

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Appellate Case No. 2016-001037

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2015-CP-36-00120

RECEIVED
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SC Court of Appeals

Oien Family Investments, LLC.....Appellant

v.

Piedmont Municipal Power Agency.....Respondent

RECORD ON APPEAL

VOL. I OF II

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STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Oien Family Investments, LLC,

Plaintiff,

vs.

Piedmont Municipal Power Agency,

Defendant.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

CASE NUMBER: 2015-CP-36-00120

ORDER

FILED
NEWBERRY COUNTY
2016 MAY 2 AM 11 04
JACKIE S. BOWERS
CLERK OF COURT

HEARING DATE:

March 28 and 29, 2016

JUDGE:

R. Lawton McIntosh

ATTORNEY FOR PLAINTIFF:

Thomas H. Pope, III

ATTORNEYS FOR DEFENDANT: Bruce W. Bannister and Luke A. Burke

COURT REPORTER:

This matter is before the Court for trial pursuant to Plaintiff's Complaint, filed March 6, 2015, challenging Defendant's right to condemn Plaintiff's property in Newberry County pursuant to S.C. Code § 28-2-470. Plaintiffs alleged:

1. The proposed taking is not necessary;
2. The proposed taking is not reasonably calculated to fulfill a public purpose; rather, the proposed taking has been initiated to further arbitrary and capricious decisions and actions taken by Defendant;
3. The proposed taking is not for a public use; and
4. There are less intrusive means available to Defendant to accomplish its intended objectives and to comply with South Carolina law, including aesthetics and the fact that the taking crosses an existing easement when another means of taking would not do so.

Defendant filed an Answer and Counterclaim on March 26, 2015, denying the relief requested in Plaintiff's complaint and counterclaiming for attorney's fees and costs of litigation related to this action. Plaintiff filed a reply on April 9, 2015.

At the call of the case, Thomas H. Pope, III appeared and represented the Plaintiff, Oien Family Investments, LLC, (hereinafter "Oien"). Bruce W. Bannister and Luke A. Burke were present on behalf of the Defendant, Piedmont Municipal Power Agency (hereinafter "PMPA").

Based upon the pleadings, the sworn testimony of the witnesses, the exhibits placed in the record by both parties, and the arguments of counsel, the Court makes the following findings of fact and conclusions of law:

1. Oien Family Investments, LLC, is a company started by Lynn and June Oien for the purposes of holding their investment properties. In December 2005, the Oiens, who are residents of Florida, purchased two contiguous tracts of land in Newberry County totaling approximately 116 acres. In 2012, the two tracts were transferred into Oien Family Investments, LLC. Reference to Oien in this Order refers to both the Oiens individually and Oien Family Investments, LLC.
2. PMPA is a joint action agency formed by ten municipal electric utilities in the Upstate of South Carolina. PMPA provides wholesale electric services to include power to its members. The power comes primarily from the Catawba Nuclear Station.
3. Currently, the City of Newberry (hereinafter "Newberry") leases electrical substations from Duke Energy Corporation (hereinafter "Duke"). Newberry determined that installing a new substation would allow for increased electrical output to its customers and greater reliability because Newberry could service the substation itself instead of relying on Duke. In addition, one of Newberry's largest customers, Kraft Foods, informed Newberry that it intended to enlarge its plant and that additional power would be required. Kraft is one of the largest employees in the City of Newberry and its wages

are considered among the highest locally. Construction of the substation was completed in April 2014.

4. Newberry is a member of PMPA and the two entities partnered to secure the right-of-way for the transmission line to energize the new substation. The transmission line consists of metal poles, some of which would be as high as ninety (90) feet into the air with cross arms. The poles would be anchored by concrete bases. No structures can be in the right-of-way or endanger these lines. PMPA was primarily concerned with route selection and designing the transmission line. Newberry was primarily concerned with explaining the project to landowners, gathering their feedback on route selection, and assisting in procuring the necessary right-of-ways.
5. PMPA and Newberry found there were two possible points in which to tap the Duke lines to transmit the electrical power to its new substation. A cursory inspection of one point was rejected because the right of way would require PMPA to condemn and go through residential areas which would be cost prohibitive. PMPA determined that the only feasible route would need to cross Oien's property.
6. One Oien tract, identified as the "southern tract" contained a house and a large pond. Oien use the house as a residence when they are in town. The other tract, identified as the "northern tract" is undeveloped field or woodlands. Oien selected a house site on the northern tract, dug a well, and had underground power run to the site. They made a down payment on a log house to construct on the site in 2008 but did not follow through with the actual building.

7. The most feasible route for PMPA to run the power line from a Duke tap point to the new substation would be along the joint lines of Oien's two properties, or stated another way, fairly in the middle of the two tracts.
8. A Newberry employee, Todd Guy, made the initial contact with Oien concerning the right-of-way. A Newberry electrical official, Mike Regier, also met with Oien on the property to discuss the proposed right-of-way. Initially, Oien wanted the line to run across the southern tract which included the pond but then rejected that route. Oien suggested that the right-of-way run along the edge of the northern tract but soon rejected that line as being too close to their proposed house. Oien favored the middle route and had several suggestions, one of which was to route the line so as to miss having to destroy several oak trees. PMPA and Newberry officials also had meetings with Oien's property manager concerning some of the conditions of the right-of-way and some of the objections Oien had to the proposed right-of-way document.
9. In November of 2012, Oien met with PMPA officials, City of Newberry officials, and Oien's property manager in an attempt to come to an agreement. Following this meeting, Oien left a message which PMPA officials took to mean that Oien had finally selected the right-of-way that followed the property line between their two tracts which was basically in the middle of their property.
10. Shortly thereafter, Oien requested additional meetings and rejected the middle route. As a result, PMPA delivered a Notice of Condemnation on Oien on February 11, 2015. This action was timely filed on March 6, 2015.
11. At the outset of the trial, Oien announced that it was moving forward on two theories: that the proposed taking is not for public use and that, based on the factors stated in

Southern Dev. & Golf Co. v. S.C. Pub. Serv. Auth., 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), PMPA abused its discretion when deciding on the route of the transmission line.

12. At the close of its case, Oien announced that it was abandoning its argument that the proposed taking is not for public use.
13. Oien called one William Rogers who was qualified as an expert by his experience as a right-of-way agent for several electric transmission authorities. According to Rogers, the *Southern Dev.* case required a detailed analysis of the alternate routes to include the land acquisition costs. According to Rogers the lack of a detailed analysis of alternate routes was not in compliance with the requirements *Southern Dev.* and thus arbitrary and capricious.
14. Oien also presented an opinion of a qualified appraiser as to the damage to the Oien property by having the right-of-way run through the middle of its two tracts. His estimate of the damage was \$210,000.00, although his written report estimated damage of \$182,000.00. He calculated the damage of the southern route to be \$23,000.00.
15. At the close of Oien's case, PMPA moved for a directed verdict on the grounds that Oien had not met its burden of proving a clear abuse of discretion by PMPA. *See Sease v. City of Spartanburg*, 242 S.C. 520, 131 S.E.2d 683 (1963) ("The burden is on the landowner who challenges the right of condemnation."). The Court took the motion under advisement.
16. PMPA elicited testimony from the professional engineer, Alan Cobb, who designed the route. According to Cobb, he considered (1) the availability of alternate routes; (2) the aesthetics; (3) cost including engineering costs and land acquisition costs; (4)

environmental factors; (5) safety; and (6) reliability.

17. PMPA presented testimony concerning the three proposed routes across the Oien property. The northern route was rejected by Oien as being too close to the home site where Oien proposed to build their home. The southern route required several bends in the transmission line which are expensive. In addition, it requires engineering to cross the pond on the southern tract of the Oien property. Also, because Oien restricted access to the property, neither PMPA nor Newberry completed the southern route engineering plan. All parties acknowledge that the southern route would be more expensive from an engineering standpoint and that the necessary poles could be viewed from the only house on the two tracts of the Oien property. Running the transmission lines around the pond could involve the Corps of Engineers or the Environmental Protection Agency.
18. PMPA's appraisal of damage to the Oien property if the middle route was chosen and executed conflicted with the Oien appraisal. According to PMPA's expert, the damage to the Oien property would be \$23,000.00.
19. Based upon the record before this Court the Court finds that no evidence was presented showing that PMPA acted in bad faith. PMPA and Newberry met with landowners and attempted to incorporate their concerns into route planning where possible.
20. The Court finds that no evidence was presented showing that PMPA committed fraud.
21. The Court finds that ample evidence was produced showing that the taking was necessary, reasonably calculated to fulfill a public purpose, and for public use.
22. Oien argued that the lack of a detailed analysis of the costs between PMPA's chosen route in the middle of the property and a costs analysis of the route across the pond is arbitrary and capricious. They supported their argument by presenting their appraisal that

the damage to their property on the middle route is between \$182,000.00 and \$210,000.00 but only \$23,000.00 if the pond route is used. They use an estimate of additional engineering cost for the pond route of \$80,000.00 even though the additional engineering costs have not been determined.

23. PMPA also presented expert testimony that the damage to the Oien property of the middle route was \$23,000.00. Thus, there is a conflict between the two experts as to the land acquisition costs for the middle route. The Court notes that the ultimate land costs of either route will be determined by a jury at a subsequent trial.

24. As the trier of fact, this Court can give such weight to either expert's opinion as it deems fit.

25. As a matter of fact and law the Court finds the decision of PMPA to locate the right-of-way on the middle route of Oien's land was neither arbitrary nor capricious.

26. "Economic and engineering considerations require [transmission] lines to be constructed as nearly straight as practicable, and there is no other feasible route for the line except the route across the lands in question, because any other route would increase the length of the line by several miles, and the cost would be substantially increased by reason of the additional guy wires, anchors and appropriate structures which would be necessitated at each of four additional angles." *Bookhart v. Central Elec. Power Co-op*, 219 S.C. 414, 432, 65 S.E.2d, 781, 789 (1951).

27. In *Southern Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth.*, 305 S.C. 507, 409 S.E.2d 428 (Ct. App. 1991), the Court of Appeals upheld a decision by a master in equity who upheld a challenge to the proposed condemnation of a high voltage line across a golf

course. The basis for the injunction was the master's finding that the power company was estopped from crossing the golf course due to the golf course developer's reasonable reliance upon prior statements by one of the power company's officers that the power company did not intend to build a line on its existing right of way across the proposed golf course. The master also concluded that the power company was enjoined from condemning additional land and using its existing right of way because it abused its discretion. The decision regarding abuse of discretion was based on a finding that the power company did not consider land acquisition costs in choosing the route.

The Court of Appeals reversed the master on the estoppel issue but upheld the master on the abuse of discretion issue. The Court of Appeals vacated that portion of the master's decision and remanded with instructions for the power company to reevaluate the choice of route based on utilizing the factors of safety, reliability, aesthetics, and costs including land acquisition costs.

28. In *Southern Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth.*, 311 S.C. 29, 426 S.E.2d 748 (1993), the Supreme Court reversed the Court of Appeals on the estoppel issue. In addressing the finding of abuse of discretion, the Supreme Court stated, at page 34:

Accordingly, we affirm the Master's order enjoining Santee Cooper from proceeding with the condemnation of the easement in question. Although we agree with the Court of Appeals' analysis of the issue of abuse of discretion, in light of our holding on the question of estoppel, we find the remand as ordered by the Court of Appeals unnecessary. Thus, the opinion of the Court of Appeals is **AFFIRMED IN PART, and REVERSED IN PART.**

29. Oien's expert witness, William Rogers, testified about the procedure for right-of-way acquisition at Central Electric Power Co-op and other entities Mr. Rogers has worked for. However, the Court finds that there is no legal requirement for PMPA to conform to the

standard created by Mr. Rogers which involves numerous written and detailed alternate route studies. Further, Mr. Rogers admitted in his testimony that, if PMPA considered the factors laid out in *Southern Dev.*, then it had not abused its discretion, even if PMPA did not perform written alternate route studies.

30. Further, the Court finds that PMPA relied upon professional appraisers and professional engineers for analysis and did consider the following factors when determining the location of the route:

- a. Availability of alternate routes;
- b. Aesthetics;
- c. Cost including engineering costs and land acquisition costs;
- d. Environmental factors;
- e. Safety; and
- f. Reliability.

31. Therefore, the Court finds that PMPA did not abuse its discretion and did not act capriciously when determining the location of the transmission line route.

32. Finally, the Court finds that Oien brought this action, not for a legitimate purpose, but in an attempt to reroute the transmission line off of Oien's property. Mr. Oien admitted that their goal was to keep PMPA from building the transmission line across Oien's property. Further, although Oien presented evidence attempting to show its preferred route, it failed to present any evidence that PMPA abused its discretion in choosing the location of the route.

33. S.C. Code §28.2.510(A) allows this Court to award PMPA reasonable costs and litigation

expenses if it finds Oien did not raise and litigate the challenge to condemnation in good

faith.

Based upon the manner in which PMPA conducted its alternate route analysis, the Court does not find Plaintiff's challenge to be brought in bad faith.

34. Oien was aware that a challenge would halt the construction of a needed substation and

thus place pressure on PMPA and Newberry to try and find a solution. That solution was

to either move the right-of-way off Oien's property or place it on the southern pond route

in disregard of the almost certain higher costs to the customers of Newberry.

35. The alleged grounds for their challenge to the condemnation show Oien's intent. Thus,

the grounds were abandoned. The abandoned grounds were 1) the proposed taking was

not necessary; (2) the proposed taking is not reasonably calculated to fulfil a public

purpose, rather, the proposed taking has been initiated to further arbitrary and capricious

decision and actions taken by PMPA; (3) the proposed taking is not for public use.

36. The remaining grounds of Oien's complaint alleges "There are less intrusive means

available to Defendant to accomplish its intended objectives and to comply with South

Carolina law, including aesthetics and the fact that the taking crosses an existing

easement when another means would not do so."

37. The single motivating factor for Oien was to force PMPA to relocate the transmission

line to the southern route or to avoid Oien's property altogether. Lynn Oien admitted as

much in his testimony.

38. The Court finds that forcing a public utility to locate a transmission line where the

landowner wants it by challenging the condemnation is not good faith.

39. PMPA is awarded attorney fees and costs in the amount of \$68,817.52 to be deducted

from any award for damages for condemnation.

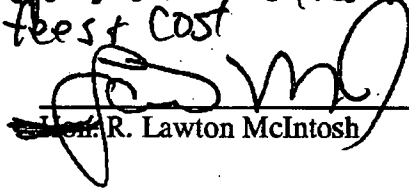
NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. PMPA's Motion for a Directed Verdict is GRANTED;

2. Oien's request for an injunction is DENIED; and

2LM ~~3. Oien is responsible for PMPA's attorney's fees and costs in the amount of \$68,817.52 and this amount will be deducted from any compensation awarded to Oien for the land condemned by PMPA.~~

3. Each Party shall be responsible for their own Attorney's fees & cost
IT IS SO ORDERED.



Hon. R. Lawton McIntosh

4-27, 2016

Anderson, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Oien Family Investments, LLC,

Plaintiff,

vs.

Piedmont Municipal Power Agency,

Defendant.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

CASE NUMBER: 2015-CP-36-00120

AMENDED ORDER

FILED
NEWBERRY COUNTY
2016 MAY 16 AM 10 13
JACKIE S. BOWERS
CLERK OF COURT

HEARING DATE:

March 28 and 29, 2016

JUDGE:

R. Lawton McIntosh

ATTORNEY FOR PLAINTIFF:

Thomas H. Pope, III

ATTORNEYS FOR DEFENDANT: Bruce W. Bannister and Luke A. Burke

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Based upon the pleadings, the sworn testimony of the witnesses, the exhibits placed in the record by both parties, and the arguments of counsel, the Court makes the following findings of fact and conclusions of law:

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10. Shortly thereafter, Oien requested additional meetings and rejected the middle route. As a result, PMPA delivered a Notice of Condemnation on Oien on February 11, 2015. This action was timely filed on March 6, 2015.
11. At the outset of the trial, Oien announced that it was moving forward on two theories: that the proposed taking is not for public use and that, based on the factors stated in

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12. At the close of its case, Oien announced that it was abandoning its argument that the proposed taking is not for public use.
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15. At the close of Oien's case, PMPA moved for a directed verdict on the grounds that Oien had not met its burden of proving a clear abuse of discretion by PMPA. *See Sease v. City of Spartanburg*, 242 S.C. 520, 131 S.E.2d 683 (1963) ("The burden is on the landowner who challenges the right of condemnation."). The Court took the motion under advisement.
16. PMPA elicited testimony from the professional engineer, Alan Cobb, who designed the route. According to Cobb, he considered (1) the availability of alternate routes; (2) the aesthetics; (3) cost including engineering costs and land acquisition costs; (4)

environmental factors; (5) safety; and (6) reliability.

17. PMPA presented testimony concerning the three proposed routes across the Oien property. The northern route was rejected by Oien as being too close to the home site where Oien proposed to build their home. The southern route required several bends in the transmission line which are expensive. In addition, it requires engineering to cross the pond on the southern tract of the Oien property. Also, because Oien restricted access to the property, neither PMPA nor Newberry completed the southern route engineering plan. All parties acknowledge that the southern route would be more expensive from an engineering standpoint and that the necessary poles could be viewed from the only house on the two tracts of the Oien property. Running the transmission lines around the pond could involve the Corps of Engineers or the Environmental Protection Agency.
18. PMPA's appraisal of damage to the Oien property if the middle route was chosen and executed conflicted with the Oien appraisal. According to PMPA's expert, the damage to the Oien property would be \$23,000.00.
19. Based upon the record before this Court the Court finds that no evidence was presented showing that PMPA acted in bad faith. PMPA and Newberry met with landowners and attempted to incorporate their concerns into route planning where possible.
20. The Court finds that no evidence was presented showing that PMPA committed fraud.
21. The Court finds that ample evidence was produced showing that the taking was necessary, reasonably calculated to fulfill a public purpose, and for public use.
22. Oien argued that the lack of a detailed analysis of the costs between PMPA's chosen route in the middle of the property and a costs analysis of the route across the pond is arbitrary and capricious. They supported their argument by presenting their appraisal that

the damage to their property on the middle route is between \$182,000.00 and \$210,000.00 but only \$23,000.00 if the pond route is used. They use an estimate of additional engineering cost for the pond route of \$80,000.00 even though the additional engineering costs have not been determined.

23. PMPA also presented expert testimony that the damage to the Oien property of the middle route was \$23,000.00. Thus, there is a conflict between the two experts as to the land acquisition costs for the middle route. The Court notes that the ultimate land costs of either route will be determined by a jury at a subsequent trial.

24. As the trier of fact, this Court can give such weight to either expert's opinion as it deems fit.

25. As a matter of fact and law the Court finds the decision of PMPA to locate the right-of-way on the middle route of Oien's land was neither arbitrary nor capricious.

26. "Economic and engineering considerations require [transmission] lines to be constructed as nearly straight as practicable, and there is no other feasible route for the line except the route across the lands in question, because any other route would increase the length of the line by several miles, and the cost would be substantially increased by reason of the additional guy wires, anchors and appropriate structures which would be necessitated at each of four additional angles." *Bookhart v. Central Elec. Power Co-op*, 219 S.C. 414, 432, 65 S.E.2d, 781, 789 (1951).

27. In *Southern Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth.*, 305 S.C. 507, 409 S.E.2d 428 (Ct. App. 1991), the Court of Appeals upheld a decision by a master in equity who upheld a challenge to the proposed condemnation of a high voltage line across a golf

course. The basis for the injunction was the master's finding that the power company was estopped from crossing the golf course due to the golf course developer's reasonable reliance upon prior statements by one of the power company's officers that the power company did not intend to build a line on its existing right of way across the proposed golf course. The master also concluded that the power company was enjoined from condemning additional land and using its existing right of way because it abused its discretion. The decision regarding abuse of discretion was based on a finding that the power company did not consider land acquisition costs in choosing the route.

The Court of Appeals reversed the master on the estoppel issue but upheld the master on the abuse of discretion issue. The Court of Appeals vacated that portion of the master's decision and remanded with instructions for the power company to reevaluate the choice of route based on utilizing the factors of safety, reliability, aesthetics, and costs including land acquisition costs.

28. In *Southern Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth.*, 311 S.C. 29, 426 S.E.2d 748 (1993), the Supreme Court reversed the Court of Appeals on the estoppel issue. In addressing the finding of abuse of discretion, the Supreme Court stated, at page 34:

Accordingly, we affirm the Master's order enjoining Santee Cooper from proceeding with the condemnation of the easement in question. Although we agree with the Court of Appeals' analysis of the issue of abuse of discretion, in light of our holding on the question of estoppel, we find the remand as ordered by the Court of Appeals unnecessary. Thus, the opinion of the Court of Appeals is AFFIRMED IN PART, and REVERSED IN PART.

29. Oien's expert witness, William Rogers, testified about the procedure for right-of-way acquisition at Central Electric Power Co-op and other entities Mr. Rogers has worked for. However, the Court finds that there is no legal requirement for PMPA to conform to the

standard created by Mr. Rogers which involves numerous written and detailed alternate route studies. Further, Mr. Rogers admitted in his testimony that, if PMPA considered the factors laid out in *Southern Dev.*, then it had not abused its discretion, even if PMPA did not perform written alternate route studies.

30. Further, the Court finds that PMPA relied upon professional appraisers and professional engineers for analysis and did consider the following factors when determining the location of the route:

- a. Availability of alternate routes;
- b. Aesthetics;
- c. Cost including engineering costs and land acquisition costs;
- d. Environmental factors;
- e. Safety; and
- f. Reliability.

31. Therefore, the Court finds that PMPA did not abuse its discretion and did not act capriciously when determining the location of the transmission line route.

32. Finally, the Court finds that Oien brought this action, not for a legitimate purpose, but in an attempt to reroute the transmission line off of Oien's property. Mr. Oien admitted that their goal was to keep PMPA from building the transmission line across Oien's property. Further, although Oien presented evidence attempting to show its preferred route, it failed to present any evidence that PMPA abused its discretion in choosing the location of the route.

33. S.C. Code §28.2.510(A) allows this Court to award PMPA reasonable costs and litigation expenses if it finds Oien did not raise and litigate the challenge to condemnation in good

faith. Based upon the manner in which PMPA conducted its alternate route analysis, the Court does not find Plaintiffs challenge to be brought in bad faith.

34. Oien was aware that a challenge would halt the construction of a needed substation and thus place pressure on PMPA and Newberry to try and find a solution. That solution was to either move the right-of-way off Oien's property or place it on the southern pond route in disregard of the almost certain higher costs to the customers of Newberry.

35. The alleged grounds for their challenge to the condemnation show Oien's intent. Thus, the grounds were abandoned. The abandoned grounds were 1) the proposed taking was not necessary; (2) the proposed taking is not reasonably calculated to fulfil a public purpose, rather, the proposed taking has been initiated to further arbitrary and capricious decision and actions taken by PMPA; (3) the proposed taking is not for public use.

36. The remaining grounds of Oien's complaint alleges "There are less intrusive means available to Defendant to accomplish its intended objectives and to comply with South Carolina law, including aesthetics and the fact that the taking crosses an existing easement when another means would not do so."

37. The single motivating factor for Oien was to force PMPA to relocate the transmission line to the southern route or to avoid Oien's property altogether. Lynn Oien admitted as much in his testimony.

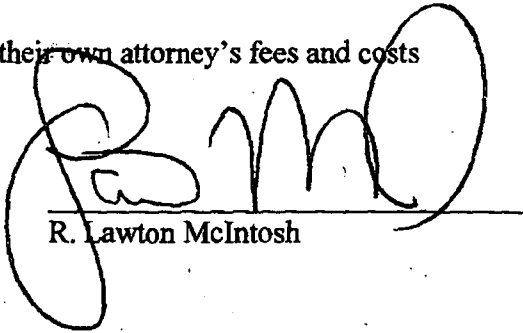
38. The Court finds that forcing a public utility to locate a transmission line where the landowner wants it by challenging the condemnation is not good faith.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. PMPA's Motion for a Directed Verdict is GRANTED;
2. Oien's request for an injunction is DENIED; and

3. Each party shall be responsible for their own attorney's fees and costs

IT IS SO ORDERED.



R. Lawton McIntosh

5-9, 2016

Wahalla, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-36-120

Oien Family Investments, LLC

Piedmont Municipal Power Agency

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

PLAINTIFF'S MOTION TO RECONSIDER, ALTER, AND AMEND IS DENIED UNDER RULES 52, 29, AND 60 WITHOUT THE NECESSITY OF A HEARING; NO FORMAL ORDER REQUESTED

This order ☒ ends ☐ does not end the case.

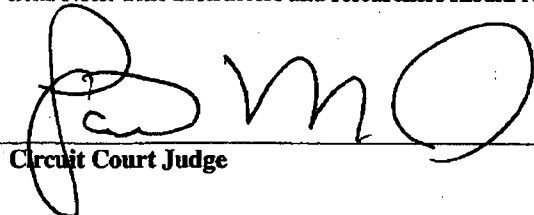
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2155
Judge Code

5-16-16
Date

1845

184

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no text or other markings on the paper.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-36-120

Oien Family Investments, LLC.

Piedmont Municipal Power Agency

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

PLAINTIFF'S MOTION FOR RECONSIDERATION AND MOTION TO ALTER AND AMEND UNDER RULES 52, 59, AND 60 REGARDING THE AMENDED ORDER DATE MAY 9, 2016 IS DENIED; NO FORMAL ORDER REQUESTED

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : *See next page*

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

PCWMO
Circuit Court Judge

2155
Judge Code

5-17-16
Date

For Clerk of Court Office Use Only

This judgment was entered on the 20th day of May 20 16 and a copy mailed first class or placed in the appropriate attorney's box on this 20th day of May 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas H. Pettit
PO Box 190
Newberry, SC 29108
ATTORNEY(S) FOR THE PLAINTIFF(S)

Oscar W. Bannister
PO Box 10007
Greenville, SC 29603
ATTORNEY(S) FOR THE DEFENDANT(S)
Jackie S. Bowers
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

(RM) This ORDER is directed to the Amended ORDER denying Plaintiffs relief. The Amended order clarified that no attorney's fees or costs were being awarded.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 18, 2016

Mr. Thomas H. Pope, III, Esquire
PO Box 190
Newberry SC 29108

Mr. Bruce Wyche Bannister, Esquire
PO Box 10007
Greenville SC 29603

Mr. Oscar W. Bannister, Esquire
Bannister, Wyatt & Stalvey, LLC
PO Box 10007
Greenville SC 29603

Mr. Luke Anthony Burke, Esquire
401 Pettigru Street
Greenville SC 29601

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

Dear Counsel:

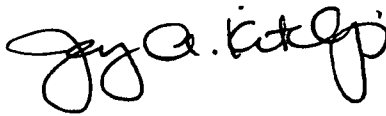
The following order has been endorsed on your appellant's petition/motion for enforcement of statutory automatic stay, injunction, and/or supersedeas in the above matter.

"Granted.

s/ Stephanie P. McDonald J.
For the Court

May 18, 2016."

Very truly yours,


CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)
)
IN THE COURT OF COMMON PLEAS
Civil Action No. 2015-CP-36 00120

Oien Family Investments, LLC,)
)
 Plaintiff,)

 v.)

Piedmont Municipal Power Agency,)
)
 Defendant.)

COMPLAINT
(Landowners' Challenge of Condemnor's Right to Take)
(Non-Jury)

FILED
NEWBERRY COUNTY
2015 MAR 6 PM 2 19
JACKIE S. BARNES
CLERK OF COURT

The plaintiff, complaining of the defendant, asserts as follows:

1. The plaintiff is the owner of two contiguous tracts of land in Newberry County, State of South Carolina, consisting of approximately 106 acres; said property was conveyed to plaintiff by deeds recorded in Deed Book 1607, at p. 176 (2/21/12) and Deed Book 1607, at p. 173 (2/21/12), in the office of the Clerk of Court for Newberry County. The plaintiff limited liability company, established under the law of South Carolina, is owned by Lynn and June Oien, who are a married couple.

2. The plaintiff's said real property is the subject of a condemnation action by Piedmont Municipal Power Agency ("PMPA" or "Defendant"), which seeks to take a portion of said property for the installation of a transmission line. A copy of the condemnation notice dated February 9, 2014 in that matter is attached herewith and incorporated herein as Exhibit A.

3. The real property that is the subject of this condemnation action is in Newberry County, South Carolina.

4. Defendant ("PMPA") is a power agency comprised of a number of upstate municipalities, including the City of Newberry, which was created by Act 473 of 1978. Defendant PMPA has certain condemnation powers under the law of South Carolina, but its power is not unlimited.

5. This action is brought pursuant to the provisions of SC Code §28-2-470. Plaintiff challenges defendant's right to take and the manner of defendant's taking. Plaintiff seeks an injunction against PMPA from proceeding with its condemnation.

6. Upon information and belief, the taking contemplated in the above action by Defendant PMPA is unlawful for one or more of the following reasons:

- (a) The proposed taking is not necessary;
- (b) The proposed taking is not reasonably calculated to fulfill a public purpose; rather, the proposed taking has been initiated to further arbitrary and capricious decisions and actions taken by the defendant;
- (c) The proposed taking is not for a public use; and,
- (d) There are less intrusive means available to the defendant to accomplish its intended objectives and to comply with South Carolina law, including aesthetics and the fact that the taking crosses an existing easement when another means of taking would not do so.

7. The plaintiffs, Lynn and June Oien, first heard of the proposed power line via a neighbor in June 2013. In approximately August 2013, without notification to the plaintiffs, it was learned that the City of Newberry and Duke Power personnel were on plaintiffs' property having a discussion as to where to join the PMPA line off the existing Duke line.

8. On August 11, 2013, the plaintiffs arrived at their property to find that there were survey stakes down the middle of the property. No permission had been sought or given by plaintiffs to PMPA, the City of Newberry, or any person to go on the property.

9. In September 2013, at the request of Lynn and June Oien, a meeting was arranged at the City Hall of Newberry to inquire about PMPA's plans. At that time, a City of Newberry representative said they would let the Oiens know more about the line later. Then again, at the request of the Oiens, a meeting at City Hall was scheduled on November 26, 2013, where PMPA personnel were present. At that time, PMPA said its plan was to route the transmission line down the middle of the property and

that PMPA could do it either "with the Oiens' permission or by condemnation." The Oiens expressed their extreme concern because of the proximity of their home site, the aesthetics thereof, and the damage to the remainder of their property which would be caused. At that meeting, the Oiens asked PMPA to answer questions about the purpose of the taking, danger area, size of the right of way, compensation, communication towers, the number of poles, the location of the right of way, property improvements, etc. The Oiens were expecting answers to these questions. The Oiens informed PMPA that under no circumstances could they consent for PMPA to put a line that ran through the middle of the property (as the current proposed line does) and, if there was a justifiable reason for a line at all, that they wanted the line to run along a more southern route, which is where PMPA had originally designed it.

10. PMPA initially had presented to plaintiff in 2013 a right of way easement that would traverse the southern portion of plaintiff's property (rather than go down the middle). It has unreasonably, arbitrarily, and punitively changed the line to its current proposed location directly through the middle of plaintiff's property, causing great damage to the remainder of said property.

11. On August 14, 2014, PMPA sent a letter enclosing an agreement reflecting the route through the middle of plaintiff's property as shown on Exhibit A and told plaintiffs to sign and return it by August 22, 2014. Consistent with what they had already told PMPA, the plaintiffs refused to sign the agreement.

12. The only time that PMPA came to Newberry to meet with plaintiffs was on November 26, 2013, when they presented a "take it or leave it" proposal to the Oiens and refused to consider anything else. This is the only meeting that a PMPA official has ever had with the Oiens.

13. After August 2014, the plaintiff has attempted for many months prior to service of the notice of condemnation to set up a meeting with representatives of PMPA and have also repeatedly requested answers to many questions, including *inter alia*, the following:

- (a) legal justification for the taking;
- (b) the route of the line;
- (c) the terms of a "normal" easement agreement rather than onerous terms proposed to inconvenience and trample the rights of the landowner;
- (d) location and height of the transmission poles;
- (e) location of communications equipment attached to poles and the rights of landowner with regard to attachments; and,
- (f) danger tree zones being defined per a normal easement agreement.

See Exhibit F attached hereto and incorporated, which is plaintiff's counsel's letter dated October 3, 2014, along with the attached lengthy memo dated October 1, 2014.

14. The plaintiff has asked for answers to these questions and for a meeting with PMPA on the following dates: September 3, 2014; September 24, 2014; September 29; October 1 (email); October 3 (letter with attached lengthy memo dated 10/3/2014); October 14 (email with attached letter); November 11; November 12 (email with attached letter); and, December 12. See Exhibit B through Exhibit J, which are letters and emails to PMPA's agent.

15. Despite getting these nine (9) written requests, neither PMPA nor its agents, have bothered to provide one word of written response to plaintiff's inquiries. Further, contrary to the letter and spirit of the Eminent Domain Procedure Act of 1988, defendant has refused to meet with the landowners. Such arrogance should not be countenanced by the circuit courts of South Carolina.

16. Defendant PMPA has not seen fit to meet with the landowner; to schedule a conference with the landowner; to inspect the proposed condemnation site with the landowner; to have a telephone conference with the plaintiff; or to answer the written requests of the landowner referenced above.

17. Defendant PMPA has refused to provide any answers to these important questions or to provide any documentation in response to said inquiries.

18. The actions of PMPA, an organization organized and existing in a county other than Newberry, are those of a "bully," and PMPA has trespassed on plaintiff's property and treated the plaintiff contumaciously, contemptuously and with utter disregard of its rights as landowner, a sacred right recognized by the South Carolina Constitution, as well as the Constitution of the United States.

19. The landowner has repeatedly, in writing and verbally, asked PMPA to be fair to it. Landowner has asked, if the condemnation is to proceed, that there be a safer, less intrusive, less expensive route and that there not be an outrageously unfair "easement agreement." The PMPA proposed easement includes not only a route through the middle of landowner's property (the worse possible location), but also included no reverter rights if PMPA ceases to use the right of way; no indication of how high the poles will be, where the poles will be, what telecommunications equipment is proposed to be included by PMPA, how danger trees would be identified and/or removed (at the sole discretion of PMPA?), or where the meter box will be.

20. Defendant PMPA intentionally, maliciously and arrogantly designed its proposed high voltage transmission line through the middle of the landowner's property for no good reason; upon information and belief, PMPA had originally designed a line to run along the southern border of the property (a less intrusive, less costly route – see sketch attached as page 4 to Exhibit K) which would not cross an existing underground power line of Newberry Electric Cooperative, Inc.

21. The proposed route will create an unnecessary safety and/or maintenance issue with said existing underground power line and easement.

22. The taking contemplated by Defendant PMPA in the above-referenced condemnation action is inequitable and invalid for the reasons including, but not limited to, the matters set forth herein.

23. Upon information and belief, the proposed takings are not in accordance with the Constitutions of South Carolina, the United States, applicable case law, or the orders of various circuit court judges.

24. For several years, the landowners have planned a home site on the property and have invested over \$75,000 in planning, grading, and establishing a location for their home on the northern portion of the site. PMPA has arbitrarily ignored its plan for a southern route which it designed and then abandoned for the proposed route in the Condemnation Notice, the route in said notice was chosen arbitrarily and without regard for the letter or spirit of the law of South Carolina and without any consideration of the point of view of the landowners (see exhibits attached hereto) or other criteria. The intended taking by PMPA will irreparably harm plaintiff by preventing the use of the property at its highest and best use. There is, upon information and belief, no accurate remedy at law for the harm caused by PMPA upon plaintiff by its egregious taking.

25. The defendant did not consider the availability of an alternate route, environmental factors, safety considerations, crossing and/or avoiding other easements, aesthetics, or the impact on the landowners.

26. Upon information and belief, the purpose of the project is to serve a private corporation which is not recognized as a valid purpose for condemnation purposes.

27. Plaintiff requests that this Court enter its Order finding and concluding that PMPA has no right to take plaintiff's property under its eminent domain powers and that the proposed easement sought by PMPA should be denied because there are less intrusive means of accomplishing its intended objectives.

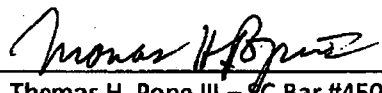
28. The defendant's actions herein were undertaken in bad faith and were a clear abuse of discretion. It has simply attempted to "roll over" not only the landowners, but the law, including the state and federal constitutions.

29. By virtue of the foregoing, the plaintiff is entitled to an injunction against PMPA from proceeding with its condemnation.

30. Plaintiff is entitled to attorneys' fees, costs, and litigation expenses under SC Code §28-2-510.

WHEREFORE, plaintiff prays for an Order of this Court dismissing with prejudice the Condemnation Notice (Exhibit A) pursuant to SC Code §28-2-470 and permanently enjoining the defendant from proceeding with this condemnation. In the alternative, plaintiff requests an Order directing the defendant to re-evaluate and alter the proposed condemnation, communicate with the plaintiff/landowners, and proceed anew with the line being re-routed along the southern border of plaintiff's property based on efficiencies, aesthetics, and a normal easement with fair terms to the landowner. Plaintiff asks for an award of attorneys' fees and litigation expenses to be paid by PMPA.

POPE AND HUDGENS, P.A.

By: 
Thomas H. Pope III – SC Bar #4508
PO Box 190
1508 College Street
Newberry, SC 29108
P: 803-276-2532; F: 803-276-8684
Email: thpope@popeandhudgens.com

Attorneys for Plaintiff

March 6, 2015

FILED
NEWBERRY COUNTY
2015 MAR 6 PM 2 19
JACKIE S. BOWERS
CLERK OF COURT

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Piedmont Municipal Power Agency

Condemnor,

vs.

Oien Family Investments, LLC

Landowner-Condemnee

) IN THE COURT OF COMMON PLEAS

) CASE NO: 2015-CP-36-_____

) NOTICE OF CONDEMNATION AND
) TENDER OF PAYMENT
) (Jury Trial Demanded)

FILED
NEWBERRY COUNTY
2015 MAR 6 PM 2:44
JACKIE S. BOWERS
CLERK OF COURT

TO THE LANDOWNER-CONDEMNEE ABOVE-NAMED:

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10, et. seq., Code of Laws of South Carolina, 1976, as amended, you are hereby notified as follows:

1. Piedmont Municipal Power Agency is the Condemnor herein and seeks to acquire an interest in the real property described herein for public purposes.
2. Oien Family Investments, LLC is named as Landowner in this action by virtue of that certain deed, dated February 14, 2012 and recorded in the Clerk of Courts Office for Newberry County in Deed Book 1607, at page 176 on February 21, 2012 and also by that certain deed dated February 14, 2012 and recorded in the Clerk of Courts Office for Newberry County, in Deed Book 1607 at Page 173 on February 21, 2012.
3. The following is a description of the real property subject to this action and a description of the interest sought to be acquired in and to the property by the Condemnor:

All that certain piece, parcel or tract of land with improvements thereon situate, lying and being in the County of Newberry, State of South Carolina, containing 49.72 acres more or less, and being more particularly described on a plat prepared by Todd Surveys, Inc., dated May 18, 1998 and recorded in the Office of the Clerk of Court for Newberry County, SC in Plat Book B111 at Page 8. Said tract being described as Tract 1, and being bounded as follows: Bounded on the West by lands now or formerly of Thomas C. Kibler and J. W.

Kibler for a distance of 504.59 feet, bounded on the North by lands now or formerly of Woodlands, Inc., for a total distance of 2,341.19 feet, bounded on the East by lands now or formerly of Woodlands, Inc., for a total distance of 1,021.16 feet, bounded on the South by lands now or formerly of J.R. Sligh, Robert Simpson and Kelly H. Ahrens for a distance of 1,761.39 feet. See also plat prepared for Lynn Oien and June Oien by Cannon-Davenport Surveying, Inc., dated December 23, 2005 and recorded in the Office of the Clerk of Court for Newberry County, SC in Plat Book C136 at Page 9.

This being the same property conveyed unto OIEN Family Investments, LLC by deed of Lynn E. Oien and June Oien, dated February 14, 2012 and recorded February 21, 2012 in the Clerk of Courts Office for Newberry County, SC in Book 1607 at Page 176.

Tax Map# 340-3-20

The right of way and easement to be taken by this proceeding is as follows:

Permanent right of way - 691.6 square feet (0.02 acre),
Var Width Triangular Area
255.92 LF by 6.75LF by 251.93 LF

As referenced in Exhibit "A" attached hereto and made a part hereof.

ALSO:

All that certain piece, parcel or tract of land with improvements thereon situate, lying and being in the County of Newberry, State of South Carolina, containing 66.45 acres more or less, and being more particularly described on a plat prepared by Todd Surveys, Inc., dated May 18, 1998 and recorded in the Office of the Clerk of Court for Newberry County, SC in Plat Book B111 at Page 8. Said tract being described as Tract 2, and being bounded as follows: Bounded on the West by lands now or formerly of Thomas C. Kibler for a distance of 1,106.87 feet, bounded on the North by lands now or formerly of U.S. Forest Services for a total distance of 2,557.71 feet, bounded on the East by lands now or formerly J.L. Hawkins, Sara and Ray Woodward and James Deloach for a total distance of 1,603.66 feet, bounded again on the West by lands now or formerly of Woodlands, Inc., for a distance of 818.89 feet, and bounded again on the South by lands now or formerly of Woodlands, Inc., for a distance of 2,341.19 feet. See also plat prepared for Lynn Oien and June Oien by Cannon-Davenport Surveying, Inc., dated December 23, 2005 and recorded in the Office of the Clerk of Court for Newberry County, SC in Plat Book C136 at Page 9.

This being the same property conveyed unto OIEN Family Investments, LLC by deed of Lynn E. Oien and June Oien, dated February 14, 2012 and recorded February 21, 2012 in the Clerk of Courts Office for Newberry County, SC in Book 1607 at Page 173.

Tax Map# 340-3-59

The right of way and easement to be taken by this proceeding is as follows:

Permanent right of way - 167,749.7 square feet (3.85 acres),
2,246.05 LF Center Line Length
75 LF Var Width – 37.5 LF Var Width on each side of
the centerline

As referenced in Exhibit "B" attached hereto and made a part hereof.

4. Piedmont Municipal Power Agency is vested with the power of eminent domain pursuant to e.g., Section 6-11-130, Code of Laws of South Carolina, 1976, as amended.

5. The property and rights sought herein to be acquired are for public purposes, more particularly a general power transmission line right of way and easement for the installation, maintenance, replacement, and repair of a new power line and appurtenances over portions of landowners' property located in Newberry County, which rights and privileges include the following:

a. The right and privilege of entering the aforesaid strip of land, and to construct, maintain and operate within the limits of same, power lines, poles, and any other adjuncts deemed by the Condemnor to be necessary for the purposes of conveying electric power and to make such relocations, changes, renewals, substitutions, replacements and additions of or to the same from time to time as said Condemnor may deem desirable; the right at all times to cut away and keep clean of said power lines and poles any and all vegetation that might, in the opinion of the Condemnor, endanger or injure the power lines and poles or their appurtenances, or interfere with their proper operation or maintenance; the right of ingress to and egress from said strip of land across the land referred to above for the purposes of exercising the rights herein granted; provided that the failure of the Condemnor to exercise any of the rights herein granted shall not be construed as a waiver or abandonment of the right thereafter at any time and from time to time to exercise any or all of same. No building shall be erected over said right of way and easement, nor so close thereto as to impose any load to said power line, poles and appurtenances.

b. That the landowners may plant crops, maintain fences and use this strip of land, provided: That crops or other plants, such as flowering shrubs, bushes, hedges or low growing species must not exceed 20 feet in height at maturity; that any fences installed must provide access to Condemnor by way of gates, which gates shall have a minimum width of sixteen (16) feet of clearance from side to side, any locking mechanism may be installed upon any gate only with coordination with Condemnor, and any fence which crosses the within referenced right of way and easement must only be installed in a line perpendicular to the center of the easement and right of way; that the use of said strip of land by the landowners shall not, in the opinion of the Condemnor, interfere or conflict with the use of said strip of land by the Condemnor for the purposes herein mentioned, and that no use shall be made of the said strip of land that would, in the opinion of the Condemnor, injure, endanger or render inaccessible the power lines, poles or their appurtenances.

6. This action is brought pursuant to Section 28-2-240, Code of Laws of South Carolina, 1976, as amended.

7. Piedmont Municipal Power Agency has complied with the requirements set forth in Section 28-2-70 (a) Code of Laws of South Carolina, 1976, as amended, by having the subject property appraised and certifies to the Court that a negotiated resolution has been attempted prior to the commencement of this action.

8. Attached to the Condemnation Notice (Exhibit "A"), is a sketch, map or diagram of the property being taken.

9. Project plans may be inspected at the Office of Piedmont Municipal Power Agency, 121 Village Drive, Greer, SC 29651, between 9:00 a.m. and 5:00 p.m.

10. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTIES (DESIGNATED AS TRACT 1 AND TRACT 2) AND RIGHTS TO BE ACQUIRED

HEREUNDER TO BE THE SUM OF TWENTY-ONE THOUSAND SEVENTY-FIVE AND NO/100 (\$21,075.00) DOLLARS AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER.

11. Payment of this amount will be made to the landowner if within thirty (30) days of service of this Condemnation Notice, the landowner in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described herein above. The request agreement must be sent by first class certified mail with return receipt requested or delivered in person to the Condemnor at 121 Village Drive, Greer, SC 29651. If no request and agreement is received by the Condemnor within the thirty-day period, the tender is considered rejected.

12. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the property is situated and deposit the tender amount with the Clerk. The Condemnor shall give the landowner notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

13. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

14. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the landowner. That notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The landowner has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over

other civil cases. The Clerk of Court shall give the landowner written notice by mail of the call of the case for trial.

15. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

16. In the event the landowner accepts the amount tendered in this Notice, the attached Request for Payment and Agreement form should be signed and returned to the Condemnor within thirty (30) days of your receipt of this Notice.

BANNISTER, WYATT & STALVEY, LLC



Bruce W. Bannister, SC Bar No. 15679, Fed. I.D. No. 7321
John F. Wyatt, SC Bar No. 006247, Fed. I.D. No. 3768
Oscar W. Bannister, Jr., SC Bar No. 00506, Fed. I.D. No. 1184
P. O. Box 10007 (401 Pettigru St., 29603)
Greenville, SC 29601
Phone: 864-298-0084 Fax: 864-331-0245
ATTORNEYS FOR THE CONDEMNOR

February 9, 2015.

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS
Case No: 2015-CP-36 - _____

PIEDMONT MUNICIPAL POWER
AGENCY,

Condemnor

vs.

OIEN FAMILY INVESTMENTS, LLC

Landowners

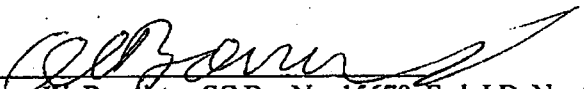
SUMMONS
JURY

FILED
NEWBERRY COUNTY
2015 MAR 6 PM 2 18
JACQUE S. BOWLES
CLERK OF COURT

TO: THE UNKNOWN LANDOWNERS HEREIN, NAMES AND ADDRESSES UNKNOWN:

You are hereby summoned, advised and notified pursuant to the South Carolina Eminent Domain Procedures Act, SC Code Ann. § 28-2-10, et. Seq., that the within Notice of Condemnation and Tender of Payment and Lis Pendens are hereby served upon you. The purpose of this lawsuit is to enable the Condemnor, Piedmont Municipal Power Agency, to acquire certain real property for purposes as are more fully stated in the attached Notice of Condemnation and Tender of Payment. Responsive pleadings to this Notice of Condemnation and Tender of Payment are not necessary, except as further stated in the Notice of Condemnation and Tender of Payment.

BANNISTER, WYATT & STALVEY, LLC


Bruce W. Bannister, SC Bar No. 15679, Fed. I.D. No. 7321
John F. Wyatt, SC Bar No. 006247, Fed. I.D. No. 3768
Oscar W. Bannister, Jr., SC Bar No. 00506, Fed. I.D. No. 1184
P. O. Box 10007 (401 Pettigru St., 29603)
Greenville, SC 29601
Phone: 864-298-0084 Fax: 864-331-0245
ATTORNEYS FOR THE CONDEMNOR

February 1, 2015.

FILED

NEWBERRY COUNTY

2015 MAR 6 PM 2 20

JACKIE S. BOWEN
CLERK OF COURT

EXHIBIT B

September 3, 2014

VIA MAIL AND FAX: 864-298-0146

John F. Wyatt, Esquire
Bannister Wyatt & Stalvey, LLC
PO Box 10007
Greenville, SC 29603

RE: Olen Family Investments, LLC

Dear Mr. Wyatt:

I am writing in response to your letter of August 29 to confirm that I represent Mr. & Mrs. Olen. Also, I would be happy to discuss the matter with you at a convenient time. I will be traveling to Delaware tomorrow for a deposition, and I will not return until Friday evening. Unfortunately, I will be out of the country all of next week for a conference (although I will be in the office Monday morning).

The Olen's concerns are that the proposed PMPA line will run right through the center of their property which is the worst possible route and would thereby create substantial damages to them, including diminution in the value of their entire property. My clients are most interested in PMPA looking at other options. In addition, I have questions, such as the purpose of the line, PMPA's right to take, etc.

Upon my return to the office on September 15, I plan to go look at the property to familiarize myself with the lay of the land. During the latter part of the week of September 15, it may be good for us to meet to discuss the various options. I would suggest that we tentatively plan to meet on either September 18 or 19 (or one day the following week) to explore these issues.

With kind regards.

Sincerely,

POPE AND HUDGENS, P.A.

Thomas H. Pope III

THP III/ig

FILED
NEWBERRY COUNTY

2015 MAR 6 PM 2 20

JACKIE S. BOWEN
CLERK OF COURT

EXHIBIT C

Lynne Grant

From: "Thomas H. Pope, III" <thpope@popeandhudgets.com>
To: "John Wyatt" <jwyatt@bannisterwyatt.com>
Cc: "Betsy Alexander" <baalexander@popeandhudgets.com>; "Lynne Grant" <lgrant@popeandhudgets.com>
Sent: Wednesday, September 24, 2014 8:57 AM
Subject: PMPA -Oien property

John

I wrote you several days ago , and this is a follow up .I will be talking to my client in the next day or two .

I will be out of the office Friday . Can you and I talk by phone next Monday or Tuesday ?

Let me know what time suits .

Best,

Tom

Thomas H. Pope III
Pope & Hudgets, PA
P.O. Box 190
1508 College St.
Newberry, S.C. 29108
803-276-2532
Fax: 803-276-8684
thpope@popeandhudgets.com

2/10/2015

053

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NEWBERRY COUNTY
2015 MAR 6 PM 2 20
JACKIE S. POWERS
CLERK OF COURT

EXHIBIT D

JOSEPH W. HUDGENS
THOMAS H. POPE III
W. CHAD JENKINS

KYLE B. PARKER

**POPE
&
HUDGENS**
ATTORNEYS, P.A.

1508 COLLEGE STREET-P.O. BOX 190
NEWBERRY, SOUTH CAROLINA 29108
PHONE (803) 276-2532 FAX (803) 276-8684
WWW.POPEANDHUDGENS.COM

THOMAS H. POPE
(1913-1999)
ROBERT D. SCHUMPERT
(1927-1994)

September 29, 2014

VIA MAIL AND FAX: 864-298-0146

Oscar W. Bannister, Jr., Esquire
Bannister Wyatt & Stalvey, LLC
PO Box 10007
Greenville, SC 29603

RE: PMPA - Olen Family

Dear Bill:

I understand that you represent PMPA. Since I am new to this case, I had a meeting this morning with the City of Newberry and my clients. It is obvious there have been miscommunications about this property. To clear these miscommunications, I think that it is important for us all (our clients, you and me) to meet for the purpose of discussing resolution of this case and the documents necessary to wrap it up.

While I have some concern about the public purpose of the project, I am not interested in arguing about the law. My clients are most interested in having the line routed in a fashion that does not ruin the value of the property for them (they've invested hundreds of thousands of dollars on this property already). From our brief discussion this morning, it is obvious that there are misconceptions about the Olen's position in this case, and we can resolve it if we can have a meeting. In my view, telephones don't work on things like this.

Please let me know when you are available. I am available Thursday, Friday morning and Monday, Tuesday Wednesday and Thursday of next week. We will need to meet in Newberry, either in my office or at City Hall or wherever else you prefer, because I think that we may need to visit the site. It will be important for decision makers to be present; therefore, an official with PMPA who has that authority will need to be present as well.

If you want to give me a call, please do so, and I can give you some background as to what I believe are the miscommunications that have preceded where we are now.

Sincerely,

POPE AND HUDGENS, P.A.



Thomas H. Pope III

THP III/lg

P.S. I am also available next Friday (until 1:30), in addition to the other dates this week and next.

FILED
NEWBERRY COUNTY

2015 MAR 6 PM 2 20

JACKIE S. BOWERS
CLERK OF COURT

EXHIBIT E

Lynne Grant

From: "Thomas H. Pope, III" <thpope@popeandhudsons.com>
To: <owBannister@bannisterwyatt.com>; "John Wyatt" <jwyatt@bannisterwyatt.com>
Cc: "Betsy Alexander" <baalexander@popeandhudsons.com>; "Lynne Grant" <lgrant@popeandhudsons.com>
Sent: Wednesday, October 01, 2014 10:05 AM
Subject: Olen -PMPA -NEWBERRY COUNTY condemnation

Bill and John

I communicated with each of you separately about getting in touch with me ,and specifically

meeting to try to resolve this matter . I have not had a return call .

Bill : can I call you this afternoon ?

Let me know what time suits .

Thanks.

tom

**Thomas H. Pope III
Pope & Hudsons, PA
P.O. Box 190
1508 College St.
Newberry, S.C. 29108
803-276-2532
Fax: 803-276-8684
thpope@popeandhudsons.com**

2/10/2015

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NEWBERRY COUNTY

2015 MAR 6 PM 2 20

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CLERK OF COURT

EXHIBIT F

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

**DOPE
& HUDGENS**
ATTORNEYS, P.A.

1508 COLLEGE STREET-P.O. BOX 190
NEWBERRY, SOUTH CAROLINA 29108
PHONE (803) 276-2532 FAX (803) 276-8684
WWW.POPEANDHUDGENS.COM

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

October 3, 2014

VIA U.S. MAIL & EMAIL

Oscar W. Bannister, Jr., Esquire
Bannister Wyatt & Stalvey, LLC
PO Box 10007
Greenville, SC 29603

RE: PMPA - My Clients, Mr. & Mrs. Olen

Dear Bill:

As I promised, I am enclosing herein a memo regarding some relevant points for concluding this condemnation matter. Attached with the memo is a copy of the map drawn by PMPA showing the route that the Olen's can live with. PMPA would need to compute the acreage in this right-of-way and present an offer for discussion.

I am glad that you are now involved in the case because, it is my understanding from my clients, that PMPA has been quite abusive towards them in their view and the meetings which have been scheduled in the matter have all been initiated by the landowners rather than by PMPA. All that is past history as far as I am concerned and I am ready to seriously discuss trying to resolve this matter.

As you will see from the attached memo, one of the large bones of contention is the fact that PMPA sent an easement agreement to Mr. & Mrs. Olen that contained terms that were far more burdensome or unfair than are necessary. The Olen's, as indicated in the memo, are willing to sign any reasonable easement consistent with normal condemnation practices.

In any event, if you have questions about this, you can give me a call today or Monday. Based on what I am submitting herein, I would hope that we can set up a meeting to resolve these things or at least get full clarification.

In fact, I think it would be beneficial if I drafted an easement agreement which would suit the easements and submit it to you for review by PMPA.

With kind regards.

Sincerely,

POPE AND HUDGENS, P.A.



Thomas H. Pope III

THP III/ba
Enclosures

F

MEMO

To: Olen file

Date: 10/1/2014

RE: Desires and Concerns by Mr. & Mrs. Lynn Olen
as to the Condemnation by PMPA on Their Property

1. **Route of the Line:**

The Olen's (reluctantly) will agree to have the southern route (along the southern boundary of their property) which PMPA drew several months ago -- to put the line anywhere else would violate Southern Development v. S.C. Public Service Authority (1991).

2. Because the southern route opens up the easement area for a distance of hundreds of feet to potential trespassers, the Olen's want a 6' chain link fence on the edge of the right of way as a security measure.

3. The substation "meter box" will be on Pole 330 (rather than Pole 331 which is right by the entrance to the Olen's property), and access to the right of way for PMPA will be off the current Duke right of way point as shown on the attached drawing marked with an "X." PMPA can fence and gate this access point.

4. **Terms of the Right of Way Easement:**

The Olen's are agreeable to a normal, standard easement/right of way agreement -- in my 40 years that I have practiced, I have never seen an easement as onerous as the one presented by PMPA to the Olen's a couple of months ago -- it can easily be amended to reflect normal terms.

5. Some of the details of the easement which are either unconscionable or present questions for which we need answers:

(a) Where will the poles physically be? As I understand it, PMPA advised the Olen's that they would be told this well in advance of signing an easement -- this can be corrected by a simple map showing where the poles will be.

(b) The height of the poles -- this is obviously an aesthetic issue, and we need to know if the poles are going to be 40' high or 100' high and what they will be constructed of (metal, concrete, wood, etc.)

(c) What plans does PMPA have for the communications equipment referenced in the easement it sent? We need specifics about this and what revenue sharing they propose to make with the Olen's for any attachment fees, profit splitting fees or whatever revenue is to be gained from such communication devices.

(d) Danger tree zone needs to be explicit: i.e., the right to harvest dead trees only, not healthy ones.

6

- (e) While the easement is in perpetuity, there needs to be added the standard reverter clause: if PMPA ceases to use the easement for electrical transmission, the land reverts to the Ojens or their successors, assigns, heirs, etc.



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NEWBERRY COUNTY

2015 MAR 6 PM 2 20

JACKIE S. BOWERS
CLERK OF COURT

EXHIBIT G

Lynne Grant

From: "Thomas H. Pope, III" <thpope@popeandhugdens.com>
To: <owBannister@bannisterwyatt.com>
Cc: "Lynne Grant" <lgrant@popeandhugdens.com>; "Betsy Alexander" <balexander@popeandhugdens.com>
Sent: Tuesday, October 14, 2014 10:36 AM
Attach: DOC101414.pdf
Subject: Oien -PMPA
Bill

My clients and I are in no rush about this matter ,but they are most interested in meeting to resolve this situation at a mutually convenient time . My letter is attached .

When you have a couple of proposed dates and times from your client to meet let me know .

Best regards,
Tom

Thomas H. Pope III
Pope & Hudgens, PA
P.O. Box 190
1508 College St.
Newberry, S.C. 29108
803-276-2532
Fax: 803-276-8684
thpope@popeandhugdens.com

-----Original Message-----

From: Pope & Hudgens Scanner [mailto:copier@popeandhugdens.com]
Sent: Tuesday, October 14, 2014 2:23 PM
To: T Pope
Subject: Scanned from MFP-07091179 10/14/2014 11:22

Scanned from MFP-07091179.
Date: 10/14/2014 11:22
Pages:1
Resolution:200x200 DPI

2/10/2015

064

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

**POPE
&
HUDGENS**
ATTORNEYS, P.A.

1508 COLLEGE STREET-P.O. BOX 190
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WWW.POPEANDHUDGENS.COM

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

October 14, 2014

VIA EMAIL ONLY:

Oscar W. Bannister, Jr., Esquire
Bannister Wyatt & Stalvey, LLC
PO Box 10007
Greenville, SC 29603

RE: Oien Property - PMPA

Dear Bill:

My client is certainly not in a rush on this matter, but we were interested in hearing back from you with regard to my letter to you of September 29. If your clients have dates in mind for us to meet onsite, I would appreciate hearing from you about those dates. It would be helpful for us to have several days advance notice of any proposed meeting so that we can coordinate everyone's schedule. Please let me know when you have dates that suit you and your client.

Sincerely,

POPE AND HUDGENS, P.A.



Thomas H. Pope III

THP III/tg
Enclosures

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NEWBERRY COUNTY
2015 MAR 6 PM 2 20
JACKIE S. DOWERS
CLERK OF COURT

EXHIBIT H

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

**DOPE
& HUDGENS**
ATTORNEYS, P.A.

1508 COLLEGE STREET-P.O. BOX 190
NEWBERRY, SOUTH CAROLINA 29108
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WWW.POPEANDHUDGENS.COM

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

November 11, 2014

VIA EMAIL ONLY:

Oscar W. Bannister, Jr., Esquire
Bannister Wyatt & Stalvey, LLC
PO Box 10007
Greenville, SC 29603

RE: Olen - PMPA

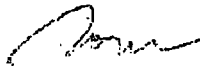
Dear Bill:

I sent you a letter several weeks ago about trying to resolve this matter but have not heard back from you. If you and PMPA are available, as we mentioned, the Olen's are happy to meet to discuss any details. There still remain a couple of questions which were referred to in the attachment to my letter to you of October 3.

With kind regards.

Sincerely,

POPE AND HUDGENS, P.A.



Thomas H. Pope III

THP III/lg

FILED
NEWBERRY COUNTY
2015 MAR 6 PM 2 20
JACKIE S. BOWERS
CLERK OF COURT

EXHIBIT I

Lynne Grant

From: "Betsy Alexander" <balexander@popeandhudgets.com>
To: <owBannister@bannisterwyatt.com>
Cc: "Thomas H. Pope, III" <thpope@popeandhudgets.com>; "Lynne Grant"
<lgrant@popeandhudgets.com>
Sent: Wednesday, November 12, 2014 5:26 PM
Attach: Letter to Bill Bannister - 11 12 14.pdf
Subject: PMPA/OIEN: Correspondence from Tom Pope
Mr. Bannister:

Attached you will find correspondence to you from Mr. Pope.

Sincerely,

Betsy Alexander
Litigation Paralegal to Thomas H. Pope III

Pope & Hudgets
1508 College Street
Post Office Box 190
Newberry, South Carolina 29108
balexander@popeandhudgets.com
www.popeandhudgets.com

2/10/2015

069

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

**DOPE
& HUDGENS**
ATTORNEYS, P.A.

1508 COLLEGE STREET-P.O. BOX 190
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www.popeandhudgens.com
November 12, 2014

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

VIA EMAIL ONLY

Oscar W. Bannister, Jr., Esquire
Bannister Wyatt & Stalvey, LLC
PO Box 10007
Greenville, SC 29603

RE: PMPA - Olen Family

Dear Bill:

Thank you for calling today. You had a question about the grantor of the Olen property and I understand that you are looking into resolving that. As I mentioned to you, since I wrote you a number of weeks ago, we have heard nothing from PMPA about our offer and also answers to some questions we had. In my previous letter to you over five weeks ago, I identified the fact that the Olen's were agreeable for PMPA to use the southern route, which PMPA had originally drawn up. They are also willing to sign a reasonable right of way easement (with a reverter clause as mentioned in my memo).

It is my understanding that you are going to contact Ben Rook, who was one of the children of Benetta Rook, and who got title via the estate of Benetta Rook. If you need us to shed any light on why Ben's sister, Donna, did not sign a deed to the Olen's (only Ben apparently), please let us know and we will try to assist and expedite.

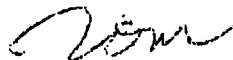
In any event, it is my understanding that you said you would get back in touch with your people about arranging a meeting time to discuss the questions that were set forth in my memo of October 1, 2014, which I sent you with my letter of my October 3.

I think a meeting would expedite the chances of a resolution and avoid a challenge to the right to take, etc. I look forward to hearing back from you soon about a date for a meeting. In the event that you cannot set up a meeting in the next ten days or two weeks, then I would suggest that we have a conference call at a minimum. I will be in the office the rest of this week and virtually all of next week as well. Call me tomorrow to arrange a meeting or conference call date and time.

With kind regards.

Sincerely,

POPE AND HUDGENS, P.A.



Thomas H. Pope III

THP III/ba

EXHIBIT J

FILED
NEWBERRY COUNTY
2015 MAR 6 PM 2 20
JACKIE S. BOWERS
CLERK OF COURT

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

**POPE
& HUDGENS**
ATTORNEYS, P.A.

1508 COLLEGE STREET-P.O. BOX 190
NEWBERRY, SOUTH CAROLINA 29108
PHONE (803) 276-2532 FAX (803) 276-8684
WWW.POPEANDHUDGENS.COM

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

December 12, 2014

VIA EMAIL ONLY:

Oscar W. Bannister, Jr., Esquire
Bannister Wyatt & Stalvey, LLC
PO Box 10007
Greenville, SC 29603

RE: Olen - PMPA

Dear Bill:

I write again regarding the above matter. Is your client PMPA agreeable with setting up a meeting with me and my clients or, at a minimum, to answer the questions that I sent to you in my letter of October 37. I am in the office today and all of next week. I would appreciate hearing from you before Christmas. My clients are concerned that PMPA continues to ignore their requests.

With kind regards,

Sincerely,

POPE AND HUDGENS, P.A.



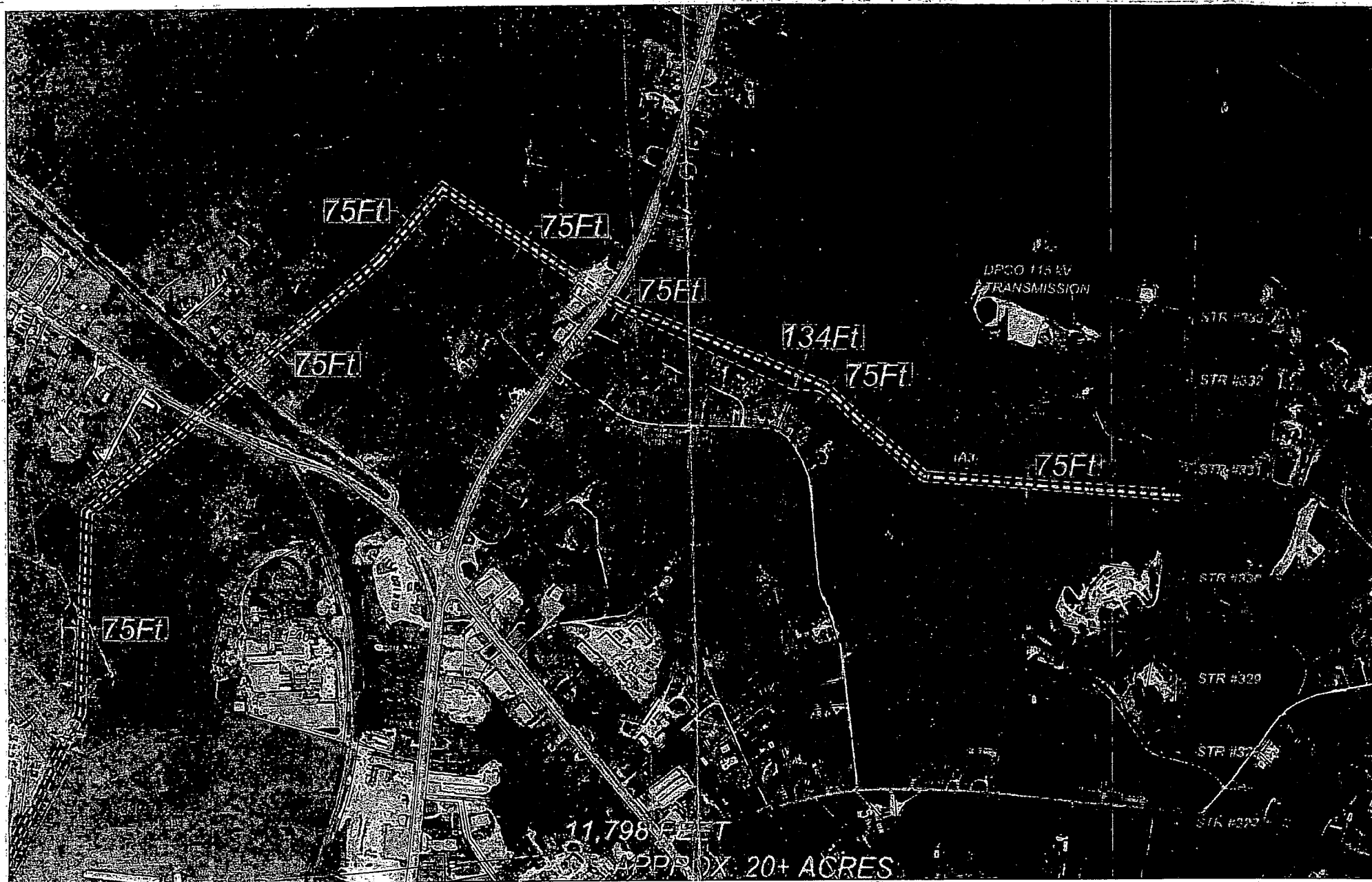
Thomas H. Pope III

THP III/lg

cc: Mr. & Mrs. Lynn Olen

EXHIBIT K

FILED
NEWBERRY COUNTY
2015 MAR 6 PM 2 20
JACKIE S. BOWERS
CLERK OF COURT



STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

Oien Family Investments, LLC

Plaintiff,

vs.

Piedmont Municipal Power Agency,

Defendant.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

C.A. No.: 2015-CP-36-00120

ANSWER AND COUNTERCLAIM

The Defendant, Piedmont Municipal Power Agency (hereinafter "PMPA"), answering the Complaint of the Plaintiff, and subject to motions filed contemporaneously herein, would respectfully show unto the Court as follows:

1. All allegations not admitted are denied.
2. Paragraph 1 admitted.
3. Paragraphs 2 and 3 are admitted.
4. Paragraph 4 is admitted. PMPA wholesales electricity to its members of which the City of Newberry is one. PMPA is contractually obligated to supply its members all-requirements power. Each member is obligated to serve its customers' electrical demands.
5. Paragraph 5 is admitted.
6. Paragraph 6 is denied.

(a) The proposed taking is necessary because the current lines are near capacity and the City of Newberry has an increased need for electricity for its homeowners

and businesses. Without increasing the capacity to supply the needs of the City of Newberry, PMPA would be derelict in its sole purpose which is to serve the public.

(b) The sole purpose of the condemnation action is to provide for the increased needs of the citizens and businesses of the City of Newberry and to do so as economically and sufficiently as practical.

(c) The only purpose of the taking is to supply the citizens and businesses of the City of Newberry with adequate electricity to meet their needs and that is a public purpose.

(d) PMPA and its member the City of Newberry have offered numerous alternative routes to appease the Plaintiff and its agents. On every occasion the Plaintiff has changed its mind, placed additional conditions of the proposed route which cannot be accepted, or which were prohibitively expensive.

7. Paragraph 7 is denied. PMPA's member, the City of Newberry, through its employees, were discussing routes for the power lines as early as April, 2013 and had suggestions from the Plaintiff as to the route. The Plaintiff actually met with the City of Newberry's employees in June, 2013 to discuss possible routes that would please the Plaintiff.

8. Paragraph 8 is denied. Plaintiff suggested locating the line as early as June, 2013 so as to avoid certain oak trees. In order to do so, the Plaintiff granted express permission for the PMPA and its member the City of Newberry to go upon the premises.

9. Paragraph 9 is admitted insofar as on November 26, 2013 a meeting was held with the City of Newberry representatives and PMPA employees. PMPA's engineer

and general manager were present along with the engineer for the project. Proposed drawings of possible routes were presented to the Plaintiff along with all information that was available at that time. PMPA denies it did not supply all information to the Plaintiffs that it had at that time. Initially PMPA and the City of Newberry considered a southern route, but determined the route to be unsuitable. The Plaintiff also objected that large trees would be destroyed and requested another route.

10. Paragraph 10 is denied. PMPA has presented options to Plaintiff in an attempt to reach an agreement or negotiated settlement. On each occasion the Plaintiff, either in person or through its agents, have added stipulations and conditions that cannot be met. For example, one of the Plaintiff's agents, one C. Paul Major, instructed the City of Newberry's agents by email dated November 12, 2013, that PMPA could send its surveyor back on the Plaintiff's property to obtain a new route and added these conditions:

Please understand that my client will not enter into any r-o-w that grants PMPA permission for antennas to be placed on any poles on his property. Further, my client will not enter into a "Perpetual Easement." The easement must include language that would cause the right-of-way to be terminated and revert to the landowner at such time as the PMPA and its successors cease use the r-o-w for a specified period of time. The r-o-w must also require PMPA and its successors to remove its equipment (poles, towers, lines, etc.) at its own expense upon termination of use.

Plaintiff either knows or should have known that such conditions could not be accepted by PMPA.

11. Paragraph 11 is admitted.

12. Paragraph 12 is admitted to the extent PMPA agents met with the Plaintiff on one occasion. Each member, however, is an extension of PMPA and the Plaintiff spoke multiple times with at least one director of the PMPA board of directors from the

City of Newberry. As a matter of policy, PMPA lets its members take the lead in trying to reach an agreement with landowners. This policy recognizes that the City of Newberry employees are neighbors and perhaps friends or fellow church members of the landowner and can best explain the project, its necessity, and its costs and benefits for the community. Agents of the City of Newberry met numerous times with the Plaintiff or its agents.

13. So much of Paragraph 13 is admitted which alleges that the Plaintiff's attorney sought a meeting with PMPA after August 2014, more than a year and one-half after PMPA and the City of Newberry began trying to reach an acceptable agreement with the Plaintiff. Time became of an essence to the project and no reasonable, good faith negotiation had been fruitful so condemnation was the only viable alternative for PMPA.

14. Paragraph 14 is admitted to the extent the Plaintiff continued to delay an agreement which could be accepted by PMPA.

15. Paragraph 15 is denied. For over a year and one-half PMPA and the City of Newberry tried to accommodate the Plaintiff and reach an acceptable agreement. Much of the information sought by PMPA was furnished for the various routes. Some of the information changed as the engineering developed.

16. Paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30 are denied.

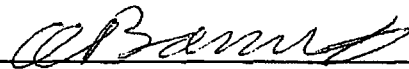
BY WAY OF COUNTERCLAIM

17. All prior allegations are realleged.

18. Pursuant to S.C. Code § 28-2-470, PMPA requests reasonable costs and litigation expenses.

WHEREFORE, having fully answered the Complaint of Plaintiff, Defendant Piedmont Municipal Power Agency (PMPA) prays the Court determine that the condemnation action of PMPA is necessary, for a public purpose and use, complies with all requirements of South Carolina law, and for attorney's fees and litigation costs.

BANNISTER, WYATT & STALVEY, LLC



O. W. Bannister
SC Bar No. 506; Fed. ID No. 1184
401 Pettigru Street (29601)
P. O. Box 10007 (29603)
Greenville, South Carolina
Phone: (864)298-0084; Fax: (864)298-0146
Attorney for Defendant

March 23, 2015

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Oien Family Investments, LLC,

Plaintiff,

v.

Piedmont Municipal Power Agency,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-36-00120

**PLAINTIFF'S REPLY TO DEFENDANT'S
ANSWER AND COUNTERCLAIM**

FILED
NEWBERRY COUNTY
2015 APR 9 PM 4 13
JACOB L. BARNETT
CLERK

**TO: DEFENDANT PIEDMONT MUNICIPAL POWER AGENCY AND ITS ATTORNEY, O. W. BANNISTER, JR.,
ESQUIRE:**

Plaintiff replies to Defendant's Answer and Counterclaim as follows:

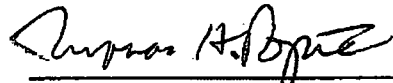
FOR A FIRST DEFENSE

1. Each and every allegation of the Answer and Counterclaim not specifically admitted herein is denied. Further, the allegations of the Complaint are realleged fully.
2. The allegations of Paragraphs 17 and 18 (purportedly constituting a "counterclaim") are denied.
3. Further responding to the allegations in the Counterclaim, the plaintiff asserts that it has raised and litigated in good faith the issue of right to take.
4. Further, PMPA has failed and refused to respond to the nine (9) letters and emails sent to its agent from August 2014 through December 2014; such conduct shows a willful disregard for the rights and interests of the landowner. In addition, the defendant's Answer asserts that it utilizes the City of Newberry to deal with landowners when, in fact, that is not the case. In the instant matter, the plaintiff contacted the City of Newberry officials (including the City Manager) in August 2014 to get PMPA to meet with them. Plaintiff was informed by the City that the matter was "out of their hands," and that plaintiff had to talk to PMPA directly; thereafter, plaintiff attempted to do exactly what the City of Newberry told it to do: contact PMPA. PMPA repeatedly refused to respond to landowner's requests.
5. PMPA has trespassed on plaintiff's property.

FOR A SECOND DEFENSE

6. Plaintiff repeats and realleges all of the foregoing allegations as if repeated verbatim herein.
7. As set forth in the Complaint, PMPA's actions herein show that its conduct is contemptuous and "unclean."
8. PMPA has "unclean hands" which is a bar to its Counterclaim.

WHEREFORE, having responded to the allegations of the Counterclaim, plaintiff prays that the Counterclaim be dismissed with prejudice and that plaintiff be granted the relief sought in the Complaint.



Thomas H. Pope, III – SC Bar No. 4508
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thpope@popeandhudgens.com

Attorneys for Plaintiff

April 9, 2015

FILED
NEWBERRY COUNTY
2016 MAY 6 AM 10 53
JACKIE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2015-CP-36-00120

Oien Family Investments, LLC,)
Plaintiff,)
v.)
Piedmont Municipal Power Agency,)
Defendant.)

**PLAINTIFF'S MOTION FOR RECONSIDERATION
AND MOTION TO ALTER OR AMEND UNDER
RULES 52, 59, AND 60 S.C.R.C.P.**

**TO: PMPA AND ITS ATTORNEY O.W. BANNISTER, JR., ESQUIRE, BRUCE W. BANNISTER, ESQUIRE,
AND LUKE BURKE, ESQUIRE:**

The plaintiff, by and through its undersigned counsel, hereby moves pursuant to the provisions of Rules 59, 60, and 52 S.C.R.C.P. that this Court reconsider its Order dated April 27, 2016, and issue an Order altering and amending the judgment.

The Court's Order dated April 27, 2016, and filed on May 2, 2016, was received by counsel on May 3, 2016.

Plaintiff respectfully asserts that this Order was in error in each of the following particulars:

1. In Finding No. 7, the Court erred in finding and concluding that the most feasible route for PMPA to run the line was through the middle of plaintiff's properties. The testimony of plaintiff's expert was not contradicted and defendant failed to determine the route in accordance with Southern Development v. S.C. 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 most feasible route reflected in the evidence, exhibits, and testimony, was the Southern Route on plaintiff's property.
2. The Court erred in failing to find and conclude that PMPA valued the alternate routes and all land on the PMPA Transmission Line project at the same per-acre value. The evidence (Plaintiff's Exhibit 14 and PMPA009) and the testimony, including that of Mr. Graydon, established this fact. Under Southern Development, it was error for defendant to fail to analyze and consider the cost to acquire the plaintiff's property, including damage to the remainder, under the Southern Route by comparison with the cost for the middle route. Like Southern Development, a route must be rejected if the condemnor's route selection considers land values for all alternate routes on a project at the same per-acre value.
3. The Court erred (or was mistaken) in the fifth sentence of Finding No. 17 where it ruled "Also, because Oien restricted access to the property, neither PMPA nor Newberry completed the southern route engineering plan." There is no support in the record for this finding, as the Oiens did not restrict access. Further, the law of

South Carolina grants to condemning authorities the authority to have access to the property of landowners to perform such studies and condemnor can get an ex parte court order for such access, pursuant to S.C. Code §28-2-70(c).

4. The Court erred in not finding that the Oien's consistently requested, well in advance of condemnation, that PMPA use the southern route across their property for the transmission poles, which were 90 feet high.
5. The Court erred in Finding No. 25 which states that the decision of PMPA to locate the right of way on the middle route of the Oien's land was neither arbitrary nor capricious. This finding is contradicted by all evidence in the record, including the testimony of expert Rogers. Further, the PMPA route decision was based only on its engineer's conclusory statement that he verbally considered the factors, which statement had no supporting document reflecting any rational decision making process contrary to Southern Development.
6. The Court erred in Finding No. 26 in relying on Bookhart v. Central Electric Power Co-op, 219 S.C. 414, 65 S.E. 2d 781 (1951), for the proposition that it is desirable that transmission lines "be constructed as nearly straight as practicable..." This case was overruled 40 years later by Southern Development, which does not bless a "straight as possible" route methodology for transmission lines. It requires that all factors be analyzed and compared as to all alternate routes. No such analysis was made by PMPA in this case.
7. The Court erred in Finding No. 29 (second sentence) in finding that "there is no legal requirement for PMPA to conform to the standard created by Mr. Rogers which involves numerous written and detailed alternate route studies." First, Mr. Rogers did not "create" the standard. He testified without contradiction that this standard was the applicable industry standard used by condemning authorities all over South Carolina, including Duke, SCE&G, Central Electric Power Co-op, and Progress Energy. He further testified that this routing standard was adopted by condemning authorities immediately after, and as a direct result of, the Court's mandate in Southern Development v. S.C. Public Service Authority (1993). This standard is not contradicted in the record.
8. The Court erred in including the last sentence of Finding No. 29, as Mr. Rogers did not admit that if PMPA had considered the Southern Development factors it had not abused its discretion, even if it performed no written studies. Rogers, on the contrary, testified that PMPA's decision was arbitrary and capricious and that it was an abuse of discretion (See Plaintiff Exhibit 40, "Conclusions"). Further, this finding is erroneous because Southern Development rejected Santee Cooper's contention that it had verbally "considered" all factors because the Court noted that the record there did not include any "notes or memoranda" from which the court could assess whether or not objective criteria had been considered and whether or not PMPA abused its discretion by failing to adhere to a "rational decision making process" required by Southern Development.

9. The Court erred in Finding No. 30 for the reasons set forth above and because the lack of written documentation, even a single piece of paper, precludes this Court, or any court, from a review of PMPA's decision. Southern Development would be negated if a Court can accept merely verbal testimony of the routing analysis of two or three alternate routes without corroboration by some written document.
10. The Court erred in Finding No. 32 (first sentence), as it is not supported by any evidence that plaintiff brought this action, not for a legitimate purpose, but in an attempt to reroute the transmission line off of the Oiens' property. Further, this finding is contradicted by the Court's handwritten Finding No. 33 that the plaintiff's challenge was not brought in bad faith.
11. The Court erred in finding in the second sentence of Finding No. 32 that the Oiens admitted that their goal was to keep PMPA from building the transmission line across the Oiens' property. There is no evidence to support this finding and it is contradicted by the Court's handwritten finding in No. 33 referenced above.
12. The Court erred in the third sentence of Finding No. 32 in concluding that Oien "failed to present any evidence that PMPA abused its discretion in choosing the location of the route." This finding overlooked Expert Rogers' testimony that PMPA did abuse its discretion required by the electric transmission industry, as recognized by Duke, SCE&G, and Central Electric Power Co-op. (See also Plaintiff Exhibit 40.) In fact, defendant provided no testimony or opinion to refute this opinion.
13. The Court erred in making Finding No. 35 about the Oiens' intent, as there was no evidence of Oiens' intent other than to challenge PMPA based on the holding in Southern Development. See prayer in Complaint where the Oiens sought to have the southern route, which was identified in the evidence as the best route under Southern Development. The routing standard or industry standard of the electric transmission entities in South Carolina was identified by Rogers and not refuted by defendant.
14. The Court erred in Finding No. 37, as plaintiff was not trying to "force" PMPA to relocate the line to the southern route or to avoid Oiens' property altogether. Plaintiff was seeking the southern route because it was the best route under Southern Development, per the expert testimony of Bill Rogers. Rather than "forcing" PMPA to do anything, Oien was exercising its right under South Carolina law to challenge PMPA's non-existent route methodology which did not comply with Southern Development.
15. The Court erred in Finding No. 38 where the Court found that "forcing a public utility to locate a transmission line where the landowner wants it by challenging the condemnation is not good faith". This finding and conclusion is not supported by the record. Southern Development clearly allows a challenge where landowner's expert has concluded that condemnor has not followed the industry standard or the required routing methodology, as Rogers did here. Further, this finding is contradicted by the Court's handwritten finding in No. 33 that plaintiff's challenge was brought in good faith.

16. The Court erred in Finding No. 39 awarding PMPA "attorney's fees and costs of \$68,817.52, to be deducted from any award for damages for condemnation." This finding is not supported by the record or by the provisions of S.C. Code §28-2-510. Further, it is contradicted by the Court's handwritten findings in Finding No. 33 and by this Court's Order on Page 11 where it is determined that "each party shall be responsible for their own attorney's fees and costs".
17. The Court erred in failing to adopt the findings of fact and conclusions of law set forth in plaintiff's proposed Order Granting Injunction submitted after trial. See Exhibit A, attached hereto and incorporated by reference.
18. The Court erred in failing to make findings in accordance with paragraph 3 of Exhibit A, which listed the uncontested facts as to plaintiff's future home site on which plaintiff had spent in excess of \$100,000.
19. The Court erred in failing to make findings in accordance with paragraph 10 of Exhibit A, as these facts were not contradicted.
20. The Court erred in failing to make findings in accordance with paragraph 11 of Exhibit A, as these facts were not contradicted.
21. The Court erred in failing to make findings in accordance with paragraph 12 of Exhibit A, as these facts are not contradicted.
22. The Court erred in failing to make findings in accordance with paragraphs 13-22 of Exhibit A, which relate to the testimony and report of plaintiff's expert Rogers. His testimony and opinions were not contradicted by PMPA. His testimony was credible and the record does not support a conclusion to the contrary. It is respectfully asserted that these paragraphs should be included in this Court's Order.
23. The Court erred in ignoring or overlooking (and implicitly rejecting) the opinions of Rogers, even though no challenge was made to his expertise as one familiar with the applicable right-of-way routing standards under Southern Development and there was no finding, or challenge by PMPA, that his testimony was not credible.
24. The Court erred in failing to adopt paragraph 26 of Exhibit A as its finding of fact and conclusion of law. This paragraph is supported by the record at trial and the facts in this case are on point with virtually identical facts in Southern Development.
25. The Court erred in failing to adopt paragraphs 27, 28, 29, and 30 of Exhibit A, as these findings and conclusions are supported by the record that a proper alternate route analysis under Southern Development shows that defendant should be enjoined and directed to use the southern route across plaintiff's property.
26. The Court erred in failing to adopt as its conclusion paragraph 31 of Exhibit A, as it is supported by the evidence at trial.

27. The Court erred on Page 11 in granting PMPA's motion for directed verdict and in denying plaintiff's request for an injunction. The record in the case supports this position. An injunction should be ordered, consistent with the Supreme Court decision in Southern Development. Further, a motion for directed verdict can only be granted if the evidence at trial presents only questions of law, pursuant to Rule 50 S.C.R.C.P. In this case the testimony of Bill Rogers supported plaintiff's position that PMPA had not used proper methodology in its route selection, in violation of Southern Development. It was error to grant defendant's motion for directed verdict in view of Rogers' uncontested testimony and opinions and based on the entire record.
28. The Court erred in failing to find that PMPA, in "considering" the alternate routes, and the factors set forth in Southern Development, did not utilize, generate, or produce a single note or document which reflected any analysis or facts which supported PMPA's routing decision.
29. The Court erred in failing to find that PMPA, even though it is engaged in electric transmission projects on a less frequent basis than the large transmission companies like Duke, SCE&G, and Central Electric Co-op, is held to the same routing standards as they are pursuant to the Southern Development case and that its relative inexperience in these projects does not excuse its actions. PMPA has no defense to its failure to conduct the same alternate routing analysis as larger transmission companies.
30. The Court erred in failing to properly apply the holding in Southern Development, which requires a "rational decision making process", to this case where PMPA said the factors of the alternate routes were "considered" but the record reflects nothing "rational" nor specific about the factual basis for the PMPA engineer's alleged "consideration". PMPA gave a mere conclusion without the specifics upon which the conclusion was based which is required by Southern Development. Because the record shows that PMPA identified no rational process, PMPA was not in compliance with a process required by our Supreme Court in Southern Development.

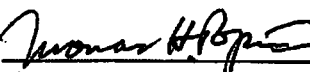
CONCLUSION

Based on the above errors in findings of fact and conclusions of law set forth above, it is requested that this Court reconsider its Order filed May 2, 2016, and alter or amend the Order/judgment by substituting a new order which incorporates the above and grants Injunctive relief to plaintiff as set forth in Exhibit A.

This motion is based upon the entire record in this matter, including the pleadings, the trial transcript, the trial exhibits, and the applicable law.

Respectfully submitted,

POPE AND HUDGENS, P.A.

By: 
Thomas H. Pope III SC Bar #4508
PO Box 190
1508 College Street
Newberry, SC 29108
P: 803-276-2532; F: 803-276-8684
thpope@popeandhudgens.com

Attorneys for Plaintiff Oien Family Investments, LLC

May 6, 2016

EXHIBIT A

FILED
NEWBERRY COUNTY
2016 MAY 6 AM 10 53
JACKIE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	Case No. 2015-CP-36-00120
	)	
Oien Family Investments, LLC,	)	
	)	
Plaintiff,	)	
v.	)	ORDER GRANTING INJUNCTION
	)	
Piedmont Municipal Power Agency,	)	
	)	
Defendant.	)	

This matter came before the Court for trial on March 28, 2016. Trial counsel were Thomas H. Pope III on behalf of plaintiff, Oien Family Investments, LLC ("Oien"), and Bruce W. Bannister and Luke A. Burke on behalf of defendant, Piedmont Municipal Power Agency ("PMPA").

This action is one by plaintiff challenging the defendant's right to condemn plaintiff's property based upon the decision in Southern Development & Golf Company v. S.C. 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)¹ Plaintiff's complaint alleges that PMPA abused its discretion when deciding on the route of the transmission line in a fashion contrary to the Southern Development case. The complaint also seeks plaintiff's right to attorneys' fees in the event it prevails, pursuant to SC Code §28-2-570.

The defendant's answer denies the allegations of the complaint and asserts a counterclaim for attorneys' fees and litigation costs. Plaintiff filed a reply on April 9, 2015.

¹ In the Southern Development case, the master granted an injunction against Santee Cooper under the doctrine of estoppel and based on an abuse of discretion for its arbitrary, capricious decision of the selected route. The Court of Appeals reversed the master's determination on the estoppel theory and affirmed his decision that the utility's choice for the route for the transmission line lacked a factual basis. Later in Southern Development v. S.C. Public Service Authority, 426 S.E.2d 748 (1993), the Supreme Court reversed the Court of Appeals on the estoppel issue. However, in the instant case, the plaintiff does not allege any estoppel issues. The Supreme Court adopted the abuse of discretion ruling by the master and affirmed the Court of Appeals in that regard.

Based upon the pleadings, the sworn testimony of the witnesses, including experts, the exhibits placed in the record by both parties, and the arguments of counsel, the Court makes the following findings of fact and conclusions of law:

1. Olen Family Investments, LLC is owned by Lynn and June Oien, and the LLC owns 116 acres in Newberry County which was purchased in June 2005 for Mr. & Mrs. Oien's retirement.
2. In 2005, the Oiens purchased two contiguous tracts from a brother and sister. These were assembled as one 116-acre tract for the creation of a retirement site for the Oiens.
3. In 2008 and 2009, the Oiens created a home site for their dream home in the north-central portion of the tract. Their testimony and exhibits showed that they incurred costs for clearing the site (\$20,000 to \$25,000) and digging a well (\$3,500), and they paid over \$78,000 for the plans and as a down payment on a contract for the materials for the 9,000 s.f. home. They also had an underground electric distribution installed at the home site in 2009 and had plans for a small pond close to the home site.
4. PMPA is a joint agency formed by ten municipal electric utilities in the upstate of South Carolina. PMPA provides wholesale electric services to its members.
5. The City of Newberry ("City") is a member of PMPA, and it arranged with PMPA for the installation of a new substation near the Kraft Food plant for the electric needs of the City, including Kraft Food.
6. PMPA is the condemning authority in this action, and its job was to plan, design, and build the transmission line, including route selection issues. The transmission line which is the subject of this action is the first transmission project undertaken by PMPA in Newberry County, and the City has never been involved with a transmission line project prior to this one. The transmission poles would be 80' to 100' high.

7. The plaintiff initially alleged two theories in support of its challenge: (a) that the taking by defendant was not for public use; and, (b) that the route selection by defendant was clearly an abuse of discretion and violative of the ruling in Southern Development. Later, plaintiff withdrew the first theory and proceeded only on its position that the route selection was an abuse of discretion.

8. A routing decision can be overturned for fraud, bad faith, or clear abuse of discretion. Plaintiff does not contend there is any fraud by PMPA but does assert that its actions, as shown by the testimony, exhibits, and the opinions of plaintiff's expert, amount to either bad faith or a clear abuse of discretion, as they were arbitrary and capricious.

9. PMPA drew three possible routes across the Oien property (middle, northern and southern). The Oien property was the starting point for the project as the Duke transmission line on the property would be tapped to run through the Oien property and then for two miles ending at the substation near the Kraft Food plant.

10. The initial route drawn by PMPA was dated February 28, 2013; it ran through the middle of the Oien property. (Plaintiff's Exhibit 14; PMPA0012). The final route was virtually identical to this initial route. (Plaintiff's Exhibit 20). This middle route clearly has a negative impact on the Oien's plans, both aesthetically and as a matter of financial damage.

11. PMPA issued a report on February 28, 2013, before any notice went out to any landowner affected by the transmission route. Fifteen landowners are affected by the transmission route which runs from the Duke Power source on the Oien property to the substation beside Kraft Foods.

PMPA's route selection in February 2013, according to PMPA's tentative report (Plaintiff's Exhibit 15) was based on: environmental impact, land use, impact to individual landowners, costs for the route, and visual impact. The report contains no specific reference to how these factors were considered. In fact, the PMPA engineer admitted that this report was based on only two resources: Google Earth and Newberry county GIS maps, and it was submitted prior to PMPA talking to any landowner or visiting any landowner's

property. PMPA filed no subsequent report which contained any comparative analysis for various alternate routes at all. Plaintiff's expert Bill Rogers concluded that because this temporary report was prepared without any site visits (and no subsequent report was ever prepared by PMPA), PMPA's process of route selection did not meet the standards of the industry and was arbitrary and capricious.

12. In the timeframe of June 2013, PMPA also drew a southern route across the Oien property and a northern route across the property. Because the northern route was too close to the home site of the Oiens and because PMPA did not want the northern route, it was rejected. PMPA preferred the middle route because it went straight through the Oiens' property. The Oiens insisted that the middle route split their property in the middle and requested the southern route. (Plaintiff's Exhibit 12). PMPA never provided any route justifications to plaintiff.

The Oiens requested meetings with PMPA to discuss their concerns, as reflected in numerous letters from September through mid-December 2014. No responses followed, and PMPA agreed to no meetings. The Notice of Condemnation was filed February 9, 2015.

13. Plaintiff's expert witness, William Rogers, has been employed in right of way acquisition for over 30 years. Mr. Rogers testified that when the Southern Development case was handed down, he was working for Central Electric Power Cooperative as its right of way manager. The procedure adopted by Central Electric with his input was for the purpose of being in compliance with this case.

14. Per his report, Mr. Rogers conducted a written study of alternate routes for the middle, southern and northern routes across the Oien property that were initially drawn by PMPA. Mr. Rogers' experience is extensive, and he testified that he has been involved in approximately 100 transmission projects and the right of way acquisitions involved therein (each project having 30 or more landowners). Further, his report indicates that he reviewed all PMPA documents produced in the case (designated PMPA001 through PMPA486), and he also conducted site visits to the property. He interviewed the landowner and he reviewed the depositions in the case (Mike Frazier, Coleman Smoak, Mark Regier, Todd Guy, and Alan Cobb).

On cross-examination, Rogers was asked if, assuming PMPA discussed verbally the applicable factors in Southern Development, even though no documents existed, would that possibly comply with the proper routing standards for the industry. He answered that it was possible but not probable. The record in this case does not support PMPA's argument that its routing decision was anything other than arbitrary, capricious, and lacking in a proper factual basis which is required by Southern Development.

15. Mr. Rogers' testimony was credible, and he stated that alternate route studies must be accomplished through an objective, fair-minded review of possible alternate routes, including costs of right of way acquisition as set forth in Southern Development. He testified that this was not done in this case.

16. Expert Rogers submitted his alternate route study and report of findings in this case on February 29, 2016. His report was admitted into evidence without objection. (Plaintiff's Exhibit 40). Mr. Rogers is a qualified expert in the field of right of way acquisitions. In the aftermath of the Southern Development case, he developed a methodology for making alternate route studies and this methodology, with minor deviation, has been utilized by all other major condemning authorities in the state, including Duke, SCE&G and Progress Energy.

17. He also concluded that PMPA did not follow the Southern Development case establishing route selection processes and that PMPA deviated from acceptable right of way practices with regard to eminent domain. He further testified and noted in his report that PMPA's process of route selection was arbitrary and capricious. All of his opinions were expressed to a reasonable degree of certainty in his field. This Court finds that Mr. Rogers is highly qualified in the field of right of way acquisition and also finds his opinions well-reasoned and credible.

18. As an expert in right of way acquisitions, Mr. Rogers identified the proper methodology for complying with industry and legal standards for alternate route studies. He pointed out that without detailed comparative analyses, there is no way for a court to assess whether or not the objective criteria have been considered.

19. Further, Mr. Rogers' testified that in his experience in right of way acquisition for over 30 years he was well aware that the right of eminent domain is a serious right bestowed upon companies such as PMPA. Without thorough alternate route studies, it is virtually impossible to assess and evaluate any decision on alternate routes.

Mr. Rogers' alternate route studies include consideration of the three routes drawn by PMPA: the northern route, the middle route, and the southern route. Each of these routes was evaluated by Mr. Rogers based on the factors recognized in his industry and in Southern Development. It was the same alternate route study he used as director of right of way for Central Electric and as used by other transmission right of way authorities.

20. As to the costs to acquire, he pointed out that the southern route was by far the least costly. Compared to the middle route, it is over \$155,000 cheaper because the middle route, based on an extensive appraisal, involved damage to the remainder. The middle route runs very close to the home (400 feet) proposed by Mr. and Mrs. Oiens which will cost in the neighborhood of \$1 million. The Oiens have already planned and have spent substantial sums of money on the new home site, including clearing the home site and having a well installed, as well as a \$78,000 down payment towards their home to be constructed. In addition, they have underground power to the home site which has been in place since 2009. All expenses incurred by the Oiens were during 2008 and 2009, well before the condemnation was contemplated.

21. Mr. Rogers' report, as well as his testimony, indicated that, while the middle route would be cheaper in terms of construction and engineering costs (approximately \$80,000 less than the southern route), the land acquisition costs for the middle route greatly exceed the southern. He computed the estimated total costs for the middle route as being \$364,200, and the costs for the southern route as being \$292,700. Thus, the overall costs for the southern route, considering construction, engineering and right of way acquisition, would be \$72,000 less than the middle route. He then explained his route ratings for the middle, southern and northern routes. The southern route was superior to the middle route in terms of cost,

tap access, aesthetics, and structures. It was inferior to the middle route as to the wetlands factor because the southern route would have to cross a pond. Mr. Rogers testified that transmission lines often go over ponds, and there were no obstacles in having that work done in the instant case.

22. After completing his alternate route study and based on his review of the depositions and documents in the case, Mr. Rogers concluded that prudent route selection methodology and industry standards require the siting authority to consider more than just taking the path of least resistance. In the instant case, the middle route is the path of least resistance. Mr. Rogers concluded that any routing must consider the impacts on the environment (human and natural), aesthetics, safety, and land use and costs. He concluded that because PMPA did not conduct such a study to objectively review the factors, PMPA abused its discretion. Mr. Rogers concluded that the southern route will be the more favorable to the landowner and less expensive for PMPA compared with the middle route.

23. PMPA's staff engineer, Michael Frazier, and its consulting engineer, Alan Cobb, both admitted there was no document showing a route analysis assessing or comparing each route as to each of the factors. Cobb acknowledged that aesthetics were an important factor. The PMPA pre-project report of February 28, 2013, shows that land acquisition costs for the project were the same for all 15 landowners. Mr. Cobb said the routing factors were "discussed" with PMPA, but he could not reference a date or a specific detail of any such discussion.

24. The report and testimony of Rogers is uncontradicted and is credible. PMPA abused its discretion by failing to adhere to the "rational decision making process" required by Southern Development. The lack of a written analysis of all factors as to each of the routes prevents this Court from identifying any process at all. PMPA produced no other documents reflecting proper consideration of the factors. This Court does not conclude that PMPA had evil intentions. Whether PMPA may have had any malicious intent is irrelevant. PMPA is not well-experienced in transmission projects, and perhaps that inexperience is the reason it failed to perform its routing duties according to the proper routing or legal standards

25. Under the ruling of Southern Development, it is clear that, in choosing a transmission line route, there must be a comparative, objective analysis of each factor for each route. Without some written evidence of the specifics of each factor for each route (particularly anticipated land use, aesthetics, and the cost to acquire land), this Court cannot identify evidence to support a finding that this standard is met. In this case, the routing decision by PMPA was to split the Oien property in half with 90' transmission poles. While to a lay person it appears that this is easier for PMPA and may appear less expensive in construction costs than the southern route (which requires two additional turns in the line), such conclusion cannot be made without also analyzing and comparing aesthetics, landowner's land usage, structures, and the costs to acquire the land, as expert Rogers did. PMPA's failure to do so is a clear abuse of discretion. Had it done so, it would have selected the southern route. (Plaintiff's Exhibit 40).

26. PMPA argues that its consulting engineer Cobb "considered" the route factors. However, in Southern Development, the Santee Cooper transmission design engineer testified that he "considered the factors of safety, reliability, costs, and aesthetics in choosing the route." Id. at 432. The master in equity found and concluded that Santee Cooper had no notes or memoranda, and an injunction was granted because the decision was a clear abuse of discretion. Vague testimony without factual support was insufficient. This holding was affirmed by the Court of Appeals and the Supreme Court. Mere testimony that routing factors were "considered" is inadequate without objective, documented facts on all factors on all alternate routes. This is essential to the "rational decision making process" required by Southern Development.

27. PMPA's failure to legitimately consider and weigh all factors, including particularly land acquisition costs, indicates its choice of a route lacks a factual basis. Id. at 433.

28. Plaintiff has met its burden of proof that PMPA's routing decision lacked factual basis and was arbitrary and capricious.

29. This Court finds and concludes that PMPA clearly abused its discretion in determining the middle route for its 90' high transmission poles, as this decision was made "without weighing and considering the factors." Id. at 432.

30. This Court finds and concludes that PMPA shall be enjoined from utilizing the middle route. A proper route analysis demonstrates and compels that the southern route (Plaintiff's Exhibit 12) shall be ordered.

31. Plaintiff is the prevailing party. Under S.C. Code §28-2-510, plaintiff is entitled to attorneys' fees and litigation expenses. Within fifteen days of the date this Order is filed, plaintiff shall file any submissions relative to the issue of fees and expenses. Within 15 days after such submission, PMPA shall have a right to file opposing submissions. If PMPA requests a hearing at which its counsel can cross-examine plaintiff's counsel, it will be scheduled at a mutually agreeable time.

THEREFORE IT IS ORDERED as follows:

- a. The relief sought in the Complaint is granted;
- b. PMPA is enjoined and prohibited from condemning via the route shown on its Notice of Condemnation dated February 9, 2015;
- c. PMPA shall be allowed to condemn a transmission line route along the southern boundary of plaintiff's property as shown on PMPA's southern route shown on plaintiff's Exhibit 12;
- d. Plaintiff is the prevailing party and is entitled to recover attorneys' fees, litigation expenses and costs from defendant pursuant to S.C. Code §28-2-510;
- e. Plaintiff shall file its submission in support of fees, expenses and costs within 15 days after the date this Order is filed; and,

- f. Defendant shall file any opposing submissions and/or request a hearing within 15 days of plaintiff's filing, after which this Court will determine the issue of fees and expenses to be awarded plaintiff.

AND IT IS SO ORDERED.

The Honorable R. Lawton McIntosh
Circuit Court Judge

April ____, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY) CIVIL ACTION NO. 2015-CP-36-00120

Oien Family Investments, LLC,)
)
Plaintiff,)
v.)
)
Piedmont Municipal Power Agency,)
)
Defendant.)

**PLAINTIFF'S MOTION FOR RECONSIDERATION
AND MOTION TO ALTER OR AMEND UNDER
RULES 52, 59, AND 60 S.C.R.C.P.**

FILED
NEWBERRY COUNTY
2016 MAY 17 PM 1 30
JACKIE S. POWERS
CLERK OF COURT

**TO: PMPA AND ITS ATTORNEY O.W. BANNISTER, JR., ESQUIRE, BRUCE W. BANNISTER, ESQUIRE,
AND LUKE BURKE, ESQUIRE:**

The plaintiff, by and through its undersigned counsel, hereby moves pursuant to the provisions of Rules 59, 60, and 52 S.C.R.C.P. that this Court reconsider its Amended Order dated May 9, 2016, and issue an Order altering and amending the judgment.

The Amended Court's Order dated May 9, 2016, and filed on May 16, 2016, was received by counsel on May 17, 2016.

Plaintiff respectfully asserts that this Order was in error in each of the following particulars:

1. In Finding No. 7, the Court erred in finding and concluding that the most feasible route for PMPA to run the line was through the middle of plaintiff's properties. The testimony of plaintiff's expert was not contradicted and defendant failed to determine the route in accordance with Southern Development v. S.C. 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 most feasible route reflected in the evidence, exhibits, and testimony, was the Southern Route on plaintiff's property.
2. The Court erred in failing to find and conclude that PMPA valued the alternate routes and all land on the PMPA Transmission Line project at the same per-acre value. The evidence (Plaintiff's Exhibit 14 and PMPA009) and the testimony, including that of Mr. Graydon, established this fact. Under Southern Development, it was error for defendant to fail to analyze and consider the cost to acquire the plaintiff's property, including damage to the remainder, under the Southern Route by comparison with the cost for the middle route. Like Southern Development, a route must be rejected if the condemnor's route selection considers land values for all alternate routes on a project at the same per-acre value.
3. The Court erred (or was mistaken) in the fifth sentence of Finding No. 17 where it ruled "Also, because Oien restricted access to the property, neither PMPA nor Newberry completed the southern route engineering plan." There is no support in the record for this finding, as the Oiens did not restrict access. Further, the law of

South Carolina grants to condemning authorities the authority to have access to the property of landowners to perform such studies and condemnor can get an ex parte court order for such access, pursuant to S.C. Code §28-2-70(c).

4. The Court erred in not finding that the Oiens consistently requested, well in advance of condemnation, that PMPA use the southern route across their property for the transmission poles, which were 90 feet high.
5. The Court erred in Finding No. 25 which states that the decision of PMPA to locate the right of way on the middle route of the Oien's land was neither arbitrary nor capricious. This finding is contradicted by all evidence in the record, including the testimony of expert Rogers. Further, the PMPA route decision was based only on its engineer's conclusory statement that he verbally considered the factors, which statement had no supporting document reflecting any rational decision making process contrary to Southern Development.
6. The Court erred in Finding No. 26 in relying on Bookhart v. Central Electric Power Co-op, 219 S.C. 414, 65 S.E. 2d 781 (1951), for the proposition that it is desirable that transmission lines "be constructed as nearly straight as practicable..." This case was overruled 40 years later by Southern Development, which does not bless a "straight as possible" route methodology for transmission lines. It requires that all factors be analyzed and compared as to all alternate routes. No such analysis was made by PMPA in this case.
7. The Court erred in Finding No. 29 (second sentence) in finding that "there is no legal requirement for PMPA to conform to the standard created by Mr. Rogers which involves numerous written and detailed alternate route studies." First, Mr. Rogers did not "create" the standard. He testified without contradiction that this standard was the applicable industry standard used by condemning authorities all over South Carolina, including Duke, SCE&G, Central Electric Power Co-op, and Progress Energy. He further testified that this routing standard was adopted by condemning authorities immediately after, and as a direct result of, the Court's mandate in Southern Development v. S.C. Public Service Authority (1993). This standard is not contradicted in the record.
8. The Court erred in including the last sentence of Finding No. 29, as Mr. Rogers did not admit that if PMPA had considered the Southern Development factors it had not abused its discretion, even if it performed no written studies. Rogers, on the contrary, testified that PMPA's decision was arbitrary and capricious and that it was an abuse of discretion (See Plaintiff Exhibit 40, "Conclusions"). Further, this finding is erroneous because Southern Development rejected Santee Cooper's contention that it had verbally "considered" all factors because the Court noted that the record there did not include any "notes or memoranda" from which the court could assess whether or not objective criteria had been considered and whether or not PMPA abused its discretion by failing to adhere to a "rational decision making process" required by Southern Development.

9. The Court erred in Finding No. 30 for the reasons set forth above and because the lack of written documentation, even a single piece of paper, precludes this Court, or any court, from a review of PMPA's decision. Southern Development would be negated if a Court can accept merely verbal testimony of the routing analysis of two or three alternate routes without corroboration by some written document.
10. The Court erred in Finding No. 32 (first sentence), as it is not supported by any evidence that plaintiff brought this action, not for a legitimate purpose, but in an attempt to reroute the transmission line off of the Oiens' property. Further, this finding is contradicted by the Court's handwritten Finding No. 33 that the plaintiff's challenge was not brought in bad faith.
11. The Court erred in finding in the second sentence of Finding No. 32 that the Oiens admitted that their goal was to keep PMPA from building the transmission line across the Oiens' property. There is no evidence to support this finding and it is contradicted by the Court's handwritten finding in No. 33 referenced above.
12. The Court erred in the third sentence of Finding No. 32 in concluding that Oien "failed to present any evidence that PMPA abused its discretion in choosing the location of the route." This finding overlooked Expert Rogers' testimony that PMPA did abuse its discretion required by the electric transmission industry, as recognized by Duke, SCE&G, and Central Electric Power Co-op. (See also Plaintiff Exhibit 40.) In fact, defendant provided no testimony or opinion to refute this opinion.
13. The Court erred in making Finding No. 35 about the Oiens' intent, as there was no evidence of Oiens' intent other than to challenge PMPA based on the holding in Southern Development. See prayer in Complaint where the Oiens sought to have the southern route, which was identified in the evidence as the best route under Southern Development. The routing standard or industry standard of the electric transmission entities in South Carolina was identified by Rogers and not refuted by defendant.
14. The Court erred in Finding No. 37, as plaintiff was not trying to "force" PMPA to relocate the line to the southern route or to avoid Oiens' property altogether. Plaintiff was seeking the southern route because it was the best route under Southern Development, per the expert testimony of Bill Rogers. Rather than "forcing" PMPA to do anything, Oien was exercising its right under South Carolina law to challenge PMPA's non-existent route methodology which did not comply with Southern Development.
15. The Court erred in Finding No. 38 where the Court found that "forcing a public utility to locate a transmission line where the landowner wants it by challenging the condemnation is not good faith". This finding and conclusion is not supported by the record. Southern Development clearly allows a challenge where landowner's expert has concluded that condemnor has not followed the industry standard or the required routing methodology, as Rogers did here. Further, this finding is contradicted by the Court's handwritten finding in No. 33 that plaintiff's challenge was brought in good faith.

16. The Court erred in failing to adopt the findings of fact and conclusions of law set forth in plaintiff's proposed Order Granting Injunction submitted after trial. See Exhibit A, attached hereto and incorporated by reference.
17. The Court erred in failing to make findings in accordance with paragraph 3 of Exhibit A, which listed the uncontested facts as to plaintiff's future home site on which plaintiff had spent in excess of \$100,000.
18. The Court erred in failing to make findings in accordance with paragraph 10 of Exhibit A, as these facts were not contradicted.
19. The Court erred in failing to make findings in accordance with paragraph 11 of Exhibit A, as these facts were not contradicted.
20. The Court erred in failing to make findings in accordance with paragraph 12 of Exhibit A, as these facts are not contradicted.
21. The Court erred in failing to make findings in accordance with paragraphs 13-22 of Exhibit A, which relate to the testimony and report of plaintiff's expert Rogers. His testimony and opinions were not contradicted by PMPA. His testimony was credible and the record does not support a conclusion to the contrary. It is respectfully asserted that these paragraphs should be included in this Court's Order.
22. The Court erred in ignoring or overlooking (and implicitly rejecting) the opinions of Rogers, even though no challenge was made to his expertise as one familiar with the applicable right-of-way routing standards under Southern Development and there was no finding, or challenge by PMPA, that his testimony was not credible.
23. The Court erred in failing to adopt paragraph 26 of Exhibit A as its finding of fact and conclusion of law. This paragraph is supported by the record at trial and the facts in this case are on point with virtually identical facts in Southern Development.
24. The Court erred in failing to adopt paragraphs 27, 28, 29, and 30 of Exhibit A, as these findings and conclusions are supported by the record that a proper alternate route analysis under Southern Development shows that defendant should be enjoined and directed to use the southern route across plaintiff's property.
25. The Court erred in failing to adopt as its conclusion paragraph 31 of Exhibit A, as it is supported by the evidence at trial.
26. The Court erred on Page 11 in granting PMPA's motion for directed verdict and in denying plaintiff's request for an injunction. The record in the case supports this position. An injunction should be ordered, consistent with the Supreme Court decision in Southern Development. Further, a motion for directed verdict can only be granted if the evidence at trial presents only questions of law, pursuant to Rule 50 S.C.R.C.P. In this case the testimony of Bill Rogers supported plaintiff's position that

PMPA had not used proper methodology in its route selection, in violation of Southern Development. It was error to grant defendant's motion for directed verdict in view of Rogers' uncontested testimony and opinions and based on the entire record.

27. The Court erred in failing to find that PMPA, in "considering" the alternate routes, and the factors set forth in Southern Development, did not utilize, generate, or produce a single note or document which reflected any analysis or facts which supported PMPA's routing decision.
28. The Court erred in failing to find that PMPA, even though it is engaged in electric transmission projects on a less frequent basis than the large transmission companies like Duke, SCE&G, and Central Electric Co-op, is held to the same routing standards as they are pursuant to the Southern Development case and that its relative inexperience in these projects does not excuse its actions. PMPA has no defense to its failure to conduct the same alternate routing analysis as larger transmission companies.
29. The Court erred in failing to properly apply the holding in Southern Development, which requires a "rational decision making process", to this case where PMPA said the factors of the alternate routes were "considered" but the record reflects nothing "rational" nor specific about the factual basis for the PMPA engineer's alleged "consideration". PMPA gave a mere conclusion without the specifics upon which the conclusion was based which is required by Southern Development. Because the record shows that PMPA identified no rational process, PMPA was not in compliance with a process required by our Supreme Court in Southern Development.

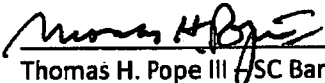
CONCLUSION

Based on the above errors in findings of fact and conclusions of law set forth above, it is requested that this Court reconsider its Amended Order filed May 16, 2016, and alter or amend the Order/judgment by substituting a new order which incorporates the above and grants injunctive relief to plaintiff as set forth in Exhibit A.

This motion is based upon the entire record in this matter, including the pleadings, the trial transcript, the trial exhibits, and the applicable law.

Respectfully submitted,

POPE AND HUDGENS, P.A.

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Attorneys for Plaintiff Oien Family Investments, LLC

May 17, 2016

EXHIBIT A

FILED
NEWBERRY COUNTY
2016 MAY 17 PM 1 30
JACKIE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	Case No. 2015-CP-36-00120
	)	
Oien Family Investments, LLC,	)	
	)	
Plaintiff,	)	
v.	)	ORDER GRANTING INJUNCTION
	)	
Piedmont Municipal Power Agency,	)	
	)	
Defendant.	)	

This matter came before the Court for trial on March 28, 2016. Trial counsel were Thomas H. Pope III on behalf of plaintiff, Oien Family Investments, LLC ("Oien"), and Bruce W. Bannister and Luke A. Burke on behalf of defendant, Piedmont Municipal Power Agency ("PMPA").

This action is one by plaintiff challenging the defendant's right to condemn plaintiff's property based upon the decision in Southern Development & Golf Company v. S.C. 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)¹ Plaintiff's complaint alleges that PMPA abused its discretion when deciding on the route of the transmission line in a fashion contrary to the Southern Development case. The complaint also seeks plaintiff's right to attorneys' fees in the event it prevails, pursuant to SC Code §28-2-570.

The defendant's answer denies the allegations of the complaint and asserts a counterclaim for attorneys' fees and litigation costs. Plaintiff filed a reply on April 9, 2015.

¹ In the Southern Development case, the master granted an injunction against Santee Cooper under the doctrine of estoppel and based on an abuse of discretion for its arbitrary, capricious decision of the selected route. The Court of Appeals reversed the master's determination on the estoppel theory and affirmed his decision that the utility's choice for the route for the transmission line lacked a factual basis. Later in Southern Development v. S.C. Public Service Authority, 426 S.E.2d 748 (1993), the Supreme Court reversed the Court of Appeals on the estoppel issue. However, in the instant case, the plaintiff does not allege any estoppel issues. The Supreme Court adopted the abuse of discretion ruling by the master and affirmed the Court of Appeals in that regard.

Based upon the pleadings, the sworn testimony of the witnesses, including experts, the exhibits placed in the record by both parties, and the arguments of counsel, the Court makes the following findings of fact and conclusions of law:

1. Oien Family Investments, LLC is owned by Lynn and June Oien, and the LLC owns 116 acres in Newberry County which was purchased in June 2005 for Mr. & Mrs. Oien's retirement.

2. In 2005, the Oiens purchased two contiguous tracts from a brother and sister. These were assembled as one 116-acre tract for the creation of a retirement site for the Oiens.

3. In 2008 and 2009, the Oiens created a home site for their dream home in the north-central portion of the tract. Their testimony and exhibits showed that they incurred costs for clearing the site (\$20,000 to \$25,000) and digging a well (\$3,500), and they paid over \$78,000 for the plans and as a down payment on a contract for the materials for the 9,000 s.f. home. They also had an underground electric distribution installed at the home site in 2009 and had plans for a small pond close to the home site.

4. PMPA is a joint agency formed by ten municipal electric utilities in the upstate of South Carolina. PMPA provides wholesale electric services to its members.

5. The City of Newberry ("City") is a member of PMPA, and it arranged with PMPA for the installation of a new substation near the Kraft Food plant for the electric needs of the City, including Kraft Food.

6. PMPA is the condemning authority in this action, and its job was to plan, design, and build the transmission line, including route selection issues. The transmission line which is the subject of this action is the first transmission project undertaken by PMPA in Newberry County, and the City has never been involved with a transmission line project prior to this one. The transmission poles would be 80' to 100' high.

7. The plaintiff initially alleged two theories in support of its challenge: (a) that the taking by defendant was not for public use; and, (b) that the route selection by defendant was clearly an abuse of discretion and violative of the ruling in Southern Development. Later, plaintiff withdrew the first theory and proceeded only on its position that the route selection was an abuse of discretion.

8. A routing decision can be overturned for fraud, bad faith, or clear abuse of discretion. Plaintiff does not contend there is any fraud by PMPA but does assert that its actions, as shown by the testimony, exhibits, and the opinions of plaintiff's expert, amount to either bad faith or a clear abuse of discretion, as they were arbitrary and capricious.

9. PMPA drew three possible routes across the Oien property (middle, northern and southern). The Oien property was the starting point for the project as the Duke transmission line on the property would be tapped to run through the Oien property and then for two miles ending at the substation near the Kraft Food plant.

10. The initial route drawn by PMPA was dated February 28, 2013; it ran through the middle of the Oien property. (Plaintiff's Exhibit 14; PMPA0012). The final route was virtually identical to this initial route. (Plaintiff's Exhibit 20). This middle route clearly has a negative impact on the Oiens' plans, both aesthetically and as a matter of financial damage.

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property. PMPA filed no subsequent report which contained any comparative analysis for various alternate routes at all. Plaintiff's expert Bill Rogers concluded that because this temporary report was prepared without any site visits (and no subsequent report was ever prepared by PMPA), PMPA's process of route selection did not meet the standards of the industry and was arbitrary and capricious.

12. In the timeframe of June 2013, PMPA also drew a southern route across the Oien property and a northern route across the property. Because the northern route was too close to the home site of the Oiens and because PMPA did not want the northern route, it was rejected. PMPA preferred the middle route because it went straight through the Oiens' property. The Oiens insisted that the middle route split their property in the middle and requested the southern route. (Plaintiff's Exhibit 12). PMPA never provided any route justifications to plaintiff.

The Oiens requested meetings with PMPA to discuss their concerns, as reflected in numerous letters from September through mid-December 2014. No responses followed, and PMPA agreed to no meetings. The Notice of Condemnation was filed February 9, 2015.

13. Plaintiff's expert witness, William Rogers, has been employed in right of way acquisition for over 30 years. Mr. Rogers testified that when the Southern Development case was handed down, he was working for Central Electric Power Cooperative as its right of way manager. The procedure adopted by Central Electric with his input was for the purpose of being in compliance with this case.

14. Per his report, Mr. Rogers conducted a written study of alternate routes for the middle, southern and northern routes across the Oien property that were initially drawn by PMPA. Mr. Rogers' experience is extensive, and he testified that he has been involved in approximately 100 transmission projects and the right of way acquisitions involved therein (each project having 30 or more landowners). Further, his report indicates that he reviewed all PMPA documents produced in the case (designated PMPA001 through PMPA486), and he also conducted site visits to the property. He interviewed the landowner and he reviewed the depositions in the case (Mike Frazier, Coleman Smoak, Mark Regier, Todd Guy, and Alan Cobb).

On cross-examination, Rogers was asked if, assuming PMPA discussed verbally the applicable factors in Southern Development, even though no documents existed, would that possibly comply with the proper routing standards for the industry. He answered that it was possible but not probable. The record in this case does not support PMPA's argument that its routing decision was anything other than arbitrary, capricious, and lacking in a proper factual basis which is required by Southern Development.

15. Mr. Rogers' testimony was credible, and he stated that alternate route studies must be accomplished through an objective, fair-minded review of possible alternate routes, including costs of right of way acquisition as set forth in Southern Development. He testified that this was not done in this case.

16. Expert Rogers submitted his alternate route study and report of findings in this case on February 29, 2016. His report was admitted into evidence without objection. (Plaintiff's Exhibit 40). Mr. Rogers is a qualified expert in the field of right of way acquisitions. In the aftermath of the Southern Development case, he developed a methodology for making alternate route studies and this methodology, with minor deviation, has been utilized by all other major condemning authorities in the state, including Duke, SCE&G and Progress Energy.

17. He also concluded that PMPA did not follow the Southern Development case establishing route selection processes and that PMPA deviated from acceptable right of way practices with regard to eminent domain. He further testified and noted in his report that PMPA's process of route selection was arbitrary and capricious. All of his opinions were expressed to a reasonable degree of certainty in his field. This Court finds that Mr. Rogers is highly qualified in the field of right of way acquisition and also finds his opinions well-reasoned and credible.

18. As an expert in right of way acquisitions, Mr. Rogers identified the proper methodology for complying with industry and legal standards for alternate route studies. He pointed out that without detailed comparative analyses, there is no way for a court to assess whether or not the objective criteria have been considered.

19. Further, Mr. Rogers' testified that in his experience in right of way acquisition for over 30 years he was well aware that the right of eminent domain is a serious right bestowed upon companies such as PMPA. Without thorough alternate route studies, it is virtually impossible to assess and evaluate any decision on alternate routes.

Mr. Rogers' alternate route studies include consideration of the three routes drawn by PMPA: the northern route, the middle route, and the southern route. Each of these routes was evaluated by Mr. Rogers based on the factors recognized in his industry and in Southern Development. It was the same alternate route study he used as director of right of way for Central Electric and as used by other transmission right of way authorities.

20. As to the costs to acquire, he pointed out that the southern route was by far the least costly. Compared to the middle route, it is over \$155,000 cheaper because the middle route, based on an extensive appraisal, involved damage to the remainder. The middle route runs very close to the home (400 feet) proposed by Mr. and Mrs. Oiens which will cost in the neighborhood of \$1 million. The Oiens have already planned and have spent substantial sums of money on the new home site, including clearing the home site and having a well installed, as well as a \$78,000 down payment towards their home to be constructed. In addition, they have underground power to the home site which has been in place since 2009. All expenses incurred by the Oiens were during 2008 and 2009, well before the condemnation was contemplated.

21. Mr. Rogers' report, as well as his testimony, indicated that, while the middle route would be cheaper in terms of construction and engineering costs (approximately \$80,000 less than the southern route), the land acquisition costs for the middle route greatly exceed the southern. He computed the estimated total costs for the middle route as being \$364,200, and the costs for the southern route as being \$292,700. Thus, the overall costs for the southern route, considering construction, engineering and right of way acquisition, would be \$72,000 less than the middle route. He then explained his route ratings for the middle, southern and northern routes. The southern route was superior to the middle route in terms of cost,

tap access, aesthetics, and structures. It was inferior to the middle route as to the wetlands factor because the southern route would have to cross a pond. Mr. Rogers testified that transmission lines often go over ponds, and there were no obstacles in having that work done in the instant case.

22. After completing his alternate route study and based on his review of the depositions and documents in the case, Mr. Rogers concluded that prudent route selection methodology and industry standards require the siting authority to consider more than just taking the path of least resistance. In the instant case, the middle route is the path of least resistance. Mr. Rogers concluded that any routing must consider the impacts on the environment (human and natural), aesthetics, safety, and land use and costs. He concluded that because PMPA did not conduct such a study to objectively review the factors, PMPA abused its discretion. Mr. Rogers concluded that the southern route will be the more favorable to the landowner and less expensive for PMPA compared with the middle route.

23. PMPA's staff engineer, Michael Frazier, and its consulting engineer, Alan Cobb, both admitted there was no document showing a route analysis assessing or comparing each route as to each of the factors. Cobb acknowledged that aesthetics were an important factor. The PMPA pre-project report of February 28, 2013, shows that land acquisition costs for the project were the same for all 15 landowners. Mr. Cobb said the routing factors were "discussed" with PMPA, but he could not reference a date or a specific detail of any such discussion.

24. The report and testimony of Rogers is uncontradicted and is credible. PMPA abused its discretion by failing to adhere to the "rational decision making process" required by Southern Development. The lack of a written analysis of all factors as to each of the routes prevents this Court from identifying any process at all. PMPA produced no other documents reflecting proper consideration of the factors. This Court does not conclude that PMPA had evil intentions. Whether PMPA may have had any malicious intent is irrelevant. PMPA is not well-experienced in transmission projects, and perhaps that inexperience is the reason it failed to perform its routing duties according to the proper routing or legal standards

25. Under the ruling of Southern Development, it is clear that, in choosing a transmission line route, there must be a comparative, objective analysis of each factor for each route. Without some written evidence of the specifics of each factor for each route (particularly anticipated land use, aesthetics, and the cost to acquire land), this Court cannot identify evidence to support a finding that this standard is met. In this case, the routing decision by PMPA was to split the Olen property in half with 90' transmission poles. While to a lay person it appears that this is easier for PMPA and may appear less expensive in construction costs than the southern route (which requires two additional turns in the line), such conclusion cannot be made without also analyzing and comparing aesthetics, landowner's land usage, structures, and the costs to acquire the land, as expert Rogers did. PMPA's failure to do so is a clear abuse of discretion. Had it done so, it would have selected the southern route. (Plaintiff's Exhibit 40).

26. PMPA argues that its consulting engineer Cobb "considered" the route factors. However, in Southern Development, the Santee Cooper transmission design engineer testified that he "considered the factors of safety, reliability, costs, and aesthetics in choosing the route." Id. at 432. The master in equity found and concluded that Santee Cooper had no notes or memoranda, and an injunction was granted because the decision was a clear abuse of discretion. Vague testimony without factual support was insufficient. This holding was affirmed by the Court of Appeals and the Supreme Court. Mere testimony that routing factors were "considered" is inadequate without objective, documented facts on all factors on all alternate routes. This is essential to the "rational decision making process" required by Southern Development.

27. PMPA's failure to legitimately consider and weigh all factors, including particularly land acquisition costs, indicates its choice of a route lacks a factual basis. Id. at 433.

28. Plaintiff has met its burden of proof that PMPA's routing decision lacked factual basis and was arbitrary and capricious.

29. This Court finds and concludes that PMPA clearly abused its discretion in determining the middle route for its 90' high transmission poles, as this decision was made "without weighing and considering the factors." Id. at 432.

30. This Court finds and concludes that PMPA shall be enjoined from utilizing the middle route. A proper route analysis demonstrates and compels that the southern route (Plaintiff's Exhibit 12) shall be ordered.

31. Plaintiff is the prevailing party. Under S.C. Code §28-2-510, plaintiff is entitled to attorneys' fees and litigation expenses. Within fifteen days of the date this Order is filed, plaintiff shall file any submissions relative to the issue of fees and expenses. Within 15 days after such submission, PMPA shall have a right to file opposing submissions. If PMPA requests a hearing at which its counsel can cross-examine plaintiff's counsel, it will be scheduled at a mutually agreeable time.

THEREFORE IT IS ORDERED as follows:

- a. The relief sought in the Complaint is granted;
- b. PMPA is enjoined and prohibited from condemning via the route shown on its Notice of Condemnation dated February 9, 2015;
- c. PMPA shall be allowed to condemn a transmission line route along the southern boundary of plaintiff's property as shown on PMPA's southern route shown on plaintiff's Exhibit 12;
- d. Plaintiff is the prevailing party and is entitled to recover attorneys' fees, litigation expenses and costs from defendant pursuant to S.C. Code §28-2-510;
- e. Plaintiff shall file its submission in support of fees, expenses and costs within 15 days after the date this Order is filed; and,

- f. Defendant shall file any opposing submissions and/or request a hearing within 15 days of plaintiff's filing, after which this Court will determine the issue of fees and expenses to be awarded plaintiff.

AND IT IS SO ORDERED.

The Honorable R. Lawton McIntosh
Circuit Court Judge

May ____, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM NEWBERRY COUNTY
COURT OF COMMON PLEAS

R. LAWTON MCINTOSH, TENTH JUDICIAL CIRCUIT COURT JUDGE
C. A. NO. 2015-CP-36-120

APPELLATE CASE NO.: 2016-001037

Oien Family Investments, LLC, ...Appellant

v.

Piedmont Municipal Power Agency, ...Respondent

**RESPONDENT'S
RETURN TO APPELLANT'S MOTION TO RECONSIDER
LIFTING OF STAY**

BACKGROUND

Piedmont Municipal Power Agency ("PMPA") and the City of Newberry began in early 2013 the process of installing a power line to a Newberry substation to better serve its customers. The only valid and reasonable route crossed the lands owned by Oien Family Investments, LLC ("Oien"). After numerous attempts to place the line in an area acceptable to Oien, PMPA served a Notice of Condemnation in February, 2015. In March, 2015, Oien filed an action challenging the condemnation. In May, 2016, the Honorable R. Lawton McIntosh issued an Order denying Oien's request that the court enjoin PMPA from condemning the right-of-way across its property and ordering PMPA to reroute its line to a portion of the property that Oien selected.

Oien appealed and moved to stay any further proceedings which was granted on May 18, 2016. PMPA moved to lift the stay or require Oien to post a bond.

By Order dated October 18, 2016 this Court lifted the stay and PMPA began preparing the route. (Frazier Affidavit).

On October 20, 2016 Oien filed a Motion to Reconsider the lifting of the stay. On November 22, 2016 this Court re-imposed the stay.

ISSUES

At issue in this stay is the public interest of the ordinary, working citizens of the City of Newberry in reliable electricity for their homes and businesses as opposed to a single wealthy out-of-state landowner who objects to a power line six hundred feet from a proposed house that has not been built and may never be built. The legal basis for the landowner's objection is a hyper-technical reading of dicta from a single Supreme Court case that would require condemning authorities to engage in expensive, time wasting paperwork exercises that defy common sense and can make the courts the final authority on the placement of condemnations in practically every case.

To understand what has transpired, a timeline of the dealings with the landowner is essential.

The need for a reliable power source under the control of the City of Newberry was recognized and in early 2013 a project to fulfill that need was officially approved by the appropriate authorities.

Todd Guy, a native of Newberry and the City's electrical foreman, was tasked with informing the landowners who would be affected by the new line. (Transcript, p. 420, lines 5-18). The Oien's, who are Florida residents and visit their land as infrequently as quarterly (Transcript, p. 125, line 11-12) were one of the landowners.

Guy made contact in early 2013 with one now deceased Mills who was a caretaker for the Oien's (Transcript, p. 421, line 1 – p. 422, line 18). Mills and Guy called Oien and Guy informed Oien of the project. Guy and Oien made arrangements to meet on the Oien property.

When Guy and Oien met on the Oien property, Guy showed a proposed route along the property line of the two properties of Oien which was basically in the middle of the two adjoining tracts. Oien objected and asked that the line go on the bottom of the property that contained a house and pond (Transcript, p. 423, line 1 – p. 424, line 17).

As a result of this meeting, Newberry, PMPA and its engineer made drawings of the route proposed by Oien. Guy met with the Oien's and showed them the drawings. Oien rejected this route because it would take away the buffer between Oien and the neighbor at the bottom of their property line (Transcript, p. 424 line 19 – p. 425, line 13).

After Oien rejected the southern route because it would remove the buffer, Guy got a map of a route on the northern side of Oien's property and presented it to Oien who wanted the line further north (Transcript, p. 426, line 9 – p. 427, line 18).

Guy went back to Newberry, PMPA and the engineer for another option (Transcript p. 427, line 19 – p. 428, line 14). After he presented the new northern route, Oien rejected it and went back to the center route (Transcript, p. 428, line 16 – p. 429, line 15). Guy arranged for the center route to be surveyed.

At that point, Oien agent Paul Major took over and Guy stepped out. Major acknowledged meeting with Oien and Newberry officials in September, 2013 and November, 2013. Major took away from these meetings the impression that Oien wanted the southern route, but wanted more information about the middle route (Transcript, p. 194, line 20 – p. 195, line 18).

After the November, 2013 meeting, Oien left a message on Frazier's phone that the middle route was satisfactory to Oien (Transcript p. 341, line 21 – p. 351, line 27). (Exhibit 3).

A right-of-way agreement was sent to Oien in August, 2014 but Oien rejected the agreement (Transcript, p. 150).

The substation was completed in April, 2014.

ARGUMENT

The imposition of a stay in this matter involves an interpretation of the Eminent Domain Procedure Act, S.C. Code §28-2-10, et. seq., and the applicability of Rule 241, SCACR.

In a proceeding to challenge PMPA's right to condemn a right-of-way, S.C. Code §28-2-470 provides, "All proceedings under the condemnation notice are automatically stayed until the disposition of the action, if any, unless the landowner and the condemnor consent otherwise." The term "disposition of the action" is not otherwise defined under the statute.

What is meant by "disposed of" as used in §28-2-470 is a matter of first impression.

There are policy reasons to find "disposed of" means a determination by the trial court. Because a challenge to condemnation invariably seeks an injunction, the denial of the injunction disposed of the action in one sense. If "disposed of" means a final determination by the highest court, then "disposed of" means the exhaustion of all appeals.

The practical consequence of holding that "disposed of" includes the exhaustion of all appeals is to empower a disgruntled landowner to delay a public project for years. This case is a good example. The Notice of Condemnation was served on Oien in February, 2015. The substation was completed in April, 2014 (Judge McIntosh Order, para. 3) and all the other work on the line has nearly been completed (Frazier Affidavit). Yet, this one landowner is able to delay a much needed improvement by simply litigating as long as possible. The ability to hold

up a public work project is a powerful negotiating tool to make the public pay more than just compensation for a right-of-way.

Judge McIntosh, who saw the witnesses and heard the testimony, concluded that the motivating factor for Oien was to use the challenge to the condemnation to force the public utility to place the line where they now say they want it placed. Their motivation was not in good faith. (McIntosh Order, para. 37, 38).

Rule 241(a), SCACR, sets out the general rule for matters stayed on the filing of an appeal. In its action challenging the condemnation, Oien ultimately sought relief in the form of a permanent injunction against the route chosen by PMPA across their land and for the court to order the right-of-way to go on the route they choose. Oien got a temporary stay under §28-2-470 just by filing its suit.

Judge McIntosh's Order did not grant Oien an injunction or order PMPA to go the route chosen by Oien. PMPA would assert that the issue is disposed of under §28-2-470.

Rule 241(b)(8), SCACR, sets out an exception to the general rule for stays on appeal. Under Section (b)(8), "An appeal from an order granting an injunction or temporary restraining order is not stayed." Under this exception, had Judge McIntosh granted the injunction it would not have been stayed by appeal. It seems illogical to say that the denial of an injunction is stayed on appeal because such stay grants the injunction until all appeals are exhausted.

In any event, it is arguable that Rule 241 is inapplicable to condemnation actions because §28-2-120 provides that if a conflict arises between the Rule and the condemnation, the condemnation statute prevails.

The Oien legal argument is based dicta on a single case.

In So. Dev. Land & Golf Co. v. SC Pub. Serv. Auth., 305 S.C. 507, 409 S.E.2d 428 (Ct. App., 1991) this Court upheld a decision by a master in equity who upheld a challenge to the proposed condemnation of a high voltage line across a golf course. The basis for the injunction by the master was a finding that the power company was estopped from crossing the golf course due to prior statements by one of its officers to the golf course developer that the power company did not intend to build a line on its existing right-of-way across the proposed golf course. The master also enjoined the power company from condemning additional land and using its existing right-of-way for abusing its discretion. The abuse of discretion was based on a finding that the power company did not consider land acquisition costs in choosing its route.

This Court reversed the master on the estoppel issue but upheld the master on the abuse of discretion issue. Because the power company did not consider land acquisition costs, this Court vacated that portion of the master's decision regarding land acquisition costs and remanded with instructions for the power company to reevaluate the choice of route based on utilizing the factors of safety, reliability, aesthetics, and costs to include land acquisition costs.

In affirming the master on the abuse of discretion, this Court said, at p. 514:

The master found the total cost for the route chosen by Santee Cooper including land acquisition cost would be \$5,762,000. The cost for the two alternate routes proposed by Southern would be \$1,284,000 and \$1,315,000. He found no material difference in the reliability of the three routes although he considered the two alternate routes somewhat safer due to their distance from a nearby airstrip and also more aesthetically pleasing due to the potential effect of the Santee Cooper route on Southern's development. The master issued the injunction prohibiting the condemnation.

In his legal conclusions the master found Santee Cooper clearly abused its discretion in the selection of the route for the transmission line. The master relied upon the case of *Florida Power & Light Co. v. Berman*, 429 So. (2d) 79 (Fla. Dist. Ct. App. 1983), *petition denied*, 436 So. (2d) 98 (Fla. 1983). In that decision, the Florida District Court of Appeal held that Florida law required a condemning authority to consider five criteria in deciding which route to select and which land to condemn. The criteria were (1) availability of an alternate

route; (2) cost; (3) environmental factors; (4) long-range planning; and (5) safety considerations. *Id.* at 82. While a condemning authority did not necessarily abuse its discretion by choosing one route over another suitable route, the Florida court held the condemning authority did abuse its discretion by making a selection of a route without weighing and considering the factors. *Id.*

On a Writ of Certiorari to the Supreme Court, S. Dev. Land & Golf Co. v. South Carolina Pub. Serv. Auth., 311 S.C. 29, 34, 426 S.E.2d 748, 751 (1993) the Supreme Court reversed this Court's decision on the estoppel issue. In addressing the finding of abuse of discretion for not considering land acquisition costs, the Supreme Court stated:

Accordingly, we affirm the Master's order enjoining Santee Cooper from proceeding with the condemnation of the easement in question. Although we agree with the Court of Appeals' analysis of the issue of abuse of discretion, in light of our holding on the question of estoppel, we find the remand as ordered by the Court of Appeals unnecessary. Thus, the opinion of the Court of Appeals is AFFIRMED IN PART, and REVERSED IN PART.

In upholding the master's decision, this Court focused on the power company's lack of consideration of land acquisition costs. According to the master, the land acquisition costs for the route chosen by the power company would be \$5,762,000 while alternative routes would be \$1,284,000 or \$1,315,000. This Court vacated that portion of the master's findings and ordered the power company to reevaluate the route using the criteria of safety, reliability, aesthetics and costs along with any other appropriate factors such as environmental conditions.

The Supreme Court held that the remand to the master for consideration by the power company was unnecessary although the Supreme Court agreed with the reasoning.

Neither the master's decision, this Court's decision nor the Supreme Court's decision mandated written route comparisons, which forms a large part of Oien's argument.

As a starting point, this Court should be aware of the topography of Oien's two parcels of land totaling 116 acres. The northern parcel is wooded with a prepared home site that has access to a well and electricity. The southern portion of the property has a 2,000 square foot home

overlooking a pond (Transcript p. 125, 126). The per acre price of the land is \$5,200 according to Oien's witness (Transcript p. 187, lines 17-18) and \$5,000 per acre according to PMPA's expert (Transcript p. 312, lines 7-8).

As to land acquisition costs, that is, the cost to obtain the right-of-way on the chosen route, PMPA's expert, David Graydon, an MAI appraiser, placed the damage at \$21,075 (Transcript p. 310, line 20). He did not damage the remainder because the proposed home site is 670 feet from the power line right-of-way (Transcript p. 322, lines 2-5). In other words, Oien's proposed home site is over the length of two football fields away.

On the other hand, Oien's witness Paul Major, a certified general real estate appraiser, valued the property at \$603,000 (Transcript p. 187, lines 15-18). He damaged the property with the proposed right-of-way from \$603,000 to \$380,000, a decrease of \$223,000 (Transcript p. 190, line 7).

Oien's witness, William Rogers, was qualified as an expert on proper procedure for right-of-way acquisition (Transcript p. 229, line 13 – p. 230, line 1). Rogers prepared his comparison of the costs of right-of-ways by using Paul Major's estimate of the land acquisition costs. He also used Oien's estimate of damages if the line was re-routed to cross over the pond. (Exhibit 40). According to Rogers the estimated costs of the middle route right-of-way is \$182,960 (Transcript p. 259, lines 22-25). According to Rogers the costs of right-of-way over the pond is \$29,000 based on Oien's testimony of no damage (Transcript p. 260, lines 10-18).

Ultimately the land acquisition costs will be determined by a jury.

Oien claims PMPA did not perform an alternate route study sufficient to satisfy the Southern Development case. This assertion is based in part on the fact that PMPA did not have

an appraisal of the land acquisition costs for the southern route over the pond. Oien's position puts form over substance.

Common sense tells one that building a power line in a straight line across undeveloped land which is basically level is cheaper than changing the direction of the line several times and building it over a body of water.

This exact point was made by the court in Bookhart v. Central Elec. Power Cooperative, 291 S.C. 414, 435, 65 S.E.2d 781 (1951).

Economic and engineering considerations require such lines to be constructed as nearly straight as practicable, and there is no other feasible route for the line except the route across the lands in question, because any other route would increase the length of the line by several miles, and the cost would be substantially increased by reason of the additional guy wires, anchors and appropriate structures which would be necessitated at each of four additional angles.

Oien's statement that PMPA did not perform alternate route studies is incorrect. Michael Frazier, PMPA's director of engineering and power supply, testified that he and the consulting engineering (Alan Cobb) discussed the aesthetics, cost of acquisition, costs of construction, safety, and reliability of the routes over Oien's property (Transcript, p. 26, line 25 – p. 27, line 11).

Alan Cobb, a professional engineer who primarily does municipal utility work (Transcript p. 342, lines 10-24) engaged in a collaborative effort with City of Newberry officials to locate the lines and substation (Transcript, p. 343, lines 5-11). Cobb testified that he first used Google Earth and GIS to locate possible points to access power and run lines to the substation. Load is considered. Duke Power is consulted on where tap points will be allowed (Transcript, p. 344).

One possible approach, the west approach, was rejected because it was twice as long, and full of urban and commercial property (Transcript, p. 342-349). The west approach was rejected by Cobb, Newberry and PMPA.

Next, Cobb looked at the east side approach. Initially, Cobb looked at 10 to 12 possible routes (Transcript, p. 349, lines 24-25).

Cobb and Frazier discussed each possible route and then walked the route. Wetlands are an issue considered because of wetlands and long term maintenance (Transcript, p. 352, lines 21-25). Construction costs, maintenance and accessibility would be considered (Transcript, p. 353, lines 1-5). Cobb met with Newberry, Frazier, and others in person and through emails, telephone conversations, and sketches to discuss options (Transcript, p. 354, line 13 – p. 355, line 165).

Cobb discussed, with the others involved, the environmental impact, land use, impact on individual property owners, cost of construction, and visual impact. Cobb could not consider land acquisition costs because no one knew what that would be (Transcript, p. 356, line 19 – p. 358, line 1).

Cobb was asked to consider the southern route at one point. He determined Duke would not allow the tap where Oien wanted it (Transcript, p. 363, lines 3-6). The southern route required turns that Cobb estimates would cost \$200,000 just in additional pole costs and installation costs (Transcript, p. 363, lines 15-18). That additional cost did not include costs to negotiate the wetlands (Transcript, p. 363, lines 19-20). The estimated costs of additional poles and installation could exceed the estimated \$200,000 (Transcript p. 364, line 23 – p. 365, line 1). Cobb stopped the engineering on the exact cost of the southern route because Oien also rejected the southern route (Transcript, p. 366, lines 1-12).

Cobb, PMPA and Newberry ruled out the southern route after discussion and walking the possible southern route (Transcript, p. 371, line 15 – p. 372, line 6).

Cobb received input from Newberry as to the costs of the right-of-way (Transcript, 372, line 21 – p. 375, lines 14-17).

Oien cites Rogers' testimony as being determinative of the Southern issues.

For starters, Rogers gave an opinion as an expert on right-of-way acquisition. The trial court can give such weight to Rogers' testimony as it sees fit. Oien asserts through Rogers' testimony that there was no factual basis for PMPA's choice of routes. Just a brief review of the two routes exposes the fallacy of this statement. The chosen route was shorter, nearer a straight line, and is on basically flat land with some drop off at the end. It is the length of two football fields away from the proposed house of the Oien's. The southern route has turns requiring more expensive poles and goes over a pond with the added costs of placing a pole or two in water to say nothing of the additional problems of servicing the line. The southern route can involve environmental issues as well.

Rogers' costs analysis is based on Oien's appraiser damaging the entire tract ranging from 10% to 20%. His damage therefor extended the width and breadth of the entire 166 acres. Rogers does not damage any area on the southern route because Oien says it does not mind the line on the southern route which makes it cheaper than the middle route. The trial court can certainly reject their expert opinion for lack of a legitimate factual basis.

Oien complains that PMPA did not have a written route analysis. When asked if a study is done is that not sufficient, Mr. Rogers answered he did not know (Transcript, p. 275, lines 1-4).

Oien asserts that PMPA always had access to their property to survey or do engineering. According to Mr. Oien, PMPA had a surveyor on the property without his approval and that was a trespass. PMPA needed his approval to go on the property (Transcript, p. 144 lines 5-14). Paul Major, Oien's agent, questioned Todd Guy, a Newberry employee who was the go-between, as to who gave him permission to be on the Oien property. (Transcript, p. 430, lines 1-11).

CONCLUSION

A review of the planning, services, consultation, and interaction among PMPA, the City of Newberry, its engineers and employees, demonstrate that the condemnation in this instance was in the public interest and should be allowed to proceed.

Respectfully submitted,



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM NEWBERRY COUNTY
COURT OF COMMON PLEAS

R. LAWTON MCINTOSH, TENTH JUDICIAL CIRCUIT COURT JUDGE
C. A. NO. 2015-CP-36-120

APPELLATE CASE NO.: 2016-001037

Oien Family Investments, LLC, ...Appellant

v.

Piedmont Municipal Power Agency, ...Respondent

AFFIDAVIT OF MICHAEL FRAZIER

PERSONALLY APPEARED before me, the undersigned, Michael Frazier, who being
duly sworn, deposes and states as follows:

I am the Director of Engineering and Power Supply for Piedmont Municipal Power
Agency. I am familiar with the City of Newberry substation and power line across the Oien
Family Investment, LLC property.

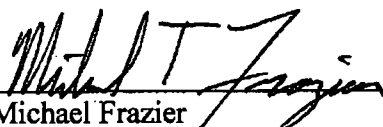
The Newberry city substation has been completed for some time. The rest of the project is
near completion with the exception of stringing the necessary lines which must cross Oien's
property.

Once the stay was lifted by the Court we immediately cleared the right-of-way over the
Oien land and began to prepare to lay the concrete foundations for the poles that would carry the
transmission lines. We halted all work when the stay was reinstituted.

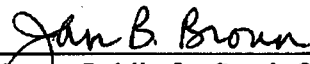
What remains to be done on the Oien property is the concrete foundations and the erecting of the poles. Once that is done we can string the wires to the Duke Energy connections.

Since the trial of this case, there have been several partial outages in the City of Newberry due to the current City of Newberry electrical facilities. These outages have lasted for as long as an hour and half and could have been remedied much sooner if the current line had been run to the current substation which would be controlled by the City of Newberry.

Further Deponent sayeth not.


Michael Frazier

SWORN to before me this 30
day of November, 2016


Notary Public for South Carolina
My Commission Expires: March 4, 2021

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

Appellate Case No. 2016-001037

Oien Family Investments, LLC.....Appellant

v.

Piedmont Municipal Power Agency.....Respondent

**APPELLANT'S PETITION FOR REHEARING,
REQUEST FOR REHEARING *EN BANC*
AND MEMORANDUM IN SUPPORT**

Appellant Oien Family Investments, LLC does hereby petition the Court *en banc* to rehear Appellant's 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 requests the Court expedite the briefing schedule and oral argument and reinstate the stay until such time as the Court decides the appeal. The bases for said petition are set forth hereinbelow.

SUMMARY OF ARGUMENT

The position of appellant is that if the stay is not reinstated and the condemnation project is allowed to proceed pending the appeal, then 1) the Court has effectively decided the appeal without a review of the record or the briefs of the parties contrary to our rules of appellate practice; 2) the holding of this Court in 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), will be rendered meaningless because there would be

no point to requiring a route analysis after the line is installed; 3) the plain meaning and purpose of S.C. § 28-2-470 will be stood on its head; and, 4) appellant's plans for their retirement property will be forever ruined, a wrong for which there is no remedy at law. Moreover, there is no reason not to reinstate the stay because, contrary to the assertions made to this Court, PMPA knows that the line will not be installed unless and until this litigation is finally adjudicated because representatives of the electric company installing and energizing the line, Duke Power, informed PMPA that it would not "set a pole" as long as appellant is challenging the condemnation because Duke realized that if appellant prevails, Duke would later have to remove its equipment. (See Exhibit A, PMPA000339).

It is sufficiently clear, as recited herein, that the record below shows the ruling of the lower court is contrary to the clear holding in Southern Development. Because this Court issued its December 9, 2016, Order denying the appellant's motion to reconsider and lifting the stay without the benefit of a record and was presented with extraneous material, it is requested that this Court rehear Appellant's motion to reconsider *en banc* and revisit the issue after reviewing the record and briefs of the parties, and, to the extent any affidavits are allowed to be considered, considering those attached hereto.

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 this Court in Southern Development wherein the lower court grant of an injunction against the condemning authority was affirmed based on the fact that the condemning authority had failed to legitimately consider the cost to acquire land for the three alternate routes involved in that case. There, the condemning authority assumed all of the land values related to each alternate routes were identical. The appellant's challenge to the condemnation was heard by the Honorable R. Lawton McIntosh on March 28 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.

After Judge McIntosh's orders were entered, PMPA indicated to Oien's counsel that it intended to proceed with the condemnation. The very next day, on May 18, 2016, appellant filed the notice of appeal and 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. Later that day, this Court issued its order dated May 18, 2016 granting Appellant's motion wherein the Court stayed the operation of the lower court's order pending the appeal.

Respondent then filed a Motion to Lift Stay on May 20, 2016. Appellant filed its Return in Opposition to the Motion to Lift Stay or Require Bond on May 31, 2016. The Court held a hearing on Respondent's motion on July 27, 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 not provided by the court reporter to counsel until October 13, 2016. Counsel argued without benefit of a record and respondent's arguments supporting the motion were in some instances outside the record reflected in the transcript of the trial. The panel ultimately issued its order dated October 18, 2016, lifting the stay.

On October 20, 2016, appellant filed a motion to reconsider lifting the stay. The panel, after considering appellant's motion, ordered Respondent to file a return to the motion and a copy of the trial transcript and reinstated the stay on November 22, 2016. Respondent filed its return and the transcript (consisting of over 500 pages) on December 2, 2016. The return included an affidavit of a manager with PMPA, Michael Frazier, in which he makes statements that are based on hearsay or rumor, and imply, without any reference to the trial transcript, that the prompt installation of the subject transmission line is an urgent matter of public safety. Appellant filed a reply to Respondent's return on December 8, 2016, along with a motion to strike Mr. Frazier's affidavit. Appellant's motion to strike also sought, in the alternative, leave to submit affidavits disputing each statement contained in Mr. Frazier's affidavit and definitively showing that no such emergency exists because PMPA (and Mr. Frazier himself) knows that Duke Power will not "set a pole" until this litigation is concluded because "Duke's theory is that if PMPA loses, Duke will have

to remove their equipment.” Without addressing the motion to strike, the panel issued its order on December 9, 2016, denying appellant’s motion to reconsider and again lifting the stay.

Appellant filed its Initial Brief on November 14, 2016. This brief supports the position that PMPA’s route selection is violative of the Southern Development case. PMPA did not file its brief yet, and has requested and received an extension of the time in which to file its Initial Brief. Respondent’s brief is now due on January 13, 2017.

ARGUMENT

A. A Stay Is Required and Must Be Imposed Under South Carolina Law. Otherwise, the Court is Effectively Deciding the Appeal Without a Record and Without Considering the Briefs of the Parties.

PMPA’s position concerning the stay set forth in its motion to lift the stay and return to appellant’s motion to reconsider misapprehends the applicable law. It is well for this Court to note, in the context of the instant matter, that our courts take a restrictive view of the power of eminent domain. Georgia Dept. of Transp. v. Jasper County, 355 S.C. 631, 586 S.E.2d. 853 (2003). The exercise of the right of eminent domain by the sovereign is, in its very nature, in derogation of the “great and fundamental principle of all constitutional governments, which secures to every individual the right to acquire, possess, and defend property.” Karesh v. City Council of City of Charleston, 271 S.C. 339, 247 S.E.2d. 342 (1978), *quoting*, Young et al. v. Wiggins et al., 240 S.C. 426, 126 S.E.2d 360 (1962). While in other jurisdictions the power of eminent domain may be exercised for a public purpose, benefit or the public welfare, the courts of South Carolina have adhered to a strict interpretation of our constitutional provision. Karesh, *supra*. This is because the power of eminent domain expressed by the framers of our constitution and the courts of this State proclaim a high regard for private property. (*Id.*) “However attractive the proposed project, however desirable the project from a government planning point of view, the use of the power of eminent domain for such purposes runs squarely into the right of an individual to own property and use it as he pleases.” Jasper County, *supra*, at 856.

It is this principle on which the Southern Development decision is grounded. It is further through this lens that the statute providing for an action to challenge the right to take, and the automatic stay provided in

it, must be viewed. S.C. Code §28-2-470 provides that “[a]ll proceedings under the Condemnation Notice are automatically *stayed* until the *disposition of the action*...” (emphasis added). Of course, it would be helpful if the issue of the stay imposed by the statute had been previously litigated, but the question is not a complicated one despite the protestations of PMPA because the statute cannot be more clear. It plainly states that all proceedings are stayed. It does not say that some or certain types of actions are allowed to proceed. It unequivocally says “all” condemnation actions stop when an action such as Appellant’s is filed, and the fact that it does informs the construction of the phrase “disposition of the action”. That all actions are stayed necessarily means that the legislature intended that the final adjudication of the action must be had. Otherwise, the purpose of the statute is defeated.

SC Code §28-2-470 creates the right of a landowner to seek a judicial determination of the condemnor’s right to proceed with the Condemnation Notice or whether it will be enjoined from doing so altogether. For “disposition of the action” to mean anything other than a final adjudication would be an aberration of not only the plain meaning of the phrase, but its operation in all other facets of the law. Any meaning short of final adjudication is not a “disposition” in the plain in ordinary sense. Blacks Law Dictionary defines “disposition” as “a *final* settlement or determination”. Black’s Law Dictionary, p. 484 (7th Ed. 1999). The matter is not “disposed of” until all appeals are exhausted.

The construction of “disposition of the action” asserted by PMPA is absurd, stands the purpose of the SC Code §28-2-470 on its head, and requires the court to supply additional words to the statute or apply meaning to the terms used contrary to their plain and ordinary meaning. Such a construction is impermissible. The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000); SCDOT v. First Carolina Corp. of SC, 369 S.S. 150, 631 S.E.2d. 533 (2006). What a legislature says in the text of a statute is considered the best evidence of legislative intent. Hodges, *supra*. Where such intent can be reasonably discovered from the plain and ordinary meaning of the language used, rules of construction are subservient to the principle that legislative intent must prevail and must be construed in light of the intended purpose of the statute. First Carolina Corp

of SC, *supra*. Where the statute's language is plain and unambiguous, conveying a clear and definite meaning, the rules of statutory interpretation are not needed and "the court has no right to impose another meaning." *Id.* at 535. A court is further prohibited from rewriting the statute or injecting matters into it which are not in the legislature's language. *Hodges, supra*.

It is absurd to contend that the legislature intended the phrase "disposition of the action" to mean that the automatic stay is only in place until the trial court renders its decision. If the legislature had intended the decision of the trial court to be the effectual end of the challenge proceeding, it surely would have said so or specified what actions were not stayed on appeal, or limited appellate jurisdiction. It did not. Moreover, were that the case, nothing would prevent PMPA from installing the transmission line right through the middle of the Appellant's property while this matter is on appeal. That logic could also lead to PMPA having to incur the costs of removing the transmission line and reconstructing it somewhere else if the Appellant prevails on appeal. Respondent's position is, at the very least, an unreasonable construction which has no basis in the common understanding of the meaning of the terms used by the legislature. Courts cannot employ a subtle or forced construction of a statute so as to limit its operation. *Centex Intern., Inc. v. SCDOR*, 406 S.C. 132, 750 S.E.2d 65 (2013). Nevertheless, this is precisely what the Return of Respondent asks this Court to do by lifting the automatic stay provided by SC §28-2-470 at this stage of the proceedings.

Appellant's Argument relating to Rule 241(a) contained in Appellant's Return in Opposition to Motion to Lift Stay dated May 31, 2016, is incorporated herein by reference. The rule states that all matters "affected by the appeal" are stayed pending the appeal. There is no legal or factual basis to grant supersedeas in a challenge case such as this.

The effect of the Order of the Court dated December 9, 2016, lifting the stay is, in essence, to finally decide the appeal, and therefore, rehearing of the matter is proper under Rule 240(i), SCACR. To lift the stay is to disregard the clear meaning and purpose of the statute and the appellate court rule. More importantly, however, to lift the stay is to effectively decide the matter without any review of the record or the briefs of the parties. Our rules of appellate practice contemplate and provide that the Court only decides a matter

after the record on appeal is established and the parties have fully briefed the issues on appeal. Appellant's action before this Court is one challenging PMPA's right to take under the statute. If PMPA is allowed to proceed with the taking during the pendency of the appeal, the provision of the right to challenge the taking in the first place is for naught; the taking has already happened; the damage is done even if this Court ultimately decides to reverse the lower court based upon the record and briefs. The Court should not set that precedent. The law and a common understanding of due process does not support that view. The stay should be reinstated.

B. PMPA Knows That the Transmission Line Will Not Be Constructed Until This Litigation Has Ended and There is No Urgency to Construct the Line Prior to the Disposition of this Appeal.

Attached hereto is an affidavit of counsel (Exhibit A) authenticating email correspondence provided by PMPA in discovery from the said Michael Frazier, manager of PMPA, to Marc Regier of the City of Newberry. In the email, Mr. Frazier states that "[o]ne bad thing is that Duke [Power] has told me that they will not set a pole if the Oiens are fighting condemnation. Duke's theory is that if PMPA loses, then Duke will have to remove their equipment." Duke's "theory" is obviously correct, which is exactly the argument made herein. It is only common sense. Moreover, this is proof positive that PMPA knows that the transmission line will not be completed unless and until this litigation is finally adjudicated. Therefore, there is no urgency to lifting the stay. If there is any urgency, it is to resolve this litigation.

Further attached (Exhibit B hereto) is an affidavit of Jason Merchant, Vice President of Engineering and Operations at Newberry Electric Cooperative. Contrary to what Mr. Frazier, who does not live or work in Newberry, says in his affidavit, Mr. Merchant makes clear that he is aware of no significant interruptions in electric service in Newberry and that any interruptions that have occurred do not stem from the fact that the subject transmission line has not been completed. Mr. Merchant is in a position to know what outages have or have not occurred and is qualified to opine on the cause of any such outages. Furthermore, the undersigned counsel live and work in the City of Newberry and have not experienced any interruptions. Mr. Frazier's implications to the contrary are at best mistaken and based on hearsay and rumor.

As set forth in appellant's reply to respondents return in opposition to appellant's motion to reconsider, this matter is not difficult to resolve. All Southern Development affords appellants is the right to require PMPA conduct a proper alternate route analysis by utilizing a "rational decision making process based on facts." Southern Development, at 434. That PMPA comes before this Court feigning an emergency, while steadfastly refusing to conduct the analysis which would render the appeal moot is all this Court needs to know about not only the disregard it has for the rights of the landowner, but the likelihood the Oiens are correct when they assert that a proper analysis, such as that conducted by Mr. Rogers, would find the southern route superior in all measures compared to the middle route.

C. The Trial Transcript Demonstrates That the Lower Court Order Did Not Correctly Apply Southern Development, and this Court Should Review the Record and Briefs of the Parties Before Allowing PMPA to Proceed with the Condemnation.

Respondent PMPA's 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 at all, much less one using the factors listed and suggested in the Southern Development case.

In Southern Development this Court affirmed the lower court's granting an injunction against the condemning authority finding that the condemning authority (Santee Cooper) failed to legitimately consider the cost to acquire land for the three alternate routes involved in that case because Santee Cooper assumed all land in the general area was worth the same. In that case, Master-in-Equity Breeden found that the utility's route selection lacked a factual basis because it had given no concrete consideration to land acquisition costs, and assumed all land in the general area had the same fair market value. Id. at 433. In affirming the Master's ruling, this Court noted that "no notes or memoranda were kept by Santee Cooper employees of their analysis." Id. at 433. Here, PMPA witnesses admitted not only was there is not a single shred of written material (notes, memorandum, reports, correspondence, etc.) kept by PMPA of any analysis conducted, not the first written material was ever created. Instead, the engineer hired to plan and "select" the route testified that he conducted a "mental" analysis.

In deciding Southern Development, this Court noted that the cost element for construction by Santee Cooper only involved construction cost of the line by Santee Cooper "without substantive regard to the cost to acquire the land" because Santee Cooper, just as PMPA here, considered that all of the land required had equal value. Here, neither PMPA engineer Frazier nor outside consultant Cobb identified the specific engineering cost of the middle route or the southern route. Southern Development requires a comparative analysis. Obviously, PMPA could not "compare" these routes without doing so. Moreover, the sin that Santee Cooper committed resulting in the decision in favor of the landowner is the very sin present in this case. Santee Cooper failed to consider acquisition costs by considering land values for all properties along the line the same. The record reflects that PMPA made the exact same error that Santee Cooper did. Their own witness testified that PMPA considered all values along the line to be the same. PMPA appraised all 15 properties involved in the transmission project using the same per acre value (\$5,000 per acre). Either Southern Development means something or it does not. The appellant assert that it does, and under its holding, if Santee Cooper's selection of the route was arbitrary and capricious, then so was PMPA's.

At trial, appellant's evidence further established that PMPA failed to adhere to the basic requirements of Southern Development, which are that a transmission authority:

- (a) must consider applicable factors including land usage, cost to acquire and aesthetics, and it must have some writing to support a "rational decision-making process." (PMPA did not do this);
- (b) must not consider the cost to acquire land at the same cost as other tracts on the project (PMPA considered cost to acquire all 15 landowners' properties at \$5,000 per acre);
- (c) must compare the facts on all alternate routes (PMPA did not do so; no quantification of costs to acquire or total costs for the alternate routes were provided by PMPA); and,
- (d) must make an objective assessment of the alternate routes, compare them using a rational decision-making process, and make a route decision that is supported by facts. Id. at 434. (PMPA did not perform this, and its decision was arbitrary and capricious).

The transcript reflects that PMPA refused to consider any alternative routes proposed by the Oiens, but, instead, insisted on the “easiest” and “cheapest” route. It admittedly failed to consider or legitimately consider tap access, aesthetic, environmental factors, construction costs, land acquisition costs, or any other matter concerning the southern route. PMPA witnesses admitted that they never even considered any costs or other factors related to the southern route or compared them to the middle route. The PMPA officials similarly admitted that they had not even heard of Southern Development or its requirements.

In Southern Development, as in the case at bar, no property owners were contacted before the route was chosen regarding the “anticipated use of their property.” Id., at 432. The testimony below shows that PMPA’s selection was based on nothing more than “Google Earth” and Newberry County GIS maps (Transcript, pp. 231, 234, 243, 294) and was prepared and submitted by PMPA before any landowner had been contacted (Transcript, p. 237) and before PMPA had been on the Oiens’ property. (Transcript, p. 230). Clearly, for an authority with the power of eminent domain, this is not a “rational decision making process based on facts.” Id. at 434.

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 middle 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 Order of the lower court failed to properly apply Southern Development to the facts presented. This 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. Here, the only analysis in the record is that of appellant's expert who determined that 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. Using Mr. Roger's written route ratings ("1" being best), applying all the Southern Development factors, the southern route scored a "9," while the middle route scored a "15". He further found the southern route was superior in 5 out of 6 categories. (Plaintiff's Exhibit 40).

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).

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.

To uphold the decision of PMPA in "selecting" the middle route by lifting the stay would stand the holding in Southern Development on its head where the route selection was made by officials at PMPA who had never heard of a comparative route analysis (Transcript, p. 74), who had never heard of Southern Development (Transcript, pp. 379-80), who knew the Oiens wanted consideration of the southern route but refused to analyze it, and who presented no comparative land acquisition or construction costs. Decisions by condemnors like PMPA which lack any "rational decision-making process" for route selection are the very evil that this Court sought to abolish in Southern Development. PMPA in essence did nothing required by this Court in that case.

Given that the Respondent admittedly conducted no route analysis, the Respondent is effectively asking this Court to overrule Southern Development and the rationale upon which it is founded. It is for this Court to determine whether Southern Development stands for reigning in heavy handedness and "tunnel vision" in the exercise of the power of condemnation or not. Appellant asserts that it does, and its application to the record of this case is squarely against the Respondent.

Sections "B" and "C" of the argument in Appellant's Reply To Respondent PMPA's Return To Appellant's Motion To Reconsider Lifting Of Stay concerning respondent's misstatements of fact in its return and the Initial Brief of Appellant are incorporated herein by reference.

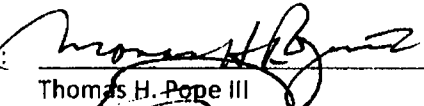
CONCLUSION

For the reasons set forth above, appellant respectfully requests that this Court rehear the appellant's motion to reconsider its Order of October 18, 2016, en banc, and withdraw said Order until the conclusion of the appeal. In the alternative, Appellant requests the Court expedite the briefing schedule and oral argument and reinstate the stay until such time as all appeals are concluded. This petition is based on Rules 240(i) and 241(a), SCACR, S.C. 28-2-470, and irreparable damage which will occur unless this Court can at

least make its decision on the question of the stay based upon the transcript of record and the briefs to be filed.

Respectfully submitted,

POPE AND HUDGENS, P.A.

By: 
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Attorneys for Appellant

Oien Family Investments, LLC

December 22, 2016

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Appellate Case No. 2016-001037

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2015-CP-36-00120

Oien Family Investments, LLC.....Appellant

v.

Piedmont Municipal Power Agency.....Respondent

AFFIDAVIT OF THOMAS H. POPE III

PERSONALLY appeared before me Thomas H. Pope III who being duly sworn,
deposes and states as follows:

1. Along with my law partner, Kyle B. Parker, I am counsel for Oien Family Investments, LLC in the above matter. This affidavit is supplied in connection with Appellant Oien's Petition for Rehearing *en banc*, and in opposition to the affidavit of Michael Frazier, an employee of PMPA who resides in Greenville County, South Carolina.
2. Mr. Frazier's affidavit asserts that there have been power outages in the City of Newberry that were caused by the City's inability to finish the installation of the transmission line which is the subject of the challenge asserted by appellant in this case.

3. I have been a resident of the City of Newberry for virtually my entire life, and, I have resided within the city limits of Newberry continuously since 1977.
4. PMPA now asserts that there is some urgency in completing its transmission line for the City of Newberry. In Mr. Frazier's affidavit dated November 30, 2016, PMPA is the first time it has been asserted that time is now of the essence.
5. Attached herewith as Exhibit 1 is a copy of an email produced in discovery and marked as PMPA00339, which is from Michael Frazier with PMPA to Marc Regier with the City of Newberry ("Transmission Line Update") dated November 14, 2014. In this email, Mr. Frazier asserts that Duke Power Company has informed him (PMPA) that it will not set a pole if the Oicns are "fighting condemnation." The reason asserted in this email is that Duke believes that if PMPA loses, Duke will have to remove its equipment.
6. This email refutes the fact that there is any urgency in completing this line and that Duke is not going to set a pole to allow power to go the substation until this case is resolved.
7. As stated in our filings, Mr. Frazier's affidavit should not be considered by this Court because Mr. Frazier does not live in the City or County of Newberry, his affidavit is based on hearsay, and there is no factual support for his assertion about outages.
8. As a resident of the City and County of Newberry, I am aware of no extensive outages in the City of Newberry either of my own knowledge or via "the grapevine." In the last year, there have been one or two occasions where power went off for a very short period of time, less than 15 minutes in some isolated spots in the City; however, there have been no outages of significant length of which I am aware. In fact, I have observed no more outages in the City during the last 12 months than in prior 12-month periods since 1977.

9. I am aware of no factual corroboration for Frazier's inference that either (a) there have been no more outages in the City since the trial (in March 2016); or, (b) any outages which have occurred are somehow caused by PMPA's not having completed the two mile transmission line which is the subject of this action challenging PMPA's condemnation and routing election.

SWORN to before me this 12th
day of December 2016

Mina Elizabeth Beards Alexander (L.S.)
Notary Public for the State of South Carolina
My commission expires: 1/29/2025

Thomas H. Pope III
Thomas H. Pope III

Mike Frazier

From: Mike Frazier
Sent: Friday, November 14, 2014 5:14 PM
To: 'Mr. Marc Regier (mregier@cityofnewberry.com)'
Subject: Transmission Line Update

Marc,

You saw my note to Kraft. Depending on the result, I plan to condemn them as well so as not to waste more time. The attorneys are getting ready for the clock to run out on the others. On the Oiens, we may have to add another person to that condemnation. One of the previous owners left the land to their son and daughter. The son sold it, but there is no paperwork about the daughter agreeing to anything, therefore she may still have a claim to a piece of the ROW payment. As far as the Oiens go, it's their land, but to condemn the land, this legal issue arises. It's not a big issue, just more cost to track down someone to get a signature.

The land clearing bids are going out and the transmission poles will be ordered soon. My goal is to get the bids back around the time when the time period runs out on the property and PMPA can proceed with the land.

One bad issue is that Duke has told me that they will not set a pole if the Oiens are fighting condemnation. Duke's theory is that if PMPA loses, then Duke will have to remove their equipment. Let's see what happens in a few weeks.

Mike

Piedmont Municipal Power Agency
121 Village Drive
Greer, SC 29651
O: 864.848.5409
M: 864.414.9614
mfrazier@mpa.com

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Appellate Case No. 2016-001037

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2015-CP-36-00120

Oien Family Investments, LLC.....Appellant

v.

Piedmont Municipal Power Agency.....Respondent

AFFIDAVIT OF JASON MERCHANT

PERSONALLY appeared before me Jason Merchant who being duly sworn,
deposes and states as follows:

1. I am Vice President of Engineering & Operations for Newberry Electric Cooperative, Inc. ("NEC"), and I have served as Manager of Engineering and as Vice President of Engineering & Operations for over 18 years. I formerly worked for SCE&G also.
2. Newberry Electric Cooperative has approximately 13,000 members/customers (residential and commercial), and I am familiar with the other electric providers within Newberry County which include the City of Newberry; SCE&G in the southern part of the county; Duke Power Company in miscellaneous areas in the central and northern parts of the county; and, the Town of Prosperity.

3. Newberry Electric Cooperative serves more electric customers than any other electric supplier in this county.
4. In my capacity as Vice President of Engineering for Newberry Electric Cooperative, Inc., I am generally familiar with the operations of all the other electric suppliers. I am also familiar with if and when there are any outages sustained by any electric supplier in Newberry County.
5. I am also generally aware of the transmission line that PMPA, on behalf of the City of Newberry, is planning which runs from a Duke transmission line on the property owned by Oien Family Investment, LLC to the Louis Rich plant, a distance of a little more than two miles. I am aware of this because this proposed line goes through lands owned by customers of NEC and I have received telephone calls from many of these customers. Outages occur frequently with any electric provider; a squirrel or a car accident will cause a technical "outage" for a short duration.
6. As Vice-President of Engineering for Newberry Electric Cooperative, I am routinely in contact with my counterparts and employees (linemen) with SCE&G, Duke Power, and the City of Newberry on a regular basis.
7. Every electric supplier in this county has had outages in the last year or so; outages are a reality with which all electric suppliers contend.
8. In the last year, NEC has had approximately eight (8) non-storm related extended outages (affecting more than 100 customers).
9. I am not aware of any significant outage problems that the City of Newberry has had over the last year. Further, I am not aware of any outage of more than 30 minutes' duration in the city over the last year, and I have heard of none in the City during the last year.
10. I have read the Affidavit of Michael Frazier of Greenville County dated November 30, 2016. It is my belief that there have been no sustained partial outages more than 30 minutes in the City of Newberry over the course of the last 12 months. It is my belief that I would have known about any such outages had they occurred.

SWORN to before me this 22nd
day of December 2016

Mina Elizabeth Brooks Alexander (L.S.)
Notary Public for the State of South Carolina
My commission expires: 1/29/2025

Jason Merchant
Jason Merchant

State of South Carolina)
) Court of Common Pleas
County of Newberry)

2015-CP-36-00120

Oien Family Investments, LLC)
) vs. Transcript of Record
)
)
Piedmont Municipal Power)
Agency)
 Defendant)

March 28th and 29th, 2016
Newberry, South Carolina

B E F O R E:

Honorable Lawton R. McIntosh, Judge

A P P E A R A N C E S:

Tom Pope, Esq.
Attorney for the Plaintiff

Bruce Bannister, Esq.
Luke Burke, Esq.
Attorneys for the Defendant

Joy E. Holston
Official Court Reporter

1 THE COURT: Good morning.

2 MR. POPE: Good morning.

3 MR. BANNISTER: Good morning.

4 THE COURT: I have read your submissions. And, Mr.
5 Pope, would you tell me the issues that is for me to
6 decide today?

7 MR. POPE: Yes, sir. Your Honor, the issues to be
8 decided. One, is the taking for a public use. And that
9 is one position that we at least contend that is for one
10 customer, Kraft Foods, and it is not for public use as
11 defined by the case law. But secondly, equally, if not
12 more importantly is the case of Southern Development
13 versus South Carolina Public Services. I sent you the
14 brief, I didn't send the case. But the critical points of
15 that case and I will just summarize them right quick. In
16 that case the Court held, the lower Court, Master in
17 Equity, later a Circuit Judge, ruled that where a
18 defendant, where the defendant makes a choice of route for
19 a high voltage transmission line lacks a factual
20 foundation where that defendant in the route selection
21 process gives no concrete consideration to the land
22 acquisition cost, instead assuring, assuming that all land
23 in the general area has the same value. And where the
24 cost estimates prepared for alternate routes proposed do
25 not include land acquisition cost.

1 THE COURT: In that case, according to my notes there
2 are seven factors in the case and I have those factors
3 down, availability, cost, build, acquire, environmental
4 factors, public safety considerations, liability,
5 aesthetics.

6 MR. POPE: Of course, that case did say that that
7 wasn't an exclusive list. They also said that the
8 aesthetics, that case specifically relied on the
9 aesthetics being important and the anticipated use of the
10 property being important. And the failure to consider the
11 cost, all of those factors was arbitrary, capricious and
12 lack of factual foundation and it was not allowed.

13 THE COURT: You are talking about the landowners
14 anticipated use of the property?

15 MR. POPE: Sir?

16 THE COURT: The landowners anticipated use of the
17 property?

18 MR. POPE: Yes sir, the landowners use.

19 THE COURT: Okay. Mr. Bannister, did you read those
20 factors?

21 MR. BANNISTER: Judge, I agree that that is what he
22 wants you to consider.

23 THE COURT: Okay.

24 MR. BANNISTER: That is the case that was reversed
25 that granted estoppel, they said, yes, we agree.

1 THE COURT: Right, based on representation.

2 MR. BANNISTER: Generally you have to consider those
3 factors in determining which route we are going to choose.
4 We disagree with the application that they use that on a
5 specific piece of property you have to consider alternate
6 routes once you pick the route. Once you pick the route
7 you don't have to consider every piece of property in the
8 same way. In other words, Southern Development was about
9 the route, whether you picked route A which was from the,
10 from point A to point B, or route B which went entirely
11 off route A, somewhere else, or route C which was an
12 entirely different route. And in this case, you are going
13 to hear testimony, PMPA considered five different routes
14 and they settled on one crossing the Oien's property. And
15 that is all they have to do. We don't agree that once
16 they decide they are going to cross the Oien's property
17 they then have to pick, they have to do an additional
18 route and apply those factors to several different routes
19 across one owner's property, they can just pick the route
20 that they think is best and go forward from there.

21 THE COURT: Okay. Any other issues from your
22 standpoint?

23 MR. BANNISTER: Judge, it was my understanding that
24 they have abandoned the lack of accessing public use or if
25 that is, if they are, in fact, pursuing that, at some

1 THE COURT: Mr. Pope, are you ready to call your
2 first witness?

3 MR. POPE: Yes sir, we are. We would call Mike
4 Frazier. Also, I offer for the Court, I have got a set of
5 exhibits.

6 THE COURT: Let's go ahead and do that.

7 MR. POPE: I gave it to the Court Reporter.

8 THE COURT: Is there any objection, Mr. Bannister, to
9 the proposed exhibits from the plaintiff? For the record,
10 any objections, Mr. Bannister, to the exhibits?

11 MR. BANNISTER: No, Your Honor.

12 THE COURT: And those are 1 through 44, is that
13 correct?

14 MR. POPE: Yes, sir.

15 THE COURT: And, Mr. Bannister, 1 through 26.

16 MR. BANNISTER: Judge, why don't we deal with them
17 one at a time.

18 THE COURT: That is why I was looking at it. That is
19 fine. All right, Mr. Pope.

20 MIKE FRAZIER, being
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 By Mr. Pope:

24 Q Mr. Frazier, you live in Greenville County?

25 A Correct.

1 Q Sir?

2 A Correct.

3 Q What's your position?

4 A At PMPA, I am the Director of Engineering and Power
5 Supply.

6 Q You've had that job about ten years?

7 A I've had that title for about ten years.

8 Q And during that ten-year, well, let's back up. PMPA
9 is called the Piedmont Municipal Power Agency, is that
10 right?

11 A Yes.

12 Q And your members are ten, approximately ten
13 municipalities that sell electricity?

14 A Ten municipal utilities, yes.

15 Q That would include Greer and Newberry's, eight of
16 them?

17 A Yes.

18 Q And in those ten years, your company, PMPA, has been
19 involved in four, prior to this, four transmission line
20 projects?

21 A Five.

22 Q And you, I think you told us you spent about five
23 percent of your time on transmission line projects?

24 A Over the course of the year.

25 Q Sir?

1 A Over the course of the year depending on what the
2 project requires.

3 Q Have you had any, you've not had any training in the
4 handling of a condemnation case, have you?

5 A This is, as far as training, it's been on the job.

6 Q Well, you testified in your deposition as far as
7 training, you depend on your lawyer to guide you in
8 dealing with property owners?

9 A Yes.

10 Q And you don't have, do you have any expertise in
11 right-of-way acquisitions?

12 A Just the transmission lines that I've already done.
13 Like I said, it's been on the job.

14 Q Are you a member of any right-of-way associations?

15 A No.

16 Q Are you familiar with the International Right-of-Way
17 Association?

18 A I have heard of it because of this transmission line,
19 but prior to that, no.

20 Q Well, you've heard that Mr. Rogers, our expert, is a
21 member of that, correct?

22 A Yes.

23 Q That's the first time you've heard of it?

24 A Yes.

25 Q All right. Now, are you familiar with being

1 certified as a right-of-way acquisition expert?

2 A Again, just recently.

3 Q And Mr. Rogers is certified, do you know that?

4 A Yeah.

5 Q Okay. Now, you've never been on the Oien property,
6 correct?

7 A I have.

8 Q You have. All right. Let's look it, get an overview
9 here. You've got the Duke Power Line that comes north and
10 south, is that correct?

11 A That is correct.

12 Q And that's the power source for the project that
13 we're here about today?

14 A Yes.

15 Q And the substation is built right here beside Kraft
16 Food?

17 A Yes.

18 Q And the route of the thing, of course, it wasn't
19 exactly like this, but that's the general route, it's 2.1
20 miles?

21 A I believe that's correct.

22 Q And the Oiens are the very first property you cross
23 from that power source, is that right?

24 A Correct.

25 Q So you had many options in, to tap onto that Duke

1 line, correct?

2 A We had, from that side of town, there were a few
3 options.

4 Q All right. But you had, would you agree that in
5 about 1500 to 2000 feet that Duke transmission line that
6 runs through the Oien edge of their property?

7 A That is correct. However, Duke Power would only give
8 taps at either mid-span or at a pole, I would think.

9 Q All right. You don't have any training in how to
10 deal with landowners to determine what their rights should
11 be; do you inform them about such things as that?

12 A Other than common knowledge, no.

13 Q Okay. Now, did you ever have contact with the Oiens
14 before November of 2013?

15 A Not direct contact, no.

16 Q All right. What contact, the project started in
17 February of 2013, is that right?

18 A PMPA had a committee meeting of its Board in March
19 that approved the project.

20 Q Sir?

21 A PMPA had a committee meeting where that project was
22 approved by the committee and recommended to the Board in
23 March of 2013.

24 Q Early March?

25 A Yes. I can't remember the exact date, but in March.

1 Q Now, would you, did you not write a letter to the
2 landowner affected by this project?

3 A The City of Newberry went out to contact all the
4 property owners.

5 Q So you delegated that to them?

6 A Yes.

7 Q Did you give any instructions to the City of Newberry
8 about how they would, how to talk to these landowners and
9 what they were to tell them?

10 A I did not get in any direct discussions since they
11 deal with other right-of-way with their electric and water
12 utilities.

13 Q Sir?

14 A Newberry deals with right-of-way acquisition for
15 their own system.

16 Q That's distribution, right?

17 A Yes, it is.

18 Q Now, distribution line is just getting power to some
19 consumers, some homeowners?

20 A It is talking to the property owners of those
21 affected.

22 Q The different, and the issues with a transmission
23 line are totally different from a distribution, aren't
24 they?

25 A They are similar and different, yes.

1 Q Well, a transmission line, in this instance, your
2 transmission line is for a pole 90-feet high, wasn't it?

3 A Yes, roughly. I don't think everyone is 90.

4 Q 80 to 100?

5 A Sure.

6 Q Now, are you aware of our Constitution in South
7 Carolina that provides that imminent domain is a very
8 powerful right that has to be cautiously exercised, would
9 you agree with that?

10 A I would agree.

11 Q And that you're taking somebody's private property,
12 correct?

13 A If required.

14 Q Well, you either acquire it or condemn it, but it's
15 you're taking private property?

16 A I meant required.

17 Q Sir?

18 A Required. We only do it if it's required.

19 Q In any event, it's private property that you're
20 taking that a homeowner would have a lot of questions
21 about that, wouldn't it?

22 A Potentially, yes.

23 Q But you didn't send any notification to the Oiens or
24 any other homeowners about the fact that, hey, we got a
25 line that's got to run generally these two miles to the

1 Kraft Plant, you didn't do that?

2 A PMPA did not send any directly to the customers. It
3 was all relayed to the City of Newberry and disbursed
4 through them.

5 Q Well, you've seen, you've gathered all of the
6 documents in this case for your lawyer to present to us,
7 486 pages, didn't you?

8 A Mostly between yeah, the City, yes.

9 Q And that you, there's no indication in there that
10 anybody wrote the Oiens about this project, correct?

11 MR. BANNISTER: Your Honor, I want to object. It is
12 irrelevant whether somebody is called or talked to the
13 Oiens in this case. They raised two issues, route
14 selection, and those are the factors that would be taken
15 into account. The landowner's opinion is irrelevant and
16 public use and you don't have to contact the landowner
17 about public use. So unless there's a different issue Mr.
18 Pope is raising, I don't think questions about the contact
19 and how it happened or what letters were written to the
20 Oiens is relevant for Your Honor today related to a
21 permanent injunction stopping this right-of-way.

22 THE COURT: Mr. Pope?

23 MR. POPE: Judge, these questions go to his route
24 selection.

25 THE COURT: I note your objection. I can figure it

1 out.

2 MR. BANNISTER: Okay. Thank you.

3 Q There's no letter to the Oiens about the nature of
4 the project or your general scope of it or anything else,
5 is that right?

6 A That is correct.

7 Q Okay. And the person that you delegated it to at the
8 City is Mr. Mark Regier?

9 A Yes.

10 Q Of course, Mr. Regier is a very nice person, but he
11 has no experience in transmission, acquisition, does he?

12 A Not transmission, no.

13 Q And never done one before this, correct?

14 A No.

15 Q And you didn't give him any instructions, did you?

16 A Other than just, you know, deal with the customers
17 like they normally would, no.

18 Q Well, if he'd never done it before, what's normal?
19 You wouldn't have, you hadn't, you gave him no advice?

20 A For acquiring right-of-way. That's the advice.

21 Q You gave him no advice?

22 A For transmission or distribution, talking to the
23 customers would be the same, calling them up, talking to
24 them.

25 Q Now, are you aware that Mr. Oien found out about the

1 transmission line from a neighbor of his?

2 A I've heard him say that.

3 Q And have you saw the email that the neighbor wrote
4 him?

5 A I have not.

6 Q You don't recall seeing the Plaintiff's exhibit 7?
7 I'll show it to you.

8 A Okay.

9 Q You have seen it?

10 A I have not.

11 Q Okay. So you never heard that Misty West contacted
12 the Oiens and said that there was a potential line that is
13 going to be run through their property. And I told that,
14 I, being Misty West said, there's no way you would
15 willingly give them an easement to cut your property in
16 half. You don't remember hearing about that?

17 A In hearing the depositions.

18 Q You heard about the email she sent, but you haven't
19 seen it, is that what you're saying?

20 A That is correct.

21 Q I show you, I believe, it's exhibit 15. You have
22 seen that, have you not?

23 A I have.

24 Q And this is a report issued by the, your engineering
25 firm?

1 A At the time this was presented, they were not
2 employed by PMPA.

3 Q Okay. Well, they issued a report February 28th,
4 2013?

5 A Yes.

6 Q And in that report, they set forth what would be the
7 start of the project, correct?

8 A This was the proposal made to the PMPA Transmission
9 Committee to get approval for the project.

10 Q Okay. And look at page marked PMPA 172 on that
11 exhibit 15. Is that right? You got it?

12 A I got 172.

13 Q And this is the preliminary, a statement of costs,
14 right?

15 A A preliminary statement, yes.

16 Q And you never seen another statement after this, have
17 you?

18 A No, not like this, no.

19 Q Since that time, correct?

20 A That's correct.

21 Q All right. And in there they've got right-of-way
22 purchase \$100,000.00, is that right?

23 A That's what's listed.

24 Q And that's based on 20 acres at \$5,000.00 an acre?

25 A Sounds about right.

1 Q Okay. And then they got right-of-way surveying
2 \$292,500.00, and then steel poles, the identical amount of
3 \$292,500.00, is that right?

4 A Yes.

5 MR. POPE: Okay. I'd offer exhibit 15.

6 THE COURT: Any objection?

7 MR. BANNISTER: No, Your Honor.

8 THE COURT: Admitted.

9 (Whereupon, Plaintiff's exhibit No. 15 was admitted
10 into evidence.)

11 Q I'll show you now exhibit 14. Have you ever seen
12 that exhibit?

13 A Yes.

14 Q The Transmission Committee voted on March 4th, 2013
15 to do the line, is that right?

16 A It was March 5th.

17 Q All right. Now, at that time, neither PMPA nor the
18 City had ever been to any landowner's property, is that
19 correct?

20 A I know PMPA hasn't.

21 Q Has not?

22 A Has not.

23 Q Okay. And you don't know anybody involved in this
24 project that had been on any landowner's property when the
25 line was approved, is that right?

1 A That I'm aware of, no.

2 Q Okay. Now, look on page PMPA 008. The first
3 paragraphs says, the City has received notice from their
4 largest customer of a plan to increase, facility
5 electrical demand in the immediate future with plans to
6 further expand the electrical demand over the course of
7 the next few years. That was the basis for the project,
8 is that right?

9 A That is what caused Newberry to have to build the
10 substation.

11 Q And that was based on Kraft Foods, that's the largest
12 customer in the City, is that right?

13 A That's the one they're talking about.

14 Q Now, you turn back to page PMPA 012. You'll see a
15 proposed route for all through there, is that correct?

16 A Yes.

17 Q That's a straight line right through the middle of
18 the Oien property, correct?

19 A That is the original proposed route.

20 Q And the final route is essentially the same but very
21 minor modifications, correct?

22 A It's similar, yes.

23 Q Virtually identical?

24 A Yes.

25 Q All right. Now, on there there are, it's a little

1 faded, but you can see it. There are dotted lines showing
2 alternate routes, A1, A2, A3, B1, B2, B3, is that correct?

3 A Yes.

4 Q And B1, B2, B3 were routes across the adjoining
5 landowner to the Oiens to the south, is that right?

6 A Yeah. I can't see the exact, the B's. But yeah, and
7 they're somewhere in there.

8 Q Sir?

9 A I can't exactly see without my glasses.

10 Q Do you need your glasses?

11 A So, I don't have them with me, so.

12 Q Are they over there?

13 A No, I don't have them with me.

14 Q Okay.

15 A But I'm assuming you're talking down here.

16 Q All right. Down here is B1, B2, B3.

17 A Okay.

18 Q And you never saw any route studies analyzing factors
19 as to B1, B2, B3, is that right?

20 A Our consulting engineer did not, you know, look at
21 those routes. We discussed them but no, there were no
22 studies done.

23 Q And you didn't do any studies?

24 A No.

25 Q All right. And as to A1, A2, A3, those routes all go

1 through the southern part of the Oien property, correct?

2 A Yes.

3 Q And you haven't seen any route studies of those three
4 routes?

5 A Not official route studies, no.

6 Q Well, meaning studies that analyze the factors that
7 the Court was talking about, aesthetics, cost of
8 acquisition, cost of instruction, safety, reliability and
9 those things, right?

10 A That's right. We discussed them, the consulting
11 engineer and I consulted.

12 Q And in those 486 pages of documents you produced for
13 us in this case, there's not a word about those route
14 studies, is there?

15 A No.

16 Q And you never met on the property with Ms. Oien, did
17 you?

18 A No.

19 MR. POPE: Your Honor, we'd offer exhibit 14.

20 THE COURT: Any objection?

21 MR. BANNISTER: No, Your Honor.

22 THE COURT: Admitted.

23 (Whereupon, Plaintiff's exhibit 14 was admitted into
24 evidence.)

25 Q And you never made an inquiry as to about what the

1 anticipated use of the property was for Mr. and Ms. Oien,
2 did you?

3 A No. Although, I mean, the City told us they were
4 going to build a home there.

5 Q And you didn't know at any time in this process that
6 the Oiens had already built, spent \$101,000.00 dollars
7 plus on a home site?

8 A No, we did not know that.

9 Q And did you, did you know where the home site was
10 going to be?

11 A Looking at the aerial map, we thought it was going to
12 be in the middle when it was suggested by the property
13 owner that we go to the northern route. And we started
14 drawing those maps. That's when we were told that the
15 home site was going to be up in that northern region and
16 that we need to move it again.

17 Q And you understand that it's perfectly understandable
18 for a landowner to want to look at every option that's out
19 there when a power line is going to be affecting their
20 property?

21 A I would see that.

22 Q Sir?

23 A Yes.

24 Q So you had a option when the southern route was
25 drawn, was it not, by Mr. Cobb?

1 A It was.

2 Q And that would have been about 1600 feet from their
3 home site?

4 A Approximately.

5 Q And the middle route is only a couple to 300 feet
6 from the home site?

7 A I think it's a little more than that.

8 Q So far?

9 A I think 4 or 500.

10 Q 400 or 500?

11 A It depends on where you put the line at.

12 Q Now, you'd never done a transmission project in
13 Newberry County before?

14 A That's correct.

15 Q And the person that made the decisions about the
16 routing of this line were you and your boss?

17 A As far as the final route, my engineer is the one who
18 said this would be the route, we would approve that.

19 Q Okay. You made the decision, you and your boss, not
20 an outside engineer, correct?

21 A Again, Alan Cobb would be the one to work out the
22 route with us. Once he's fine with it, then we would
23 approve it, yes.

24 Q Okay. But my question is you, PMPA, are charged with
25 building distribution, I mean, transmission lines. And

1 you and Mr. Smoak, your boss, are the ones that approved
2 it?

3 A We would have final approval, yes.

4 Q Well, now, in exhibit 15, we've already introduced
5 it, but there's no discussion at all about the factors in
6 that report, is there? This report on page PMPA 170 lists
7 environmental impact, land use, impact to individual
8 property owners, cost of the route, visual impact. It
9 doesn't make, it makes no comparison or comment about how
10 those factors affect Mr. Oien's property?

11 A Again, this was a proposal for the Transmission
12 Committee to approve. This is not a final report by any
13 means.

14 Q Okay. But no final report was ever issued on those
15 topics, was it?

16 A Not in those matters, no.

17 Q Now, is it not true that the route that was drawn on
18 exhibit 14 was based on Google Earth and the Newberry
19 County GIS?

20 A Yes.

21 Q It was based on no conversations with any landowners,
22 correct?

23 A Because at that time, no contact had been made. The
24 project had not been approved.

25 THE COURT: Based on Google Earth and what else?

1 MR. POPE: And the Newberry County GIS maps.

2 Q Of the aerial photographs, correct?

3 A Yes.

4 Q Now, I'm going to show you Plaintiff's exhibit 12
5 which was exhibit 2 to your deposition. Do you recognize
6 that?

7 A Yes.

8 Q That's the southern route?

9 A Yes.

10 Q And that was drawn by Mr. Cobb?

11 A Yes.

12 MR. BANNISTER: Which number is that, Your Honor?

13 THE COURT: No. 12.

14 MR. BANNISTER: No. 12. Thank you.

15 MR. POPE: Exhibit 12.

16 Q And is this a bigger copy of the same map and it's
17 slightly clearer, maybe?

18 A I think so.

19 Q Okay. So the route would be to tap into Duke below
20 their driveway, correct?

21 A And this is drawn without any Duke reference.

22 Q I know but that's where it started right there--

23 A That's where--

24 Q --and it went down the southern boundary and beside
25 the pond?

1 A The southern boundary, yeah.

2 Q All right. So you've never seen any route analysis
3 of the southern route, correct?

4 A Other than when we had permission to walk it and our
5 engineer looked at it and determined that this was going
6 to be a very difficult build if we took the southern
7 route.

8 Q But, and no analysis was done, correct?

9 A In my engineer's head.

10 Q Sir?

11 A And just in my engineer's head.

12 Q In your engineer's head?

13 A My engineer's, Alan Cobb.

14 Q Let me show you exhibit 31. This is an email you
15 wrote in September of '14, is that right?

16 THE COURT: What exhibit number is that, please, sir?

17 MR. POPE: Number 31, Your Honor.

18 Q And you wrote to your boss the end of the first
19 sentence, Mark, Mr. Regier reported to you that the Oien
20 want to settle. Money isn't an issue and the line needs
21 to go on the south side. They want to get all parties
22 together with decision-making so a solution can be come to
23 at this meeting. You saw that?

24 A Yes.

25 Q And you're aware from other references--

1 MR. POPE: We offer exhibit 31, Your Honor.

2 MR. BANNISTER: No objection.

3 THE COURT: Did you say no objection?

4 MR. BANNISTER: No objection.

5 THE COURT: I'm sorry. I was taking notes.

6 (Whereupon, Plaintiff's exhibit 31 was admitted into
7 evidence.)

8 Q And you're aware that the Oiens said then in that
9 message you got that the line needed to go to the south
10 side?

11 A That's what was in there.

12 Q All right. But you've never had an analysis that
13 would compare the southern route with the middle route,
14 have you?

15 A Again, only with my engineer, Alan Cobb.

16 Q Are you saying you did walk the southern route?

17 A Yes.

18 Q When?

19 A I believe it was sometime mid to late March.

20 Q Did you get permission?

21 A Yes. Through the City of Newberry.

22 Q You're not saying the transmission line is going to
23 cross ponds all the time, are you?

24 A They do cross water.

25 Q Okay. And I show you exhibit 39. And that's an

1 email you've seen, correct? You have it, right?

2 A It doesn't look familiar.

3 Q The top, the top paragraph number 1, routing the
4 line. That was a memo that you got through your
5 counselor, correct? It didn't come to you directly; it
6 came through your lawyer?

7 A I don't think I've seen it.

8 Q It's attached to the complaint.

9 A Okay.

10 Q So you read the complaint?

11 A Yes.

12 Q All right. It says here, October 1, 2014, The Oiens
13 reluctantly will agree to have the southern route along
14 the southern boundary of their property which PMPA drew
15 several months ago. To put the line anywhere else would
16 violate Southern Development versus S.C. Public Authority.
17 You were put on notice that that was an issue, correct?

18 A Yes.

19 Q But you still have no alternate routes, though,
20 between the southern route and the middle route?

21 A Because of what was agreed to in November of 2013.

22 Q Sir?

23 A Because of what was agreed to in 2013 in November.

24 Q All right. But you don't have a single piece of
25 paper where Mr. Oien said I want the middle route, do you?

1 A I just have a recording.

2 Q Yeah, but he doesn't say a word about the middle
3 route in there, does he?

4 A No, just to what we agreed to.

5 Q He gave you permission to survey the property to
6 answer questions, didn't he?

7 A He mentioned final survey.

8 Q To answer questions, correct, he told you that?

9 A No, that's not the way I left that meeting.

10 Q Well, if you heard it differently, why didn't you
11 send an email back to Mr. Oien and say, okay, we have an
12 agreement then. It's going to be the middle route.

13 A That's the way we left the meeting and he called me
14 back and agreed to it.

15 Q Why didn't you call him? You said you called him?

16 A I called, he left me a voice message, and I returned
17 his call and left a voice message back.

18 Q But you never talked to him?

19 A I never spoke with him, no.

20 Q But there's not a single piece of paper in this file
21 where PMPA has said, okay, Mr. Oien, thank you, we have
22 agreed on another route, right?

23 MR. BANNISTER: Judge, and he's answered that
24 question.

25 THE COURT: I sustain that. Go ahead and move on,

1 please, sir.

2 Q Other than your reference to the transcript, there's
3 nothing else?

4 A That's correct. When PMPA left the meeting, we felt
5 we had an agreement. Other discussions did continue with
6 the City of Newberry.

7 Q Okay. And do you remember when this phone
8 conversation was first brought into this litigation?

9 A The meeting was November 26th, so it was sometime a
10 week after that, I think.

11 Q I want to show you your answer. You helped your
12 counsel provide facts upon which that answer was based, is
13 that right?

14 A Yeah, I think that's my copy.

15 Q All right. Is that the answer y'all filed?

16 A I assume so.

17 Q Okay. Well, I'm going to ask you about it. In
18 paragraph nine, you pointed out that on September 2013 at
19 the request of Lynn and June Oien, a meeting was arranged
20 at the City Hall in Newberry to inquire about PMPA's plan,
21 is that correct?

22 A Now, number nine?

23 Q Of my; excuse me. I'm reading it. I'm going to let
24 you publish the answer when I get to finish it.

25 A I'm sorry.

1 Q All right. At that time, a City of Newberry
2 representative said they would let the Oiens know more
3 about the line later. Then, again, at the request of the
4 Oiens, a meeting at City Hall was scheduled on November
5 26th, 2013 where PMPA personnel were present. At that
6 time, PMPA had said that the plan was to route the
7 transmission line down the middle of the property and that
8 PMPA said it could do it either with the Oiens permission
9 or by condemnation. The Oiens expressed their extreme
10 concern, because of the proximity to their home site, the
11 aesthetics thereof and the damage to the remainder of
12 their property which would be caused. At that meeting,
13 the Oiens asked PMPA to answer questions about the purpose
14 of the line, taking the age of the area, the size of the
15 right-of-way, compensation, communication towers, the
16 number of poles, the location of the right-of-way,
17 property improvements, et cetera. The Oiens were
18 expecting answers to these questions. The Oiens informed
19 PMPA that under no circumstances could they consent for
20 PMPA to put a line that ran through the middle of the
21 property as the current proposed line does. And if there
22 was a justifiable reason for a line at all, they wanted
23 the line to run along the north southern route which is
24 where PMPA had originally designed it. Now, read your
25 answer here to paragraph nine.

1 A Paragraph nine is admitted insofar as on November 26,
2 2013. A meeting was held with the City of Newberry
3 representatives and PMPA employees. PMPA's engineer and
4 general manager were present along with the engineer for
5 the project. Proposed drawings of possible routes were
6 presented to the Plaintiff along with all information that
7 was available at the time. PMPA denies it did not supply
8 all information to the Plaintiffs that it had at the time.
9 Initially, PMPA and the City of Newberry considered a
10 southern route but determined the route to be unsuitable.
11 The Plaintiff also objected that large trees would be
12 destroyed and requested another route.

13 Q Okay. You don't say a word in that answer that, as a
14 result of that meeting, Mr. Oien agreed to any middle
15 route, do you?

16 A When we came to the meeting we had--

17 Q No, I'm asking what you put in the answer. You don't
18 say a word about him agreeing to anything, do you?

19 A No.

20 Q Now, I'm going to read you paragraph 11 of the
21 complaint, and you can read the answer to paragraph 11.
22 Eleven says, On August 14, 2014, PMPA sent a letter
23 enclosing an agreement reflecting the route through the
24 middle of Plaintiff's property as shown on exhibit A and
25 told Plaintiff's to sign and return it by August 22, 2014.

1 Consistent with what they had already told PMPA, the
2 Plaintiffs refused to sign the agreement. And what do you
3 say in response to that paragraph?

4 A Paragraph 11 is admitted.

5 Q So you admitted that they consistently told you that
6 they wanted the southern route and didn't want it in the
7 middle?

8 A I think we're admitting that we sent the document.

9 Q Okay. It says right here you admit to this sentence.
10 It's consistent with what they had already told PMPA,
11 Plaintiff's refused to sign the agreement. Correct?

12 A Yes.

13 Q And you sent on the middle route?

14 A It was for the final surveyed route.

15 Q The middle route?

16 A Yes.

17 Q And now are you aware that this property is 116
18 acres?

19 A Yes.

20 Q Are you familiar with the term, highest and best use?

21 A Yes.

22 Q And would you agree or disagree that this is the
23 highest best use of this property and not timberland?

24 A I'm not sure I'm qualified to say that.

25 Q Would you agree or disagree that this highest and

1 best use of this property is as a retirement-retreat type
2 setting?

3 A Well, I mean, there is a home on it now. I'm not
4 sure about retirement.

5 Q And you've heard about damage to remainder, correct?

6 A Yes.

7 Q Are you competent to answer questions about damage to
8 remainder?

9 A Insofar as my appraisal. Referring back to my
10 appraisal I had done.

11 Q Well, you had an appraisal done. You didn't tell Mr.
12 Graydon about the retirement home that was going to be put
13 over here, did you?

14 A I can't remember.

15 Q All right. There's no reference in his report to
16 that, right?

17 A I don't believe so, no.

18 Q All right. And Mr. Graydon in his report doesn't
19 make a single reference to the fact that he met with Mr.
20 and Ms. Oien and he didn't meet with them, correct?

21 A I honestly can't remember whether he did or not.

22 Q Well, his report does not reflect in that, correct?

23 A Okay.

24 Q Is that right?

25 A I'd have to go back and look. I don't recall.

1 Q Now, your engineer is from North Carolina, correct?

2 A Yes.

3 Q And would you agree or disagree that when you do a
4 right-of-way acquisition, it is of utmost importance that
5 a right-of-way, a agency seeking a right-of-way should be
6 very concerned about the desires and the needs and the
7 plans of a landowner?

8 A That it should be balanced, yes.

9 Q And do you think and you agree, don't you, that it
10 would be critical for PMPA to understand the land usage on
11 this Oien track, as well as any other tract, correct?

12 A We would look at the final evaluation of our engineer
13 and our appraisal and to determine that.

14 Q And before this action, you had never been to the
15 Oien property over to the home site area, had you?

16 A No.

17 Q And you'd never looked at the invoices they had,
18 correct?

19 A No.

20 Q And when they came to the meeting in November, they
21 had plans, a great big roll of plans that they paid
22 \$78,000.00 dollars for and they put them up on the table
23 there, right?

24 A I do recall that.

25 Q Did you look at them?

1 A I took them for their word that's what they were.

2 Q I mean, you didn't open them up?

3 A No.

4 Q Okay. And you understand that that was very
5 important to this landowner?

6 A Yes.

7 Q You're aware that numerous letters were written to
8 PMPA requesting meetings--

9 A I was--

10 Q --before this condemnation started?

11 A I was told by my attorney, yes.

12 Q I'm going to show you exhibit 9. Are those the
13 letters that you received copies of when I wrote to PMPA
14 and counsel on various dates before the condemnation
15 started? September 29th is the first one in 2014. That's
16 where I requested a meeting, correct?

17 A Yes.

18 MR. BANNISTER: And, Your Honor, I'm going to object
19 to the letters and the discussion of the letters that
20 happened post-notice of condemnation. And so if he's
21 going to get into things that happened after the
22 condemnation started, that is far afield of whether this
23 is for a public purpose and whether or not the selection
24 criteria for the route. Whether or not PMPA talked to Mr.
25 Pope and whether my office talked to Mr. Pope is

1 MR. POPE: That's the time.

2 THE COURT: All right. I'm going to sustain the
3 objection.

4 MR. BANNISTER: Thank you, Your Honor.

5 Q When was the decision made for the final route?

6 A In my mind, we had a final route in November 26th or
7 when Mr. Oien called me back after the 26th meeting.

8 Q Well, I want to show you exhibit 10.

9 THE COURT: November 26th will be in '13, 2013?

10 A Yes, sir.

11 Q Exhibit 10. And that's an email that you sent to the
12 engineer, excuse me, that Mr. Regier with the City sent to
13 you and the engineer stating that the Oiens were pretty
14 adamant that he wanted it at his southernmost property
15 line, correct?

16 A Yes.

17 Q All right. So when you got this email, did you ever
18 do the alternate route study yourself and see what the
19 construction cost was, see what damage you were, let's
20 look at the usage of his property and let's see which
21 route is reliable, which one is safe, which one can, what
22 the costs of acquisition are?

23 A The costs of the construction we knew would be more
24 if we went on the southern route. But since we had an
25 agreement with the property owners no, we did not.

1 Q This is 2013?

2 A Yes, sir; it is.

3 Q You still didn't do an alternate route analysis, did
4 you?

5 A No.

6 Q Okay.

7 A Other than discussing it with my engineer on
8 engineering costs and design.

9 MR. POPE: We offer exhibit 10.

10 THE COURT: Any objection. Any objection to exhibit
11 number 10?

12 MR. BANNISTER: No, Your Honor. No objection.

13 THE COURT: That'd be admitted.

14 (Whereupon, Plaintiff's exhibit number 10 was
15 admitted into evidence.)

16 Q Now, you're aware that the best practices in the
17 right-of-way business and the industry, the industry
18 standard of Duke, Carolina, I mean excuse me, Progress
19 Energy which used to be Carolina Power and Light, SCE&G
20 and Central Electric Power Cooperative all do objective
21 alternate route studies for every possible route and
22 compare the results of them?

23 A I'm aware that each utility has their own way of
24 doing things.

25 Q And that they're consistent?

1 A I have not compared how each one does it.

2 Q You would not challenge the validity of what I just
3 said, that they have a consistent policy whereby they do
4 written, comparative alternate route studies with all of
5 those factors and compare the routes on each property?

6 A I don't know that, no.

7 Q And, in fact, PMPA had no guidelines referring to
8 these type of alternate routes, does it?

9 A Because PMPA only builds short radio lines unlike
10 those other utilities, we do things a little different.

11 Q Well, the answer is you don't, is that right?

12 A We don't look at it the same way, no.

13 Q Okay. But the effect on the landowner is the same
14 whether it's PMPA or SCE&G, correct?

15 A Yes.

16 Q Now, did you have, now, you do understand, though,
17 that the landowner whose property you get a right-of-way
18 on, they pay taxes on that?

19 A Yes.

20 Q So they continue to own the property where the
21 right-of-way is?

22 A Yes.

23 Q And they have to pay taxes?

24 A Yes.

25 Q That's another thing you're familiar with that the

1 landowner would be concerned about if the route, a line
2 would lay across their property, they don't get any
3 benefit from a line going across them and they got to pay
4 taxes on it?

5 A Generally, since the line is so up above the ground,
6 they have the most use of the land below.

7 Q Well, they can't build on it?

8 A Could not build on it, no.

9 Q Can't put any structures under it?

10 A No structures.

11 Q Okay. Now, you agree when I showed you exhibit 12
12 earlier that the routing of the southern route had no
13 dramatic turns on it, correct?

14 A It has two turns.

15 Q But they're not dramatic?

16 A No. I mean, one's about 45 and one's--

17 Q One is about 20 degrees--

18 A Something, 30.

19 Q --and the other is about 45 maybe?

20 A Yeah.

21 Q Sir?

22 A Yes.

23 Q And you have no independent basis to say that there's
24 anything wrong with the southern route at all?

25 A Other than what my engineers told me.

1 Q You said it cost more?

2 A It cost more and the design of putting the poles, the
3 pond that's drawn there backs well into the property line.

4 Q Now, transmission lines, the span of the transmission
5 lines here is somewhere between 600 and 900 feet, isn't
6 it?

7 A That's not what my engineer tells me.

8 Q It's several hundred feet, isn't it?

9 A Anywhere between 500 to 700, depending on terrain.

10 Q So that would not present a problem in spanning this
11 pond?

12 A Well, where the angle pole, one of the angle poles
13 you reference would be in the pond.

14 Q All right. You're not an engineer?

15 A I'm an electrical engineer.

16 Q But you're not a pole setter--

17 A No.

18 Q --that type engineer?

19 A No.

20 Q But Mr. Cobb said you could do the southern route,
21 it'd cost more, is that what he said?

22 A Anything can be done.

23 Q Well, he didn't say that. He said it, he said he
24 could do it, but it would cost more?

25 A Anything can be done, it would just cost more.

1 Q Is that a yes or no to my question?

2 A Yes.

3 Q Now, since you were not aware of Mr. Oien's plan to
4 put a vacation home on this home site here, were you aware
5 that he'd spent \$20 or \$25,000.00 clearing the home site?

6 A I had no idea how much he'd spent.

7 Q But you were aware that he'd cleared it?

8 A Yes.

9 Q And you're aware that that home site actually had a
10 well that he'd paid for right there?

11 A At some time, I did. I don't know when.

12 Q But before this all started, correct?

13 A No, not before it started.

14 Q Not before you started. I'm talking about before
15 PMPA ever having a, before March of 2013 he had a well on
16 this site?

17 A I don't think I knew that there was a well.

18 Q Well, did you know that he had a underground electric
19 power going to that site?

20 A I don't believe I knew that at the time, no.

21 Q You know it now?

22 A I know it now.

23 Q And you know about the well now?

24 A Yes.

25 Q And but you didn't look at the time. If you'd have

1 looked, you'd have known about it, correct?

2 A Well, I would. Yeah, I'd have to be on the property
3 to know.

4 Q Well, nobody reported to you, nobody from the City
5 reported to you, hey, this man spent money building a well
6 on the home site and was getting electric power
7 underground to the home site and clearing the home site;
8 nobody reported that to you?

9 A At some time, point they did.

10 Q During this case? During this litigation?

11 A Well, I mean during the whole discussion about where
12 to put the line, moving it from where we proposed it to
13 the southern side to the northern side at the center.

14 Q Well, you never explored that as being, wait a
15 minute, this is serious. We got a home site that's pretty
16 close to this middle line, didn't you?

17 A We have a lot of other homes that are closer than
18 that one to the line. You know, going over, underground
19 distribution line, it is not an issue.

20 Q Okay. And you've never seen anything in-writing that
21 confirmed that there's anything unsuitable about the
22 southern route?

23 A Not that I'm aware of.

24 Q And you've seen nothing in-writing about what
25 increased costs, if any, the southern route would present?

1 A Not specifically, no.

2 Q All right. Now, the southern route, just to be
3 clear, is slightly downhill from the middle route?

4 There's a drop. It's not a hill, but it goes down some,
5 does it not?

6 A It funnels down to the pond would be the lowest
7 point.

8 Q Yes. So it's somewhat low and not boggy low, but
9 low, correct, down the southern route?

10 A It's somewhat up and down in there.

11 Q But you'd agree?

12 A That it trends that way, yes.

13 Q All right. So that makes it all the less likely that
14 if you use the southern route, he could see it from his
15 home site?

16 A If you put it on the southern site, it would be less
17 of a chance, yes.

18 Q All right. So we got a southern route and you agree
19 that it does not have dramatic turns on it and you've seen
20 no documentation to show why it's not satisfactory,
21 correct?

22 A No documentation, just discussions.

23 Q And you now know that he had plans to build a home
24 that's going to cost upwards or up to a million dollars on
25 this home site, you know about that, right?

1 A Yes.

2 Q And you never asked Mr. Cobb to help you? Have you
3 ever done a route analysis yourself off of a route
4 evaluation?

5 A No.

6 Q Have you ever heard of it before this case?

7 A No.

8 Q Do you think that a condemning authority has to be
9 diligent to understand the landowners concerns about the
10 usage of their property?

11 A Within reason, yes.

12 Q Well, the route was picked through the middle of the
13 property and the exhibit we just looked at in March 2013,
14 correct?

15 A The proposed route, yes.

16 Q And the final route is virtually the same way, it's
17 straight through the middle, correct?

18 A Almost identical, yes.

19 MR. POPE: Your Honor, could I have just a moment.

20 Q Now I show you exhibit 43. Now, this is August 21,
21 2014.

22 MR. BANNISTER: And which number is that? I'm sorry.

23 MR. POPE: 43. 43, excuse me.

24 Q And at the bottom there on August 21, 2014, Mr. Oien,
25 and this is the only email you ever got from him?

1 A Directly, I think, yeah.

2 Q And you had sent him before this email a package
3 showing that you were going through the middle of the
4 property, correct?

5 A That's correct.

6 Q All right. And you were excited to know that you
7 thought he'd agree to that. What does it say here in the
8 middle of this sentence, the third sentence, we received
9 your package and your package for a right-of-way through
10 our property. I would like to clear up a point you made
11 in the first sentence of your letter. We did not agree to
12 any transmission line or route. Is that right?

13 A That's what it says.

14 Q And you didn't write him back?

15 A I did.

16 Q What'd you say?

17 A I was referring to the meeting where PMPA was present
18 which occurred prior to the meeting with the City of
19 Newberry. Forgive me. That's the date that I referenced.
20 The reference to may have been incorrect. At the meeting
21 with PMPA present, PMPA's engineering consultant had laid
22 out two proposed transmission line routes that you and
23 your wife reviewed. Soon after, you let me know that the
24 route that PMPA is now taking was your preferred route of
25 the two shown during that meeting.

1 Q And you pointed out that he did not agree at that
2 meeting to a new route, correct?

3 A He did. Not at the meeting. He said he would
4 consider the two routes that we laid out.

5 Q And in your answer to the complaint, you acknowledged
6 that in the November meeting you were talking about
7 multiple routes?

8 A No, not at the November meeting.

9 Q On paragraph nine of your answer, you admitted
10 paragraph nine insofar as you admitted that on November
11 26, 2013, a meeting was held with the City representatives
12 and PMPA and PMPA's engineering and general manager were
13 present, proposed drawings of possible routes were
14 presented to Plaintiff. Correct?

15 A Yes.

16 Q Okay.

17 A Two proposed routes.

18 Q Yeah. And during that meeting, you were, Mr. Oien
19 had questions to ask you that he wanted answers to,
20 correct?

21 A Yes.

22 Q And you said I can't get those questions answered
23 unless you let me have a survey to answer those, correct?

24 A We could not give specifics. We gave estimates at
25 that meeting.

1 Q I know and you needed a survey and a TOPO survey to
2 answer those questions?

3 A Some of those questions, yes.

4 Q So he authorized you to do that survey so he could
5 get answers to it?

6 A He chose the route and the final, in my mind.

7 Q He did what?

8 A We laid out two proposed maps and he agreed, they
9 agreed to the final map, final route.

10 Q Did he ever write to you and tell you he agreed to
11 the middle route?

12 A Only in the voice mail.

13 Q All right. Here's the voice mail and let me, I want
14 to read it. Michael, it's Lynn Oien. We met with you the
15 other day in regard to the power line. We walked it. We
16 made the decision we want to stay with what you have right
17 now that you've originally drawn up as opposed to changing
18 it, so move forward and get final surveying done. Is that
19 right?

20 A Yes.

21 Q Did you ever get him the survey?

22 A Yes.

23 Q So when you determined the alternate route, you're
24 the one that makes that decision, correct, you and Mr.
25 Smoak?

1 A We had a final route. In working with the property
2 owners, we started having multiple routes.

3 Q Yeah. Well, this is the landowner. He's the first
4 one on the whole project and you had three possible
5 routes, the north which was too close to his home,
6 correct?

7 A Yes.

8 Q And the middle route, which you wanted from the
9 start, and the southern route was where he wanted it?

10 A Yes.

11 Q Now, what factors do you use to determine the
12 alternate routes when you compared those routes?

13 A We have a final route that we, a proposed route that
14 we will like to proceed on. In discussions with the
15 property owners would be the only time that we would move
16 that route.

17 Q But you never had a discussion with Mr. Oien about
18 his plans for the property, correct?

19 A The City of Newberry had those discussions.

20 Q But you never had them?

21 A No, sir.

22 Q And you're the one that makes the decision?

23 A Yes, sir.

24 Q And you never drew up a, let me show you. You have
25 seen Mr. Rogers' report?

1 A Yes.

2 Q And you're aware that he says the industry standard
3 is to take the possible routes and rate them so you can
4 compare them on all the different factors?

5 A I believe he said his standards are based on Central
6 Electric Cooperative's.

7 Q Right. And Duke and SCE&G and Progress, correct?

8 A I can't remember if he said that or not.

9 Q But he did that and you've seen his route ratings?

10 A I see that, yes.

11 Q And when he rated them, all the southern route came
12 out the best because it is the lowest, correct?

13 A I see that's how he ranked them.

14 Q Right. And you didn't do any route ratings like
15 that?

16 A Only based on what my engineer had told me.

17 Q Yeah, but it's your job. You said you made the
18 decision. You do the alternate routes?

19 A And I went with my engineer's decision.

20 Q Yeah, but he didn't do any of this either?

21 A No.

22 Q Sir?

23 A Not like that, no.

24 Q Well, not like anything, because he didn't have any
25 piece of paper with a route comparison, did he?

1 A Not a piece of paper, no.

2 Q And you understood that when Mr. Rogers did the route
3 comparisons, he acknowledged that the construction costs
4 for the southern route were higher than the middle route,
5 correct?

6 A He did.

7 Q But he factored in the home, which you didn't factor
8 in the home, correct?

9 A That's one reason why we went from the north route to
10 the middle, back to the middle route.

11 Q But you never knew until this case started that he
12 was going to put a million dollar house about 300 feet
13 from this line, correct?

14 A That's correct.

15 Q And you never bothered to ask?

16 A We were told.

17 Q You what?

18 A The City of Newberry is the one who referenced that
19 back to me.

20 Q But it's your decision, not their decision?

21 A Right. And which we didn't have a final route that
22 the property owner agreed on so, at that time.

23 Q Let me show you exhibit 32, and these are some emails
24 that were written in November of 2013. Is that right?

25 A Yes.

1 Q Now, on the second page is an email from you,
2 numbered PMPA 355?

3 A Yes.

4 Q And it doesn't have a date. I assume it's about the
5 time of November of 2013, correct?

6 A When?

7 Q It was sometime around November 25, 2013. This was
8 produced to us.

9 A Yes.

10 Q Okay. And in the middle of the second paragraph on
11 that second page of that exhibit 32, it says the Oiens,
12 and really their property manager, were upset that the
13 transmission line did not hug the property line as they
14 thought they had requested, right?

15 A Yes.

16 Q And then in the paragraph after that you say, after
17 talking with Alan, Mr. Cobb, your engineer, we don't see
18 an issue if we move to the property line. Or he doesn't
19 see an issue if we move to the property line. The issue
20 that does exist is that it requires another bend for
21 \$30-\$40,000.00. Is that right?

22 A For the one bend, yes.

23 Q So in November 2013, you knew, late November 2013,
24 you knew that they wanted to hug the property line and
25 that there was no impediment to that except Alan told you,

1 well, it'll cost \$70,000.00, excuse me, \$30-\$40,000.00
2 dollars more?

3 A And the fact that the pole would be in the water.

4 Q Well, there's no document anywhere that says any pole
5 has to be in the water. This is a little pond.

6 A Right.

7 Q And it's not more than a hundred feet across down
8 here, is it?

9 A It's not a hundred feet but, like I said, what you
10 can't see is where the water backs up well beyond the
11 property line.

12 Q There is no document that shows there is any
13 impediment to running a transmission line over this pond?

14 A No.

15 Q Is that correct?

16 A It can be done for the right amount of money.

17 Q Right. And the amount of money was \$30-\$40,000.00,
18 as far as you know, right?

19 A Only from one estimate.

20 Q Sir?

21 A Only from one estimate. We didn't have any--

22 Q Have you called anybody to find out if that was
23 accurate or not, correct?

24 MR. BANNISTER: And I--

25 THE COURT: Just one second. Do you have an

1 objection?

2 MR. BANNISTER: I think that I do. If I'm looking at
3 the right exhibit, the email he ended up referencing, the
4 middle line to, hug the middle property line.

5 THE COURT: I'm looking at exhibit 32, which is the
6 email at the top of the page dated November 25th, 2013,
7 Bates 355. It says that, The Oiens, and remind me if I'm
8 saying that right, Mr. Pope.

9 MR. POPE: The Oien; yes, sir.

10 THE COURT: The Oien, really the property manager
11 were upset, that the transmission line did not hug the
12 property line as they thought they had requested. Now,
13 where are you saying it says--

14 MR. BANNISTER: I'm sorry. He referenced the
15 southern property line and this email has got the middle
16 property line. It's where, I'm on the same email as you
17 are.

18 MR. POPE: Well, he's answered the question, Judge.

19 MR. BANNISTER: I just want to make sure I'm on the
20 right exhibit.

21 THE COURT: Okay. All right.

22 Q So based on this exhibit, the last thing you heard
23 was it was going to cost \$30-\$40,000.00 more to get down
24 to the southern line, correct?

25 A Without any detailed engineering costs, yeah.

1 Q All right. Now, did you ever have emailed and know
2 the landowner that you were trying to accommodate named
3 West?

4 A I never received any. The City of Newberry talked
5 with them.

6 Q There were reports by the landowner?

7 A Yes.

8 Q His name was Billy West?

9 A One of, yes.

10 Q Okay. He's a prominent property owner and developer
11 in this county?

12 A Yes.

13 MR. POPE: Excuse me one second.

14 Q Now, I show you exhibit 34. This is number, exhibit
15 6.

16 MR. POPE: Your Honor, we'll offer, I don't know if
17 we've offered exhibit 39 into evidence.

18 THE COURT: 39?

19 MR. POPE: And 32. I think there have been a couple
20 I haven't offered yet.

21 THE COURT: 39 is not into evidence.

22 MR. POPE: All right. I'd offer 39.

23 THE COURT: Any objection to 39 coming in?

24 MR. BANNISTER: I don't recall if he, I don't have an
25 objection to it.

1 THE COURT: Did you identify the author?

2 MR. POPE: Of 39?

3 THE COURT: Yes, sir.

4 MR. POPE: I sent it to Counsel, and it's attached to
5 the Complaint.

6 MR. BANNISTER: Then, no objection, Your Honor.

7 THE COURT: 39 will be admitted. And what else?
8 What other exhibit are you seeking to admit?

9 MR. POPE: The next is 32 off of that.

10 THE COURT: Any objection?

11 MR. BANNISTER: No objection to 32.

12 MR. POPE: Offer 43.

13 THE COURT: There were three.

14 Q All right. Now, at the bottom of Exhibit--

15 THE COURT: Hang on one second. Just one second,
16 please.

17 MR. POPE: Excuse me.

18 MR. BANNISTER: Your Honor, no objection to 43.

19 THE COURT: No objection to 43. Go ahead.

20 (Whereupon, Plaintiff's exhibits 32, 39 and 43 were
21 admitted into evidence.)

22 Q All right. Exhibit 34 is in your hand now, Mr.
23 Frazier?

24 A Yes.

25 Q All right. At the bottom of that, you got a, you

1 sent an email to Mr. Regier and you say, talking about
2 revising a line. This is June 10, 2013. It says, it
3 shows the center line running over the Oiens line. By
4 going any farther north, it worsens the King's Crossing.
5 And then on the next page you say at the top, we could
6 proceed as drawn which takes more of the King's property.

7 Now, who is the King?

8 A I am referring to Mr. West.

9 Q Why would you refer to him as the King?

10 A It's my understanding that in around Newberry, that's
11 what he's referred to as.

12 Q And what did that mean to you, that you had to do
13 what he said?

14 A No, that he is just the king of real estate, is what
15 I understand.

16 Q So were you showing favoritism to Mr., to the King
17 hereby being concerned about whether the line is going to
18 go across him?

19 A Not at all.

20 Q Then, why do you call him the King instead of Mr.
21 West?

22 MR. BANNISTER: Judge, I object to the relevancy of
23 what they call the next property owner.

24 THE COURT: I note your objection. I sustain it. I
25 will let you ask a little bit more to clarify.

1 MR. POPE: All right, sir.

2 THE COURT: What their alternatives were and what
3 they considered as to the names.

4 MR. POPE: Yes, sir.

5 Q But you weren't showing favoritism to Mr. West?

6 A No.

7 MR. POPE: All right. We offer exhibit 34.

8 MR. BANNISTER: No objection.

9 THE COURT: Admitted.

10 (Whereupon, Plaintiff's exhibit 34 was admitted into
11 evidence.)

12 Q And then exhibit 35 is in the time-period of June 13
13 which was exhibit 7 to your deposition. On the second
14 page of that you write an email to Mr. Regier and in the
15 second sentence of that email, June 13, 2013 at 4:28 p.m.
16 you say, if the King didn't mind, we could bend it up a
17 little more, pass behind the little squares and hit the
18 southwest side of his property line. So again you're
19 referring to the King and if he didn't mind this or that,
20 is that right?

21 A As with any property owner, we're looking to
22 accommodate each one.

23 MR. POPE: I offer exhibit 35.

24 THE COURT: Any objection.

25 MR. BANNISTER: 36?

1 THE COURT: 35.

2 MR. POPE: Five, five, sorry.

3 THE COURT: No problem.

4 MR. BANNISTER: No objection, Your Honor.

5 THE COURT: Admitted.

6 (Whereupon, Plaintiff's exhibit 35 was admitted into
7 evidence.)

8 Q And then this is 36. This is the next marked.
9 Exhibit 36 is a email from you to Mr. Cobb, July 3, 2013.
10 And then you say, draw it where you think the King will be
11 happy. Split the baby. And let's look at it. Again,
12 you're talking about the King. Well, what were you doing
13 there?

14 A It's asking Mr. Cobb to make a revision, to show a
15 revision.

16 MR. POPE: We offer exhibit 36.

17 THE COURT: Any objection?

18 MR. BANNISTER: No objection.

19 THE COURT: Admitted.

20 (Whereupon, Plaintiff's exhibit 36 was admitted into
21 evidence.)

22 Q And exhibit 37 is an email, in the middle is an email
23 from you to Mr. Regier November 27, 2013 and read that for
24 us.

25 A Which part, the highlighted part?

1 Q It's just one line.

2 A Ha-ha. Maybe you should ask, just ask the King or
3 King pro tem to decide for them.

4 Q Was that a joke you were writing?

5 A Yes.

6 Q And the King is Mr. West?

7 A Yes.

8 Q And his daughter is one of the high officials in his
9 company, is that what you were referring to, Misty?

10 A No. I was referring to Lynn Oien.

11 Q Huh?

12 A I was referring to Lynn Oien as the pro tem.

13 Q Well, he's not a King. Why would he do that?

14 A He is acting difficult, and I was being flippant at
15 the time.

16 Q You thought he was acting difficult?

17 A Yes.

18 Q And you only met with him one time, that one time?

19 A Yes. The City of Newberry had met with him many
20 times.

21 Q But he was meeting with people that did not have any
22 training in transmission of a line right-of-way, correct?

23 A That would be, on transmission line right-of-way,
24 that'd be correct.

25 MR. POPE: Judge, could we take a short break.

1 THE COURT: Sure. All right. Well, let's take about
2 a 10-minute break.

3 MR. POPE: Would you remind the witness about his not
4 talking to anybody.

5 THE COURT: You can talk to people but not about your
6 testimony.

7 MR. FRAZIER: Okay.

8 (Whereupon, a short break was taken.)

9 CONTINUE DIRECT EXAMINATION

10 By Mr. Pope:

11 Q Were you informed that the Oiens went to the City
12 offices in March 2014 well before there was any
13 condemnation and told the City there's no way they would
14 ever accept the middle route?

15 A Yes.

16 Q Now, as you said earlier, the middle route was
17 initially drawn based on a photograph, Google Earth and
18 GIS is that right?

19 THE COURT: I'm sorry. Ask that question again. I
20 missed it.

21 MR. POPE: Sorry.

22 Q Did the, the middle route was initially drawn based
23 on Google Earth and photograph of the aerial photography?

24 A Yes.

25 Q And nothing else?

1 A It was drawn by Alan Cobb, so I don't know if he used
2 anything else.

3 Q It was a straight line?

4 A Attempted to, yes.

5 Q All right. Now, well, I'll show you exhibit 20.

6 This is number 9 to your deposition. It's a poor copy, so
7 we attached with it a clearer copy, the same photograph.

8 A Okay.

9 Q And this shows a drawing that designates final route,
10 correct?

11 A That's not what the file says.

12 Q Sir?

13 A That's not what the file says. Let's see.

14 Q It shows a final route through the center of the Oien
15 property?

16 A It shows a line through it, yes.

17 Q And but the words under it saying what?

18 A There it is. Final route.

19 Q Okay.

20 THE COURT: Is that a trial exhibit or is that just,
21 I know you said it's to a deposition.

22 MR. POPE: Yes, sir; it is. It's exhibit 30--

23 THE COURT: 20.

24 MR. POPE: Excuse me. 20. Plaintiff's exhibit 20.

25 Q And the final route drawn right through the Oiens

1 property, correct,--

2 A Yes.

3 Q --is June 13, 2013, is that correct?

4 A That's the date of the file, yes.

5 Q And as far as you know, that was before the Oiens
6 were even talked to, is that right?

7 A They had been talked to prior to that, yes.

8 Q And do you know that of your own knowledge?

9 A I was told that.

10 Q You don't know that?

11 A I was told that.

12 Q You don't know that of your own knowledge?

13 A I was told that.

14 Q I know. But you don't, you had never talked to him
15 yourself before November?

16 A I never talked to them myself, no.

17 Q All right. So the final route depicted on this
18 drawing would appear to have been decided before, in June
19 2013, correct?

20 A I believe Alan Cobb, well, I don't want to put words
21 in his mouth. And there were several final routes when we
22 thought we had one, and then we had to change it.

23 Q Well, that, in fact, is the final route with, bear in
24 mind the magnification, right slap through the middle of
25 the property, correct?

1 A It goes, not the exact route that is what we deem the
2 final route now.

3 Q But--

4 A This one actually goes up in elevation where the
5 other one comes down and hugs the property line.

6 Q It's a matter of a few feet, it goes right through
7 the middle, essentially?

8 A It goes, if you want to say in the middle of the
9 property, the center of the property, yes.

10 Q And you agree that that one, this is from the
11 deposition of you, it was feasible to do the southern
12 route, but it would cost more. And that's your testimony?

13 A That is correct.

14 Q And the only thing you know is that without
15 substantiation you were informed that it would cost about
16 \$30-\$40,000.00 more?

17 A I can't remember where I got that number, but yeah.

18 Q Well, you had it in the email?

19 A That's what I put it in the email.

20 Q Okay. And you've seen no substantiation of whether
21 that's low or high, correct?

22 A Based on what I've seen now, it's probably low.

23 Q But that's a pretty small cost in the big project
24 like this, isn't it?

25 A It's over a million dollars.

1 Q So, I mean, \$30,000.00 is a small part of that?

2 A Relative to this property. Relative to this
3 property, it's a lot.

4 Q Well, it's a small amount, have been through about
5 the southern route if it'd take, take \$30,000.00 more than
6 the middle route and save yourself all the damages to the
7 neighbor.

8 A Yes, but Mr. Cobb believed there was probably more
9 costs based on what I know now.

10 Q Well, he didn't say that and you didn't say that in
11 your email, did you?

12 A No. Because no final engineering had been done on
13 the southern route.

14 Q And, in fact, no engineering was ever done on it to
15 see what the construction costs would be, is that right?

16 A No formal report had been generated, no.

17 Q And there's nothing in-writing, formal or not--

18 A No.

19 Q --that has been generated about construction costs
20 for the southern route?

21 A No.

22 Q Except the report from Mr. Rogers which you've seen,
23 correct?

24 A It's in generality, yes.

25 Q And then, basically, he said it's going to cost about

1 \$70,000.00 more to go to the southern route, but it's
2 going to save you a \$100,000.00 on condemnation costs?

3 A I would, let's defer to my design engineer over Mr.
4 Rogers.

5 Q But you never asked Mr. Cobb and he never provided
6 you an analysis like that?

7 A Because it's more costly.

8 Q Sir?

9 A Because it was going to be more costly.

10 Q To do the analysis?

11 A To do the route.

12 Q You didn't do a route analysis like Mr. Rogers did,
13 correct?

14 A No, he did not.

15 Q Now, you said the transmission, we have the document
16 that the Transmission Committee, PMPA, approved the start
17 of this document?

18 A Yes.

19 Q And you said they didn't approve a route?

20 A The proposed route was based on trying to take
21 straight-line approaches to the right-of-way, but then
22 also the southern routes, because we had heard that the
23 property manager who we learned was a neighbor had
24 suggested to look on the southern side.

25 Q February of 2013, the Transmission Committee approved

1 you to start and the route they were looking at was right
2 through the middle?

3 A Yes.

4 Q And they didn't, of course, they didn't have a route
5 study, because you hadn't been on the property, right?

6 A That's correct.

7 Q All right. Now, they never met again on it, so it
8 was up to you and Mr. Smoak at that point to decide what
9 alternates, if any, to pick, right?

10 A Correct.

11 Q And you said earlier you had never done an
12 alternative route study before, and you didn't on this
13 case, correct?

14 A That's right.

15 Q Now, you know that Mr. Cobb, he didn't meet with any
16 of the landowners either, right?

17 A I don't believe so up until November 26.

18 Q Now, you acknowledge that Mr. Regier was telling you
19 that the Oiens wanted the southern route, is that right?

20 A Yes.

21 Q And you ignored that?

22 A No, we discussed it.

23 Q But you didn't analyze it?

24 A Did not analyze it.

25 Q And you didn't compare it to the middle route, the

1 costs?

2 A If there was no analysis, we had discussions on, you
3 know, whether or not we can do that, what they would want.
4 We went several different places.

5 Q But you never did a cost analysis for, as the total
6 cost of the middle route versus the total cost of the
7 southern route; you never did that?

8 A No.

9 Q Okay.

10 THE COURT: Cross-examination.

11 MR. BANNISTER: Thank you, Your Honor.

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. BANNISTER:

15 Q Mr. Frazier, the Owens have alleged that the
16 substation was not for a, well, can you describe to the
17 Court what exactly the substation will do?

18 A Oh, as far as what it will do, it will provide power
19 to the City of Newberry's distribution grid.

20 Q Everybody?

21 A Yes.

22 Q All right. Is that an advantage or a disadvantage?

23 A Well, currently, their configuration is they lease
24 three deliveries from Duke Power. All three of these
25 deliveries go back to a large transformer substation they

1 have in Newberry, that Duke has in Newberry at high cost.
2 Building this new substation not only will provide
3 additional reliability but also be able to take two of
4 those current leased stations offline and also save money.

5 Q So it will save the rate payers, taxpayers of
6 Newberry County money?

7 A The City, yes.

8 Q The City. And it will give the City residents better
9 electricity, more reliable?

10 A Yes.

11 Q All right. Does it have any redundancy, you know,
12 will stop some of the power outages or anything like that?

13 A Yes, there were several power outages last year that
14 could have been prevented had this substation been up and
15 running.

16 Q Do you believe that will benefit the public or would
17 it be a, to not have their power go out?

18 A I'd see that as a big benefit to the City of
19 Newberry.

20 Q All right. Let me show you what's been marked as
21 exhibit 1 and see if you recognize that.

22 THE COURT: Is that Defendant's or Plaintiff?

23 MR. BANNISTER: That's Defendant's 1.

24 A Yes, sir.

25 Q What is it?

1 A I'm sorry.

2 MR. BANNISTER: I gave him my list, sorry about that.

3 Q Is that the resolution?

4 A Of?

5 Q Authorizing condemnation?

6 A It is.

7 Q Okay.

8 THE COURT: Is that the Council's resolution?

9 MR. BANNISTER: The Council resolution; yes, Your
10 Honor.

11 A Well, it's the resolution from the Piedmont
12 Municipality Agency Board.

13 Q Right. Authorizing condemnation of the tract at
14 issue, the line at issue in this case?

15 A Yeah.

16 MR. BANNISTER: And, Judge, I offer that as
17 Defendant's 1.

18 THE COURT: Any objection?

19 MR. POPE: No objection.

20 THE COURT: Admitted.

21 (Whereupon, Defendant's exhibit 1 was admitted into
22 evidence.)

23 Q Mr. Frazier, when you are looking at a transmission
24 line before condemnation when there is no proposed route
25 and you just have a spot, was there a particular spot

1 where you needed the transmission line to go or was it
2 just sort of anywhere in Newberry would be fine?

3 A Generally, when the proposal is made to PMPA, the
4 City has picked a substation location for it so that it's
5 my job to figure out where we can tap a Duke line and get
6 that power to the substation.

7 Q All right. In this case, the location of the
8 substation was already done, isn't that right?

9 A The City of Newberry owns a large piece of property
10 and they had, because most of their load is in that area,
11 they chose that for the site of their substation.

12 Q All right. And then the next step would be to
13 analyze ways to run a transmission line and did PMPA do
14 that?

15 A Yes.

16 Q All right. And how many, like did every line go
17 across the Oiens property or were there multiple ways you
18 could have gotten it to the substation that you looked at?

19 A No, there were, basically, two transmission lines
20 that served the Newberry area, the one that runs across
21 the Oiens property, and then another one west of the City.
22 We looked at routes trying to come from both of those
23 transmission lines.

24 Q All right. And in the process of deciding which of
25 those two, did you with your engineers figure out which

1 route would be preferable?

2 A Yes.

3 Q All right. If you can look at Defendant's exhibit
4 15. You still got that up there.

5 A Let me see.

6 MR. BANNISTER: Plaintiff's exhibit 15. I'm sorry,
7 Judge.

8 MR. POPE: I think it's already in evidence.

9 A Okay.

10 Q All right. So tell me what this is again?

11 A This is a proposal by the City of Newberry for PMPA
12 to build the transmission line.

13 Q All right. And in that do you, does PMPA reference
14 the factor that they have considered in selecting a route,
15 the west route versus the east route versus of the five
16 routes? Now, I'll reference you to PMPA 170 about halfway
17 down on the page.

18 A It's going. Just give me one second. Yes.

19 Q So, subsequently, we reviewed, and you tell me if I'm
20 reading it right. Subsequently, we reviewed multiple
21 options siting the transmission line with regard to, read
22 those things that you considered.

23 A Environmental impact, land use, impact to individual
24 property owners, cost of the route, visual impact.

25 Q Environmental impact, land use, impact to individual

1 property owners, cost of the route, visual impact. Is
2 that aesthetics, visual impact?

3 A I would deem that.

4 Q How about cost of route?

5 A Yes.

6 Q And so what PMPA proposed to the City of Newberry as
7 it relates to the transmission of the line is what is
8 shown on this map as the green line running through the
9 property of Oiens, is that right, the middle route?

10 A What was proposed in this report is going that middle
11 route.

12 Q Going the middle route. Taking all those things into
13 consideration, that was the preferred route with all the
14 other routes that you analyzed to get to the substation?

15 A Yes, that seemed to be the least impactful route.

16 Q All right. And if you'll look at Plaintiff's
17 exhibit, Plaintiff's 14; you still on that?

18 A I believe so.

19 Q Tell me what that is?

20 A This is the Minutes of the Transmission Committee
21 meeting that was held on March 5th.

22 Q Is this where the route was selected?

23 A This is where the transmission project was approved
24 and the consulting engineer approved to build it.

25 Q All right. And that route is the one that goes

1 through the middle of the Oiens property?

2 A That's the preferred route.

3 Q So of all the possible routes that were there,
4 because those five that you considered, right, this was
5 the preferred route?

6 A Yes.

7 THE COURT: There were five? I thought I heard two.

8 Q So go, if you can, Mr. Frazier, go back. When y'all
9 originally started, all the lines didn't go through the
10 Oiens property, did it? You looked at the west side to
11 bring in a line from the west?

12 A Yeah.

13 Q How many options from the west were there?

14 A I can't recall how many. There were multiple. We
15 always try to find the least path, so we'll look at both
16 sides and anywhere there's open land we'll try to do that,
17 because we're certainly not going to go through a house or
18 near a house if we can help it.

19 Q So were any of the, were any of the paths from the
20 west side of the substation doable?

21 A The problem with the west side is that there is a lot
22 more buildup of houses and structures on that side. Any
23 transmission line coming from there would be much longer
24 in route.

25 Q All right. And then on the east side, there were

1 multiple starting points, were there not?

2 A Yes.

3 Q And did you rule out the other starting points,
4 because they had that same problem?

5 A For the most part. There were some areas that, you
6 know, there are just too many unknowns. You know, whether
7 or not we could even go through a property or not and
8 there's some that was a subdivision that had not fully
9 developed, you know. But the houses were, the property
10 were set out, so it just seemed too risky to go that
11 route, plus it would be more expensive to go that route.

12 Q So you analyzed based on those factors multiple
13 routes before you settled on the preferred route?

14 A Yeah. Our engineer, you know, looked at all those
15 factors.

16 Q All right. So you start with the preferred route,
17 and then the City of Newberry went and talked to
18 landowners, is that right?

19 A That's correct.

20 Q And you don't take part in that part?

21 A No.

22 Q All right. The City of Newberry is negotiating, are
23 they not, for right-of-ways?

24 A They are talking to the property owner, letting them
25 know what's going on and then when we get to that stage, I

1 would prepare the right-of-way documents and send it to
2 Newberry to hand out to the property owners to review.

3 Q All right. Is this the practice of the City of
4 Newberry or PMPA to change the route but still go through
5 a contested condemnation?

6 A Say that again.

7 Q In other words, if Mr. West, Billy West said I'd
8 prefer the route to be on the southern part of my
9 property, but I still want to have a contested
10 condemnation; I still want you to file suit and I want a
11 jury trial about it. Is it your practice to change the
12 way you do the line, and then have a contested case over
13 just compensation or do you normally, when you reach an
14 agreement, that settles it, you work out all the details.
15 The right-of-way terms, just compensation, the location of
16 line, everything?

17 A No. We try to have one-hundred percent happy
18 property owners, you know, relatively speaking.

19 Q And when you can't have one-hundred percent happy
20 property owners, then what is your option?

21 A We work with them as much as we can and when we can't
22 work anymore, we have to condemn their property.

23 Q Okay. Part of the condemnation is you request a
24 grading?

25 A Yes.

1 Q Did you hire an A Grading?

2 A Yes.

3 Q Have you had a chance to review the appraisal
4 recently?

5 A Maybe not recently.

6 MR. POPE: We don't have any objection to the
7 appraisal--

8 THE COURT: Has that been marked as an exhibit?

9 MR. POPE: It's 40.

10 THE COURT: Exhibit 40 is admitted.

11 (Whereupon, Plaintiff's exhibit 40 was admitted into
12 evidence.)

13 Q Mr. Frazier, did your appraiser take into account
14 site improvements like the well and septic system?

15 A It says here that he did list improvements to the
16 property. Said that water, well and septic tank system as
17 well as this warehouse and shop with overhead doors.

18 Q Mr. Frazier did you, in determining the route did you
19 rely on your appraiser as it relates to the cost of the
20 acquisition?

21 A Well, after, of course, this was done, we had chosen
22 a route and the appraisal came back as we expected as far
23 as costs.

24 Q If your expert had said, I mean, it's not unusual to
25 have experts who disagree of valuation, is it?

1 A I wouldn't think so. Minor, minor costs.

2 Q And you would expect a landowner's appraisal to be
3 higher than the condemnor's appraisal?

4 A Yes, sir.

5 MR. POPE: Your Honor, he's leading the witness. I
6 know that I called him and wrote him a letter--

7 THE COURT: I'm going let him lead.

8 MR. BANNISTER: Thank you, Your Honor.

9 Q Based on your expert, do you believe you had
10 adequately considered the cost of acquisition in the
11 location of the line on the Oiens property?

12 A I do.

13 Q The original discussion about the southern route, now
14 I'm going to ask you what you know about the discussions
15 between the Oiens and the City of Newberry. The original
16 discussion, the first proposal was through the middle.
17 The Oiens or through their neighbor, I think there is an
18 email about they would prefer the southern route. Did the
19 Oiens reject the southern route?

20 A Yes. We had talked to or the City of Newberry had
21 talked to the, Mr. Mills, I believe his name is, about
22 getting on the property. He arranged that. My engineer
23 and I and a couple of other folks walked the southern
24 route. Became concerned with, you know, the terrain and
25 what we had seen down there. Then, before we had a chance

1 to do anything with that, the City of Newberry said that.
2 the property owners had said that they wanted, they did
3 not like the southern route. That it opened up their
4 property to hunting or trespassing more readily and that
5 they preferred a more northern route.

6 Q So the answer is the Oiens rejected the southern
7 route?

8 A That's what I was told.

9 Q It opened it up to their neighbors who live in
10 smaller houses there like a subdivision right there?

11 A Some are and yes.

12 Q All right. And they wanted you to do a northern
13 route?

14 A Yes.

15 Q All right. And did y'all go out and start surveying
16 northern routes?

17 A Yeah. None of this was surveyed, but we started
18 looking for possible northern routes which is you'll kind
19 of see a green line on the north side. That's one of the
20 routes that we looked at. We looked at changing that more
21 so that it would hug the property line, as well, and then
22 we were told that the Oiens were building their house up
23 by that side, so without north and south, we went back to
24 the middle.

25 Q So the property owner rejected the northern lot and

1 said it was too close to their home site?

2 MR. POPE: I'm going to object. If he's giving
3 hearsay of what he's learned from somebody, I don't think
4 that's appropriate, Judge, so I object to that.

5 THE COURT: So outline the basis, please, sir. I
6 sustain the objection.

7 Q Let me show you the email. This is Defendant's 7.
8 Tell me what that email says.

9 A It's from Mr. Regier. It says, Mike, Oiens want the
10 line to run north of the middle of the property line.
11 North of the middle property line.

12 MR. BANNISTER: I'd offer that as exhibit 7.

13 THE COURT: Any objection.

14 MR. POPE: No objection.

15 THE COURT: Okay. Admitted.

16 (Whereupon, Defendant's exhibit 7 was admitted into
17 evidence.)

18 Q All right. I'll show you another email. Do you
19 recognize that email?

20 A Yes.

21 Q What is it?

22 A It's an email I wrote to Mark, and then Mark replied
23 back to me.

24 Q What does it reference about the Oiens position over
25 the power line?

1 A In the middle route, there were some trees that the
2 Oiens did not want taken, because we'd have to clear it
3 for the right-of-way. So this is asking so that we could
4 get some GPS coordinates for the trees so that we could
5 shift the line around them.

6 Q All right. And give me the timeframe that this email
7 would have come up? They had rejected the southern route
8 as it related to the neighbors and opening up their
9 property to trespassers and hunters. They had rejected
10 the northern route as it related to, it was too close to
11 their home site. And you are now negotiating with the
12 Oiens about the location of the middle route, is that
13 right?

14 A Yes.

15 Q There was some oak trees they wanted to keep?

16 A Yes..

17 Q And just for clarification, danger trees, what's the
18 angle you have to go up to make sure the tree doesn't fall
19 on the line?

20 A Generally, we take from the outside right-of-way, so
21 seventy-five feet, thirty-seven and a half from the center
22 line. We go up at a forty-five degree angle. Anything
23 above that gets cut.

24 Q So this was a discussion about what trees were going
25 to have to be removed to protect the power line?

1 A Yes.

2 Q All right. Let me show you another email. That is
3 Defendant's exhibit 15. 15 is still on the, I'm sorry.
4 I'd ask that we admit Defendant's 8.

5 THE COURT: 8, any objection to number 8 being
6 admitted?

7 MR. POPE: No objection.

8 THE COURT: Admitted.

9 (Whereupon, Defendant's exhibit 8 was admitted into
10 evidence.)

11 Q All right. Exhibit number 15, was that more
12 discussion by email regarding the middle route?

13 A Yes.

14 Q And could you miss the trees?

15 A Yes, we had drawn, basically, to another route that
16 would push the line down, I believe, far enough that we
17 would not have to cut the trees.

18 Q All right. And did you get an email--

19 MR. BANNISTER: All right. I'd ask for Defendant's
20 15 to be admitted.

21 THE COURT: Any objection.

22 MR. POPE: No objection.

23 THE COURT: Admitted.

24 (Whereupon, Defendant's exhibit 15 was admitted into
25 evidence.)

1 Q I show you what's marked as Defendant's 17. Is that
2 an email from your engineer?

3 A Yes.

4 Q And what is that email referencing?

5 A Let's see. My engineer talked with the surveyor
6 about the two trees or found out that it was just two
7 trees. It's his opinion that, let's see, we should
8 explain to them that it is cost-prohibitive to go around
9 the trees and see if they would agree.

10 Q More discussion internally about missing the oak
11 trees?

12 A Yes.

13 Q In the middle route?

14 A In the middle route.

15 MR. BANNISTER: All right. I would offer that as
16 Defendant's 17.

17 THE COURT: Any objection.

18 MR. POPE: No objection.

19 THE COURT: Admitted.

20 (Whereupon, Defendant's exhibit 17 was admitted into
21 evidence.)

22 Q I show you what's been marked as Defendant's 18. Is
23 that additional discussion about the effects the line
24 would have if you missed the oak trees?

25 A Let's see. Yes.

1 MR. BANNISTER: I'd offer that as Defendant's 18.

2 THE COURT: Admitted.

3 (Whereupon, Defendant's exhibit 18 was admitted into
4 evidence.)

5 Q I show you what's been marked as Defendant's 24. Is
6 that an email exchange between you and the City?

7 A Yes.

8 Q And does that reference, what does that reference?

9 MR. POPE: What's the number of that, please?

10 THE COURT: 24.

11 A 24.

12 MR. BANNISTER: That would be Defendant's 24.

13 A Let's see. This is talking about changing the line
14 and if we did so, we would have to re-engineer, resurvey,
15 redesign everything. This is in September '14. It's a
16 little bit, it's a year later.

17 Q This is continued discussion between PMPA and the
18 City about where the Oiens want the line to go?

19 A It's referencing a northern route again.

20 MR. BANNISTER: I'd offer that as Defendant's 24.

21 THE COURT: Mr. Pope, do you have any objection to
22 number 24?

23 MR. POPE: Sir?

24 THE COURT: Do you have any objection to 24?

25 MR. POPE: To 24?

1 THE COURT: Yes, sir.

2 MR. POPE: No, sir.

3 (Whereupon, Defendant's exhibit 24 was admitted into
4 evidence.)

5 Q I'm going to show you what's been marked as
6 Defendant's 13. Mr. Frazier, is Defendant's 13 questions
7 that you received from the landowner's agent, Mr. Major?

8 A Through the City of Newberry, yes.

9 Q And were there questions that Mr. Major was asking
10 you?

11 A Yes. There were some questions about the
12 right-of-way agreement and a few other things, I think.

13 Q Is that the right-of-way agreement that had the line
14 going through the middle of the property?

15 A It would have been drafted, so yes.

16 Q Those questions pertain to the right-of-way, where it
17 would be accessed, what the just compensation would be;
18 the remainder of the issues acquiring right-of-way, is
19 that right?

20 A Yes. This was a preliminary right-of-way agreement
21 for them to look at.

22 MR. BANNISTER: I'd offer that as Defendant's 13.

23 THE COURT: Any objection?

24 MR. POPE: No objection.

25 THE COURT: Admitted.

1 (Whereupon, Defendant's exhibit 13 was admitted into
2 evidence.)

3 Q Did you get a voice mail from Lynn Oien after that
4 email?

5 A I got a voice mail after a meeting on November 26th.

6 Q Is this, to the best of your knowledge, an accurate
7 transcription of the voice mail that the Plaintiff in this
8 case left you on your voice mail?

9 A Yes.

10 Q What did he say to you in that voice mail?

11 A Michael, it's Lynn Oien. We met with you the other
12 day in regards to the power line coming through our
13 property. We walked it. We made the decision that we
14 want to stay with you, what you have right now, that you
15 have originally drawn up originally as opposed to changing
16 it so you can move forward and get the final surveying
17 done and finish it up. My number is (that number) in case
18 you have any questions.

19 MR. BANNISTER: I offer that as Defendant's 3.

20 THE COURT: Any objection?

21 MR. POPE: No objection.

22 THE COURT: Admitted.

23 (Whereupon, Defendant's exhibit 3 was admitted into
24 evidence.)

25 Q Mr. Frazier, to draw the line around the oak trees

1 was going to adversely affect or was it going to adversely
2 affect the Oiens little garden field? To miss the oak
3 tree, what'd you have to do?

4 A To keep it at the center of the property, we'd
5 basically just had to tilt the line to get it to both ends
6 to match.

7 Q And was that voice mail related to not doing the tilt
8 in the line?

9 A We presented at the November 26 meeting both routes,
10 one that missed the oak trees and one that didn't. And
11 they, at the end of the meeting, they said, you know, let
12 us think about it and we'll call you so that was in
13 response to that.

14 Q And that phone call is to say never mind about the
15 oak trees, stay on the middle of the property line best
16 you can?

17 A Yes.

18 Q And the route that's currently being condemned
19 actually isn't the original middle route?

20 A It's not the exact middle, no.

21 Q It has a turn in it, an angle?

22 A Yes.

23 Q And is that angle, I'd ask you to look at Plaintiff's
24 exhibit 32.

25 A 32?

1 Q You got it.

2 A All right.

3 Q Excellent. All right. Plaintiff's 32 is an email
4 to, is it an email from Coleman, from you to Coleman?

5 A It's a, yeah, back and forth conversation.

6 Q All right. What does that picture imply or what does
7 that show?

8 A That's showing what we now call the final route.

9 Q All right. And where is that route?

10 A In the middle of the property.

11 Q All right. And is there a turn on that route?

12 A Yes.

13 Q And why would PMPA put a turn on that route instead
14 of just going straight?

15 A When we talked with Duke about tapping the line, they
16 wanted to tap in mid-span which is where the beginning of
17 that starts. So to keep the line at the property line, we
18 had to bend that down, put two bends in it.

19 Q Was that an accommodation for the Oiens or was that
20 an engineering assessment?

21 A No. PMPA would have come straight off of there and
22 gone perpendicular to the Duke transmission line. That
23 was an accommodation for the Oiens.

24 Q Okay. So there were changes made to the original
25 straight-shot line from the Duke power line across the

1 Oiens property at the request of the Oiens?

2 A Yes.

3 Q All right. Do you tell Duke where you're going to
4 tap the line or does Duke tell you where you can tap the
5 line?

6 A We basically give them an area and say we'd like to
7 tap it in here. They go back and do their engineering and
8 figure out a) can the line support a tap, and then b)
9 where does it make sense to tap it.

10 Q Okay. I have one more question about Defendant,
11 Plaintiff's exhibit 32, the email you were just looking
12 at. There's a reference in there to the cost to make
13 those turns. I guess, the next to the last paragraph--

14 A Yes.

15 Q And what is the cost to make those two turns in the
16 line that were requested by the Oiens and agreed to by
17 PMPA?

18 A The overall turns, I believe, in discussions with
19 Alan, I think he originally said \$80-\$85,000.00 at one
20 time. That's not stated here. I mean, at \$30-\$40 a turn,
21 you know, there's two turns, so \$80,000.00.

22 Q So \$60-\$80,000.00 to make that adjustment to the line
23 as an accommodation to the Oiens?

24 A Using these numbers, yes.

25 Q Okay. Defendant's 22, can you identify this email

1 and tell me whether or not, tell me the date and what you
2 believe to be the status of the property owner's
3 consideration of the line?

4 A This is an email. Mark Regier had asked me on the
5 November 27, 2013, I know you are, or, let's see. No, I
6 had written one to the people involved with the City and
7 to Mr. Cobb saying that, I know you all are on pins and
8 needles waiting to hear what the Oiens have to say. I'm
9 still waiting on the call. And then on November 30th of
10 2013, after I had received the phone call, I sent another
11 email out saying, it's official. Stay with the route as
12 last surveyed.

13 Q And that's in reference to the voice mail you got
14 saying go with the non-oak tree adjusted middle route?

15 A Yes.

16 Q Okay. And you believed that was a settled issue?

17 A Yeah, it was done in my mind.

18 Q Okay. You saw Mr. Pope's expert, Mr. Rogers, did a
19 route rating study. Have you had a chance to look at
20 that?

21 A I have.

22 Q If Mr. Rogers is wrong about the construction costs
23 related to the southern route, would that, and do you
24 believe that could change his rating?

25 A It would.

1 Q All right. If Mr. Rogers is wrong about the value of
2 the acquisition, do you believe that would change his
3 route ratings?

4 A It would.

5 Q When you go through the southern route, down there at
6 the pond area, right?

7 A In the pond and through some tough terrain.

8 Q Is it safer or less safe to put a transmission line
9 through and over a pond?

10 A I mean, you don't go over one if you can prefer it
11 but, I mean, it doesn't, I mean, if you have good
12 foundations on each side to work with, you know, you can
13 do it. But that's, you know, the problem.

14 Q Okay. All right. So if there's a problem is it part
15 of the fix if it's over a pond as opposed over a land
16 right-of-way?

17 A Definitely.

18 Q All right. Would you have problems accessing the
19 area that's in the wet part of the pond or in the pond
20 that you wouldn't have if you located it over land?

21 A Yes.

22 Q So from a servicing standpoint, it would be easier to
23 drive down the dirt right-of-way than it would be to drive
24 down the marshland?

25 A Yes.

1 Q All right. Are there environmental concerns that may
2 come up if you are locating your poles in a wetland?

3 A There is potential.

4 Q There'd be potential environmental concerns?

5 A I mean, you have to get a environmental wetlands, you
6 know, Alan, my engineer, refer us back, we actually hire a
7 consultant to do just the wetlands issue, because it's
8 such a big deal.

9 Q In other words, you have a route that has a wetland
10 big deal issue and you have a route that does not have a
11 wetland big deal issue, is that something you would
12 consider when looking at practices?

13 A Yes.

14 Q Okay. And as a result of the action filed by the
15 Oiens objection to the condemnation and asking for a
16 permanent, temporary and permanent injunction against
17 PMPA, did you hire a lawyer?

18 A Yes.

19 Q And has my firm represented you from that time until
20 now?

21 A Yes.

22 Q I'm going to ask you if you know what the current
23 fees through this trial are that you have paid or agreed
24 to pay for attorney fees, expert fees, and expenses.

25 A We've paid about \$55,000.00 so far.

1 Q And what do you anticipate your costs to be through
2 the end of his trial?

3 MR. POPE: Your Honor, fee is also and I think at
4 issue should not be--

5 THE COURT: I can figure it out. I'll give both of
6 you opportunity to cross-examination one another.

7 MR. POPE: And he didn't provide this as an exhibit,
8 and I don't object to that--

9 THE COURT: I know, but go ahead.

10 MR. BANNISTER: Thank you, Your Honor.

11 Q What will total defense cost of this action will be
12 at the end of this trial?

13 A More than that. It's, let's see--

14 Q It's going to be at least how much?

15 A Probably, let's see. I know there are--

16 MR. POPE: I don't think, we can take this up later.

17 THE COURT: Again, I'm going to let both of you turn
18 them in at the end of the trial.

19 MR. BANNISTER: Judge, let me just, maybe do it this
20 way. I'd like to offer my attorney's fee affidavit as an
21 exhibit.

22 THE COURT: Any objection to it coming in?

23 MR. BANNISTER: We can argue about it later.

24 THE COURT: Any objection?

25 MR. POPE: Well, I would only say, I don't object,

1 but I have a right to submit mine also.

2 THE COURT: Let me make it clear. I'm going to let
3 you, Mr. Pope, admit yours. I'm going to give you a
4 chance to cross-examine Mr. Bannister; Mr. Bannister to
5 cross-examine you. Either one of these documents.

6 MR. BANNISTER: Thank you, Your Honor. Number 27.

7 (Whereupon, Defendant's exhibit 27 was admitted into
8 evidence.)

9 A About \$7,000.00 more.

10 Q Mr. Frazier, one final comment. There's some
11 questions about this home site. Are you aware in South
12 Carolina that the frustration of future plans for a
13 landowner is not compensable in a condemnation action?

14 A I heard that.

15 Q You heard that. How about sentimental value of a
16 property from special interests that a homeowner would
17 have and you understand that's not compensable either?

18 A I would think not.

19 Q How about if they just really don't want you to run a
20 power line through their property, is that compensable?

21 A And well there's a lot of them that--

22 MR. POPE: This witness is not--

23 THE COURT: I sustain it. That's a leading question.

24 MR. BANNISTER: Judge, and I'll move on.

25 THE COURT: Okay, sir.

1 MR. BANNISTER: If they say we didn't, if PMPA did
2 not talk to the landowners and discuss what they wanted or
3 didn't want or what their future plans were, I object to
4 relevance. You said you can figure it out. I'm just
5 making sure that this witness to the extent anyone
6 believes he was supposed to find out the sentimental
7 future plans of the homeowners that that is not something
8 that's relevant for condemnation.

9 MR. POPE: Your Honor, I think that that's a legal
10 issue and I object.

11 THE COURT: I'm still going to sustain the objection
12 and I understand the issue, and I will make sure before we
13 finish with this trial that issue and that decision, that
14 I am clear on the issues I need to decide.

15 MR. BANNISTER: Thank you, Your Honor.

16 Q The last question. When doing evaluations, you
17 understand that the South Carolina law requires you to
18 determine the value of the property before the
19 condemnation and the value of the property after the
20 condemnation to determine what is the property
21 compensation for the land. And you understand that's the
22 standard by which you determine acquisition laws?

23 MR. POPE: I also object that's a legal issue for the
24 Court and it's obvious that I don't think this witness can
25 answer that.

1 THE COURT: Go ahead.

2 MR. BANNISTER: And I'm almost finished then--

3 THE COURT: I mean, I agree with him it's a legal
4 question, but I'm just trying to, if you open the door on
5 that particular issue, I'm going to allow it.

6 Q Answer best you can.

7 A My appraiser figured it that way, I believe.

8 Q And you relied on your appraiser in the location of
9 the route?

10 A Not for the location, just the cost of the
11 right-of-way acquisition.

12 Q The acquisition cost, right?

13 A Yeah.

14 MR. BANNISTER: No other questions, Your Honor.

15 THE COURT: Any redirect?

16 MR. POPE: Yes, sir.

17 REDIRECT EXAMINATION

18 By Mr. Pope:

19 Q He asked you about Plaintiff's exhibit 15.

20 A I've got some up here.

21 Q All right. Plaintiff's exhibit 15, Mr. Bannister
22 asked you about page PMPA 170 and it was, of course, it
23 lists the factors, environmental impact, land use, impact
24 to individual property owners, cost of the route, visual
25 impact. All those are factors?

1 A Would be, but that's what Mr. Cobb looked at.

2 Q All right. And this was in February 28, 2013?

3 A Yes.

4 Q And that was, again, this was before anybody had been
5 on anybody's property, any of the affected landowners,
6 correct?

7 A That's correct.

8 Q Based on a Google map and GIS, correct?

9 A Yes.

10 Q All right. And they did not access individual
11 tracts, this was just, they said we consider these factors
12 as to the 15 landowners, correct?

13 A Well, using, as you said, the GIS. I mean, we could
14 see the different tracts that we looked at.

15 Q Right. But there's no analysis anywhere either at
16 that time real early or later that applies to the Oien
17 tract, comparing each of those factors on each route that
18 was possible, is that right?

19 A There is no documentation.

20 Q And that's correct?

21 A Yes.

22 Q Now, you were talked, you were asked about a number
23 of emails in June of 2013, correct?

24 A Yes.

25 Q Back here where you were talking about, well, let's

1 look at the north and, well, and let's look at the middle,
2 let's look at the south, is that right?

3 A Yes.

4 Q And that was very early in the process, correct?

5 A Middle of it.

6 Q Well, to the landowner, it was early, wasn't it?

7 A To my knowledge, the landowner had been involved
8 since February or March.

9 Q Well, what is the landowner here? It just says any
10 landowner. They won't, they don't like transmission
11 lines, they want to figure out what route you got in mind
12 and let's look at this one, let's look at that one, right?

13 A Yeah. All, both the owners had been contacted by
14 June.

15 Q But you didn't contact them, you assume they had?

16 A The City of Newberry had contacted and provided me a
17 contact list with phone numbers.

18 Q Okay. But you don't know what contact they had made?

19 A I do not know what was ever said, no.

20 Q And you don't know whether they had been shown a map,
21 correct?

22 A I don't know what was discussed with each property
23 owner, right.

24 Q And you know now that Mr. Regier had never done a
25 transmission line before, correct?

1 A That's correct.

2 Q But this was all in June they were looking at the
3 middle, they were looking at the north, and they were
4 looking at the south, right?

5 A They had already eliminated the south--

6 Q Were they looking at those three or not?

7 MR. BANNISTER: Judge, he's got to let him answer.

8 THE COURT: Yeah, I agree. Let him finish his
9 answer.

10 A They had already reviewed the south and told us to
11 put it up north at around that time.

12 Q Well, I showed you on your direct examination emails
13 from your file saying they wanted it on the south, they
14 wanted it on the south, right?

15 A There are emails, yeah.

16 Q Sir?

17 A There are emails, yes.

18 Q Now, we talked about that voice mail. The voice mail
19 says nothing about the middle route does it?

20 A We were--

21 Q Does it say anything about the middle route?

22 A It does not say it, no.

23 Q All right. And when you filed your answer in this
24 case, you did not assert that he had made any agreement to
25 the middle route in November 2013, did he?

1 A We had--

2 Q No, is your answer in this case?

3 A It did not specifically reference that.

4 Q Now, he asked you a question, Counsel did, about the
5 wetlands, a big deal issue. You don't contend that going
6 across a pond like the one on exhibit 44 here is a big
7 deal, wetlands issue, do you?

8 A Going across the pond, depending on how much you have
9 to spend, will not be an issue, but where you have to set
10 your poles and how you access those poles would be.

11 Q And the transmission line was going--

12 A I'm sure some of them do, yes.

13 Q And now when you got this voice mail, you never wrote
14 Mr. Oien and said, okay, great, we all agree on the middle
15 route. You never did that, did you?

16 A I'm not even sure I have an email from him but he did
17 leave me his cell phone.

18 Q You could write him, you had his home address?

19 A He did leave me his cell phone, and I returned that
20 call and left him a voice message.

21 Q But you never said we have an agreement?

22 A I did in my voice message.

23 Q What voice mail was that?

24 A After he called and left his message, I returned his
25 call and left him a message.

1 Q Now, you never said that in your deposition, did you?

2 A Yes.

3 Q That you left him a message?

4 A If I didn't, then you didn't ask it.

5 Q All right. Now, you were asked the questions about
6 frustrations of a future landowner's intentions. Now, in
7 this case, well, you know, you didn't know when the
8 condemnation started, but you know now that the Oiens paid
9 over \$100,000.00 on this home site toward the home,
10 correct?

11 A They had spent some money, yes.

12 Q And the \$78,000.00 of that was for materials for the
13 home which they'd paid an advanced payment?

14 A Yes.

15 Q And that that would be forfeited if they don't build
16 that home?

17 A Under my understanding, they signed a three-year
18 contract and they've already forfeited that money.

19 Q All right. But for the plans, they're not
20 speculative?

21 A Pardon?

22 Q Their plans to do that are not speculative? That
23 they made a commitment to do it.

24 A There was intention, yeah.

25 Q Sir?

1 A I mean, just purchasing the plans and clearing, looks
2 like they were going to do something.

3 Q Yeah. You agree with that?

4 A Yeah.

5 Q Now, were you aware that the soil is very wet below
6 the dam on this exhibit 44 also?

7 A Yes.

8 THE COURT: Ask that question again, I missed,
9 please.

10 MR. POPE: Excuse me, Judge.

11 Q Are you, I asked the witness if he was aware that
12 below the dam there's some wet areas in there where the
13 water overflows from under the dam or over the damn,
14 correct?

15 A Yes. Well, I would expect there to be some wetland
16 in there, yeah.

17 Q I mean, there's no big deal going over there, either,
18 when they go over a pond, they go over a wetland or
19 wettish area?

20 A Depending on where the final design is, you have to
21 have soil buoyance to determine where you put a pole.

22 Q Well, as you said before there were no, it's feasible
23 to go the southern route, correct, you said that?

24 A It would be feasible.

25 Q And you think it'd cost about \$30-\$40,000.00 more,

1 right?

2 A Well, for two turns.

3 Q Yeah. Thank you.

4 A Plus, there could be other costs. We just don't
5 know. It's never been fleshed out.

6 MR. POPE: All right. Thank you.

7 MR. BANNISTER: I got one question.

8 THE COURT: All right.

9 RECROSS-EXAMINATION

10 By Mr. Bannister:

11 Q Anything in the middle route power line that keeps
12 the Oiens from building the house that they ordered and
13 paid \$78,000.00 for?

14 A Not in my mind.

15 Q They can build it, right?

16 A Yes.

17 THE COURT: All right. Thank you, sir. You may step
18 down. How long is your next witness going to be?

19 MR. POPE: Well, my next witness would be one I would
20 want to finish the cross on it. I can publish a short
21 deposition in there.

22 THE COURT: All right. Okay.

23 MR. POPE: We got Coleman Smoak's deposition.

24 THE COURT: Coleman Smoak?

25 MR. POPE: It's his original deposition.

1 12:23 p.m. and ended at 12:36 p.m.)

2 THE COURT: We will take a lunch break and be back at
3 1:30. Thank you.

4 (Whereupon, a lunch break was taken.)

5 THE COURT: All right, Mr. Pope.

6 MR. POPE: We would call Lynn Oien to the stand.

7 LYNN OIEN, being
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 By Mr. Pope:

11 Q All right. State your full name and address?

12 A Lynn E. Oien; 1216 Southeast Colony Way, Jupiter,
13 Florida.

14 Q Okay. Now, you wear a hearing aide, don't you, Mr.
15 Oien?

16 A I'm sorry?

17 Q You wear hearing aids?

18 A Yes, I do.

19 Q Just like I do, so you need to make sure you
20 understand the question and make sure I'm speaking loud
21 enough, okay?

22 A Okay.

23 Q All right. You're how old now?

24 A Sixty-nine.

25 Q Okay. And your wife, June, is here with you?

1 A Yes.

2 Q What job do you have in Florida?

3 A I'm self-employed, and I manufacture engine room
4 ventilation systems for boats.

5 Q And what's the name of your company?

6 A Delta T Systems.

7 Q And are you the owner of that business?

8 A Yes.

9 Q How many employees do you have down there?

10 A I have 22.

11 Q And what does Delta T Systems produce or sell?

12 A We produce, we manufacture and sell engine room
13 ventilation components, fans, dampers, control systems.
14 and we do that for a variety of vessels, pleasure boat,
15 work boat, and military and, basically, all sizes of
16 vessels from 35 feet up to a thousand feet.

17 Q And, in fact, did you put, is your system in use on
18 the, on a U.S. Navy aircraft carrier?

19 A Yes.

20 Q And your customers would, I think, you said would be
21 military and civilian?

22 A That's correct.

23 Q Do you have contracts with Coast Guard and the Navy
24 for your systems?

25 A Yes, the U.S. Coast Guard and the U.S. Navy, as well

1 as the U.S. Army and foreign military.

2 Q All right. Including, as far as military in what
3 foreign country?

4 A I'm sorry?

5 Q What foreign country's militaries?

6 A We do business with Indonesia, with the UAE, Egypt,
7 Israel, Panama.

8 Q Okay. Now, did you spend your early life and growing
9 up over in the State of Washington near Seattle?

10 A Yes.

11 Q And what was your work history like before Delta T?

12 A I was in the automotive aftermarket. We sold,
13 distributed internal engine parts to the aftermarket.

14 Q Okay. That was in Seattle?

15 A That's correct.

16 Q And after that, what'd you do?

17 A Prior to that I was in school.

18 Q No, after that, what did you do?

19 A After that, I sold gas turbines into the marine
20 marketplace.

21 Q And your background is in sales and marketing?

22 A That's correct.

23 Q You also, you and your staff, your small staff,
24 profits in-house in your business?

25 A That's correct.

1 Q All right. Now, you have been involved with the
2 management with Delta T Systems for how many years?

3 A Twenty-five.

4 Q Now, you have how many children?

5 A Two.

6 Q And they are 40 and 37?

7 A 40 and 37.

8 Q And they live where?

9 A Both of them live in Seattle, yeah.

10 Q Now, and you've been in Florida for 25 years?

11 A I'm sorry?

12 Q You've been in Florida 25 years?

13 A Yes.

14 Q Okay. How did you happen to find Newberry?

15 A We owned some property at The Cliffs in the northeast
16 corner of the State, and I had played in a number of golf
17 tournaments, the Pro Am, BMW Pro Am Tournament. And we
18 were driving up 26, it just so happened that we had never
19 come up 26. We'd always gone 75 through Atlanta, and we
20 were coming up through 26 on one weekend and it was about
21 5:00 o'clock at night. We saw a sign that said, Historic
22 Downtown Newberry, and so we decided to stop and have
23 dinner and we drove into the city and fell in love with
24 it.

25 Q And did you then start looking for property?

1 A We did. I wasn't initially. It was about two weeks
2 after that but yes, we started looking for property right
3 away.

4 Q And what were you looking for?

5 A We were looking for acreage. I had grown up on
6 acreage, and so I wanted to have something similar to what
7 I had when I was growing up.

8 Q Did you have your intention of buying a place that
9 you could grow trees and sell them or for retirement?

10 A No, for retirement. It was basically for retirement.
11 We always said that we were looking for our Mayberry and
12 we ended up in Newberry.

13 Q Now, you, the property you showed, this map which is
14 Plaintiff's exhibit 1. This is the property that you own?

15 A Yes, that's correct.

16 Q And it's 116 acres?

17 A Correct.

18 MR. POPE: We would offer exhibit 1.

19 THE COURT: Which exhibit is it?

20 MR. BANNISTER: No objection.

21 THE COURT: Exhibit number 1 admitted.

22 (Whereupon, Plaintiff's exhibit 1 was admitted into
23 evidence.)

24 Q All right. And did you buy this property from a
25 brother and a sister who actually owned each half of it?

1 A Yes, the brother owned part of it and the sister
2 owned the other part, John Halfacre.

3 Q Did you buy them at the same time?

4 A We bought them at the same time.

5 Q What year?

6 A Pardon?

7 Q What year?

8 A In 2005.

9 Q Okay. And this exhibit 1 shows the boundaries of it
10 from an aerial GIS map?

11 A That's correct.

12 Q Okay. And would you explain what, just sort of walk
13 us through the property. You can come down and point if
14 you want to.

15 A Sure.

16 Q The access road is down here in the lower right
17 corner?

18 A That's the, that's the gate. That's the entrance.

19 Q And that's O'Dell Road?

20 A That's O'Dell Road; that's correct. And O'Dell Road
21 used to come all the way to the first corner up there on
22 further right there. It used to come to that and we made
23 an agreement with the City, and we did a circle at the end
24 of O'Dell at our new gate and that became our property at
25 that point and we were responsible.

1 Q So O'Dell Road dead-ends at a gate on your property?

2 A That's correct.

3 Q Okay. And is that, tell me what attracted you to
4 buying that 116-acre tract?

5 A It's pristine. It's almost like a plantation when
6 you go on the property. It's very, very pristine and it's
7 remote. It's close to the city. There are, it's close to
8 a lot of activities. It's close to the hospital, Lowe's,
9 just about everything that you want. And it's, I believe,
10 it's about three miles from downtown. So it's very easy
11 to get in and out of town.

12 Q And your distance to Wal-Mart from your front gate?

13 A Oh, five minutes at the most.

14 Q And so the City limits is somewhere down to the left
15 lower corner of this?

16 A That's correct.

17 Q And the interstate is up here off the left and above
18 it?

19 A Correct. I-26.

20 Q Yeah. And so the quiet appealed to you?

21 A Very much so.

22 Q Being remote?

23 A Yes.

24 Q And what improvements did you do from 2005 forward?

25 A Started with the barn. We call it the barn. It's a

1 7,000 square foot shop and--

2 Q It's the white building that's shown on the--

3 A Correct.

4 Q --transmission line right around the right upper
5 corner?

6 A Correct. I did all the prep work for that, and I
7 pushed the road in, and then had the barn built.

8 Q How much money was invested in that barn?

9 A I'm sorry?

10 Q How much money was put into that investment for the
11 barn?

12 A It's about \$160,000.00, and we put a well in, as well
13 as a septic tank and for that space.

14 Q For the barn?

15 A Yes.

16 Q All right. Did you grade the roads that are shown
17 going--

18 A Yes.

19 Q --south to north to the barn?

20 A Yes.

21 Q Did you also grade a road going on this spot here to
22 the left of the barn?

23 A Yes.

24 Q What is that?

25 A That's the homesite that we were prepping, and so I

1 cleared that. Had it cut down, all of the timber off of
2 it, and I prepped the site and I did that in 2009.

3 Q All right. How much money did you invest clearing
4 the homesite?

5 A I'm sorry?

6 Q How much money did you spend in--

7 A I probably spent \$20-\$25,000.00.

8 Q Now, what about water to that homesite?

9 A We also put a well in there and power, so we ran
10 underground power from the main road to both the barn and
11 to the homesite.

12 Q Okay.

13 A We have 50 KVA power at the homesite.

14 Q I show you Plaintiff's exhibit 3. That's an invoice
15 dated 10/1/2008. Is that what you paid for, two wells?

16 A That's correct.

17 Q Is the top well the well to the homesite or is it a
18 well to the barn?

19 A It's the one at the homesite.

20 Q Okay. So the one at the bottom, the second pricing
21 is for the barn?

22 A Yes, the first well was almost 365 feet.

23 Q All right.

24 MR. POPE: We offer Plaintiff's exhibit 3.

25 THE COURT: Any objection?

1 MR. BANNISTER: No objection.

2 THE COURT: It's admitted.

3 (Whereupon, Plaintiff's exhibit 3 was admitted into
4 evidence.)

5 Q And did you also plan and pay in part for a home on
6 the homesite?

7 A Yes.

8 Q All right. I'm showing you exhibit 2.

9 A Yes.

10 Q What is exhibit 2?

11 A It's our Purchase and Sell Agreement that we made for
12 the home that was going to be on the site.

13 Q Is that the construction?

14 A It doesn't include any construction, just the
15 materials.

16 Q All right. That was dated when?

17 A The date is 9/23/2008.

18 Q All right. And the total price, ultimately, would be
19 how much?

20 A Well, with the building, it would probably be in the
21 \$900 to a million dollars.

22 Q Counting construction?

23 A Counting construction, yes.

24 Q All right. So materials alone were how much on that
25 contract?

- 1 A \$600,000.00.
- 2 Q Yeah. Now, you've paid how much of that total?
- 3 A I paid \$78,598.00.
- 4 Q And that was in September 2008?
- 5 A That's correct.
- 6 Q All right.
- 7 A That was for plans.
- 8 Q Did you have plans?
- 9 A Yes, we did.
- 10 Q Many pages of drawings and what not?
- 11 A Yes, we did.
- 12 Q Now, have you completed those plans for that
- 13 homesite?
- 14 A I'm sorry?
- 15 Q Have you completed the homesite?
- 16 A No.
- 17 Q 2008, was that a good year or a bad year?
- 18 A 2008 was a very bad year for almost everybody.
- 19 Q And, obviously, that was a worldwide phenomenon.
- 20 A Yes.
- 21 Q Did you get agreement from those people that they
- 22 would honor at least part of the money you paid down--
- 23 A Yes.
- 24 Q --in the future?
- 25 A Yes.

1 Q Is that contract still alive now?

2 A It is.

3 MR. POPE: I offer that exhibit 2 in evidence, Your
4 Honor.

5 THE COURT: Any objection?

6 MR. BANNISTER: No objection.

7 THE COURT: Admitted.

8 (Whereupon, Plaintiff's exhibit 2 was admitted into
9 evidence.)

10 Q Exhibit 4 is what?

11 A That's a picture of the actual home that was built in
12 another location and that's one of the reasons that we
13 liked it, because we had had an opportunity to look at it.

14 Q Okay. So exhibit 4 is going to be what materials
15 shown on number 4, are those going to be what you just
16 bought--

17 A That's correct.

18 Q --or obligated yourself to buy?

19 A That's correct.

20 Q All right. It is a very large home, is it not?

21 A About 9,000 square feet.

22 Q Okay.

23 MR. POPE: I'd offer exhibit 4 in evidence.

24 THE COURT: Any objection?

25 MR. BANNISTER: No, Your Honor.

1 THE COURT: Admitted.

2 (Whereupon, Plaintiff's exhibit 4 was admitted into
3 evidence.)

4 Q Now, when I was talking to you about improvements, I
5 meant to ask you about utilities. You have a well head
6 right there at the homesite?

7 A Yes, sir.

8 Q Do you have power there?

9 A Yes.

10 Q Where does it go? Where is it from?

11 A It comes from the main road where they went
12 underground and went all the way back underground.

13 Q Does it follow right here?

14 A Along the road there, yes.

15 Q It's underground?

16 A That's correct.

17 Q Is it clearly marked?

18 A I'm sorry?

19 Q Is your underground line marked--

20 A Yes.

21 Q --with PVC pipe?

22 A It's marked with PVC pipe.

23 Q Three feet high above line?

24 A Yes.

25 Q Now, you, in addition to building a big garage

1 barn-type building, what's in the barn building?

2 A We have a number of pieces of equipment. Have a
3 dozier, tracko, tractors, mowers. Equipment that I was
4 using to clear the sites and prep the sites.

5 Q All right. Have you, in the 10 years you've owned
6 this 116 acres, you and your wife were up here on a
7 regular basis?

8 A Yes.

9 Q Can you estimate how many times you've been up to do
10 maintenance on your--

11 A Well, we try to get up at least once-a-month and
12 lately, it's been more like once-a-quarter.

13 Q All right. Now, on the other part of the property,
14 obviously, a homesite is on the north half of it. On the
15 south half, there's a road that goes to your house right
16 here?

17 A That's correct.

18 Q And is that, that's where you stay when you come use
19 your property?

20 A Yes. It's about a 2,000 square foot home.

21 Q Is that a permanent plan to stay in that house?

22 A No.

23 Q It's small?

24 A It's too small and it's old.

25 Q And would you envision, what uses would you have for

1 it?

2 A We had planned on using that as a caretaker's home.
3 Having a place that someone could come and live and take
4 care of, is if we needed it.

5 Q Well, even though this cottage on this pond here is
6 near the southern border, you have no problem and you've
7 never expressed any problem with house being exposed to a
8 transmission line, is that right?

9 A No.

10 Q Now, let me show you exhibit 5 which are some
11 pictures that are taken by Mr. Rogers. I want to know if
12 you can identify them as the first picture in exhibit 5,
13 the entranceway?

14 A Yes, that's looking from the gate south.

15 Q Okay. And if you go past the tree there, the opening
16 to the left, there's a power pole?

17 A That's correct. That's the Duke power line.

18 Q And it's flat right there like a parking lot almost?

19 A That's correct.

20 Q All right, sir. And the next picture shows the area
21 where the current power pole is to the left of your
22 driveway?

23 A Yes. It'd be running south, looking south.

24 Q Okay. As you enter the Duke transmission line
25 right-of-way, it's to the left of the drive on the south

1 of the drive?

2 A That's correct.

3 Q Okay. So it's flat there?

4 A Yes.

5 Q Now, you've seen pictures that PMPA has brought and
6 showed you in mediation that they proposed to put a tap
7 wall way up here to the right?

8 A Yes.

9 Q Is that tap point way up there more accessible or
10 less accessible?

11 A Actually, their proposed tap, I believe, was even
12 further. I think that's pole number 34, if I remember
13 right.

14 Q Is that more accessible than the one you just pointed
15 out to the left of the driveway or south of the driveway?

16 A I'm sorry?

17 Q Which pole, tap point is more accessible for cars and
18 trucks?

19 A Oh, the southern one, of course.

20 Q When you look at the fourth picture. Is that the
21 access drive to your home?

22 A That is the, that one. This is, yeah, this is
23 heading into, before it splits and goes to the old home
24 and to the new home.

25 Q All right. And the next picture, the legal access

1 drive, that's another picture of that drive?

2 A Yes.

3 Q All right. Now, you're proud of your property there
4 and the work that you've done?

5 A Very much so.

6 Q All right. The next picture shows a labeled,
7 underground electric. Is that one of those PVC markings?

8 A That is.

9 Q Power you've already got for the homesite?

10 A Yes, that is.

11 Q And you don't use that underground power at any other
12 spot other than the homesite or the barn?

13 A And the barn.

14 Q Okay. Now, the photograph marked Access to lake
15 house. Does that show the gate area where you could go
16 through?

17 A That shows the gate area down to the old house.

18 Q Okay. To the existing cottage?

19 A Yes.

20 Q The next picture entranceway lake house shows the
21 same thing?

22 A Correct.

23 Q Do you have a picture of the lake house on here?

24 A Yes. Yes.

25 Q Okay. Another picture of the lake house?

- 1 A Yes.
- 2 Q Another picture of the lake house from the direction
3 of the pond?
- 4 A Correct.
- 5 Q You've got there a picture of the pond from the
6 general area of the lake house?
- 7 A Correct.
- 8 Q Looking towards the back, you've got pictures of the
9 pond itself, several pictures of the pond area?
- 10 A Yes.
- 11 Q Does that pond maintain a pretty constant size?
- 12 A I'm sorry?
- 13 Q Does it maintain a constant size pretty much?
- 14 A Yes, it does. It is controlled by a dam.
- 15 Q Is the slopping to the pond, is it like narrow or
16 relatively steep or is it well-contained or not, is it?
- 17 A It's not very steep, no.
- 18 Q Okay. Is the water contained in an area reasonably
19 well?
- 20 A Yes.
- 21 Q Do you also have any wet area below the dam?
- 22 A Yes. Almost all the way to the property line.
- 23 Q The area I am pointing?
- 24 A Property, yes. It's, in fact, it's very wet there.
25 Like three creeks that run through that from the drainage

1 from the pond.

2 Q The width of this would be something like 300 feet?

3 A That's probably pretty close.

4 Q Okay. The rest of the pond would be similar or less?

5 A Very similar, less on the tip.

6 Q Okay.

7 MR. POPE: And we would offer exhibit 5.

8 THE COURT: Any objection?

9 MR. BANNISTER: No objection, Your Honor.

10 THE COURT: Admitted.

11 (Whereupon, Plaintiff's exhibit number 5 was admitted
12 into evidence.)

13 Q Now, the first word you had had about PMPA, had you
14 ever heard of PMPA in the early part of 2013?

15 A No.

16 Q Did you hear about a transmission line being in the
17 neighborhood from someone?

18 A Yes.

19 Q From whom?

20 A I received an email from Misty West February 25th,
21 2013 stating that they had just had a meeting with the
22 City and that they were planning a power line through our
23 property, as well as theirs.

24 Q Is this exhibit 7, is that the email you got?

25 A Yes, it is. Correct.

1 Q And did you read it there when she said she told the
2 City that there was no way you would willingly give you an
3 easement to cut your property in-half?

4 A Yes.

5 Q What were you expecting to happen after you got, a
6 rumor or whatever you want to call it from Misty West?

7 A We weren't sure, but we were expecting from this that
8 they were going to contact us.

9 Q And did they contact you shortly after that at all?

10 A No.

11 Q Did you hear anything from them during the month of
12 March?

13 A No.

14 Q What about April?

15 A No.

16 Q At some point after that, did you see people on your
17 property?

18 A Yes.

19 Q In the early summer sometime?

20 A Yes.

21 Q Who'd you see?

22 A I was driving out and there were a group of folks
23 with a pickup just inside the gate. They identified
24 themselves as Duke Power, and they said they were looking
25 at the line.

1 Q It was just Duke Power people?

2 A No, I believe there were some City representatives
3 there, as well.

4 Q And did they say anything about a line route or
5 anything like that?

6 A No.

7 Q Did anybody from PMPA or on their behalf ever call
8 you or write you and say we want to come and show this
9 project to you, want to show you a map?

10 A No.

11 Q They never call you and contact you and say we want
12 to, we want to see the lay of the land so we can access
13 what our acquisition costs might be?

14 A No.

15 Q Then, later we've heard that they sent an appraiser
16 out there, did he? Mr. Graydon, they sent an appraiser
17 out there, he never met with you?

18 A No.

19 Q You never saw him?

20 A No.

21 Q And he never called you to ask about the use you had
22 of your property?

23 A No.

24 Q If he had called you, you would have gladly told him
25 what you've already told the Court about your plans for

1 this property, correct?

2 A That's correct.

3 Q Now, what, after you saw those folks, when did, did
4 you ever talk to Mr. Regier?

5 A I met Mr. Regier at a social function, luau for the
6 Opera House Guild, at Billy West's home.

7 Q Did you ever see or speak with Todd Guy?

8 A Yes.

9 MR. POPE: Excuse me. Before I get to that, I want
10 to offer exhibit 7 into evidence.

11 THE COURT: Any objection to exhibit 7?

12 MR. BANNISTER: No objection, Your Honor.

13 THE COURT: It's in.

14 (Whereupon, Plaintiff's exhibit 7 was admitted into
15 evidence.)

16 Q Did you talk to Todd Guy on occasion?

17 A Yes.

18 Q And did you tell, where did you tell him you wanted
19 the line to go?

20 A Well, at the time, the line hadn't been established
21 other than that they had said that or Todd had said they
22 were going to run it down the middle. So my big concern
23 was my driveway into the new house and also where the
24 poles were going to be. If they were going to go in
25 there, I wanted to know more information. We tagged some

1 of the trees that he felt that would be affected and what
2 trees I didn't want to have affected by the route.

3 Q And at some point, you saw someone for the City that
4 they drew a southern route?

5 A Pardon me?

6 Q At some point, you saw that someone from the City
7 told you they had drawn a southern route?

8 A No, not until we met with them when we called the
9 meeting.

10 Q And that would have been what month?

11 A That would have been in September of 2013.

12 Q 2013?

13 A That's correct.

14 Q So the first route you saw was in September or did
15 you see routes--

16 A -- no, we saw a route with, Misty West had presented
17 a route that they had shown the middle route and the
18 southern route that she had said that would probably work
19 for us.

20 Q And so were you being briefed by the City or by the
21 PMPA about what their intentions were for your property
22 during the summer months of 2013?

23 A No.

24 Q Did you finally insist that there be a meeting?

25 A Yes.

1 Q You called a meeting?

2 A Yes, we called, we asked for a meeting with PMPA,
3 because we weren't getting where we needed to go with the
4 City.

5 Q And did you have a meeting with the City before that
6 in September about it?

7 A Yes, we did.

8 Q All right. When?

9 A It was the, I'm not sure of the exact date, but I
10 think it was, I think, the 24th or somewhere in there.

11 Q Of September?

12 A Yes.

13 Q 2013?

14 A That's correct.

15 Q And what, and was Paul Major with you there on that
16 meeting?

17 A Yes.

18 Q And he, how many options were presented at that time?

19 A Well, I think we looked at the three options that
20 were laid out, one that they had already drawn and one to
21 the north and one to the south.

22 Q And did you have, express yourself then or later
23 about the southern route?

24 A Yes. We said that the southern route would be
25 preferable just because it was away from the homesite and

1 it would make a lot more sense to do that.

2 Q And the middle route as they drew was just a straight
3 line right through the middle?

4 A Yes.

5 Q And you expressed your preference for the southern
6 route to how many people on how many different occasions?

7 A Well, in that meeting, there was Todd, Mark, and the
8 City Manager.

9 Q Okay.

10 A We expressed that to them and a number of times after
11 that also in the meeting with PMPA.

12 Q Well, did you also tell that to Mr. Regier on all the
13 occasions?

14 A Yes.

15 Q Is it clear to you that he understood or should have
16 understood you wanted a southern route?

17 A He should have understood, yes.

18 Q All right. Now, would you consider as a reasonable
19 person in talking with folks about a business deal and you
20 really need to look at every option?

21 A Yes.

22 Q And did you want to see and hear what they had to say
23 about any option, including the one you preferred?

24 A Yes, we did.

25 Q What did they want to talk about every time you

1 wanted to talk about a southern route?

2 A They wanted to talk about money and the center route,
3 because it was cheaper, a straight line and the southern
4 route was much more expensive.

5 Q Now, did you get any feedback after you made the
6 opinions of yours known and your wife was there also?

7 A Yes.

8 Q And Paul Major, the forester was there?

9 A That's correct.

10 Q All right. And did you make it clear in that meeting
11 that you wanted the southern route?

12 A Yes.

13 Q All right. And the southern, after September 27th,
14 did you get feedback that assured you that that was going
15 to happen?

16 A No.

17 Q So what did you do as requesting--

18 A -- we got no feedback. In fact, almost every time
19 we, well, we had to call all the meetings, and we would go
20 to a meeting and we wouldn't hear from them for three
21 months. They wouldn't answer calls. We had a couple of
22 brief discussions over the phone but nothing that was
23 related to anything other than trying to set up a meeting.

24 Q Okay. Notwithstanding that you wanted the southern
25 route, were you trying to work with them to try to listen

1 to what they had to say about some other route?

2 A Well, we were willing to listen to anything as long
3 as they could justify that it would be good for us and for
4 them.

5 Q But they never could, did they ever present a line
6 that did that except the southern route?

7 A They never came up with any clear proposals. We
8 asked for a number of poles, high-clip poles, location of
9 the poles, what the poles would look like and they never
10 came up or fixed locations or anything.

11 Q So now your homesite is right here, correct?

12 A Correct.

13 Q And did you also have a plan that you'd talk to Mr.
14 Major about regarding a pond?

15 A Yes.

16 Q Where was it going to go?

17 A Well, the pond was located to the southwest of the
18 homesite, south and west and it'd take, it would probably
19 be a--

20 Q Come down and draw where that's going to be.

21 A (Witness steps from witness stand.)

22 Q First, I'm going to put a circle or the X where your
23 homesite was, right there?

24 A Yeah, that's correct.

25 Q All right. Can you draw that approximate area of

1 your pond?

2 THE COURT: What was your question, please, sir?

3 MR. POPE: I'm asking him to draw the approximate
4 area of the pond he was going to install in front it.

5 THE COURT: Okay. I'm sorry.

6 Q And I'm going to draw this. Now, did you pick that
7 because of the land laid that way or because it was just
8 arbitrary?

9 A No, and because the land was set up for a good pond.
10 It's got three creeks running into it and a easy area down
11 south on the west side for a dam.

12 Q And so you spoke to Mr. Paul Major about helping you
13 thin those trees?

14 A Take the trees out, yes.

15 Q So you could do that?

16 A That's correct.

17 Q All right. Now, how far from that house site to the
18 line, if you could draw it on this map, and the one that
19 goes through the center?

20 A The original line which went through the center of
21 the garden area, it was about 200 feet to the, to that
22 line from the house.

23 Q And the final line, they moved it away from the
24 garden, but how far is that?

25 A Pardon?

1 Q The final line?

2 A It was about between 250 and 300 feet.

3 Q Okay. From that house site to the line?

4 A That's correct.

5 Q All right.

6 A It was about a hundred feet from the homesite to the
7 opening where it opened up into the garden area.

8 Q It was an open field?

9 A Yeah, so everything would be exposed.

10 Q Now, you understood that those transmission lines if
11 you run this, in doing these, they're going to be 80 to 93
12 feet high, correct?

13 A That's what they said, yes.

14 Q Does that, what does that do for your thought for a
15 retirement home and spending such a large sum of money and
16 having a transmission line running 400 feet away?

17 A We weren't happy about it. It's not something that
18 we had planned on and we were very unhappy about it.

19 Q Well, at this point, you had been working for several
20 years towards implementing step-by-step homesite, plans
21 for the home, the pond's next, and then you got to build
22 it, right?

23 A That's correct.

24 Q But you had already invested at least 15 percent of
25 the money you were ultimately going to spend building the

1 home?

2 A That's correct.

3 Q And they talked earlier in testimony, Mr. Frazier
4 talked earlier about the fact that you were wishy-washy;
5 you changed your mind and you didn't want the southern
6 route, then you didn't want the southern route. Is that
7 true that you were wishy-washy and told him you did not
8 want the southern route?

9 A No.

10 Q You had a major decision to make about these routes?

11 A Yes.

12 Q And you wanted to get all the information you could
13 get?

14 A That's correct.

15 Q And you consistently told them you wanted the
16 southern route?

17 A That's correct.

18 Q It did present a security concern, but it wasn't
19 enough that you didn't want it?

20 A That was the only concern we had was the security of
21 the property with the southern route.

22 Q Right. If using the southern route, is that going to
23 make the transmission lines easy to see or impossible to
24 see from that homesite?

25 A Impossible to see from that side.

1 Q And that's why you wanted it?

2 A That's correct.

3 Q And you told them that you didn't care about the
4 cottage, because you weren't going to be staying there;
5 that the aesthetics for that cottage weren't as important
6 as the homesite?

7 A That's correct.

8 Q Now, when you had a meeting on November 27th, you
9 said you called that meeting?

10 A Yes, we did.

11 Q Had you ever met with PMPA or had they ever contacted
12 you to want to meet with you?

13 A No.

14 Q So this case been pending nine months, well, nine
15 months, eight months?

16 A Yeah, that's correct.

17 Q And they had never called you?

18 A No.

19 Q And had Mr. Regier ever told you that he was
20 representing PMPA?

21 A No.

22 Q That he was on the board of PMPA?

23 A No.

24 Q All right. So you let him know you wanted to meet
25 with PMPA?

1 A That's correct.

2 Q And did they set up a meeting?

3 A They did set up a meeting.

4 Q And at that meeting, who was present?

5 A All of the City folks, Mark, Todd--

6 Q -- Todd Guy?

7 A Yes. Alan.

8 Q Mr. Regier. Alan Cobb was there?

9 A And, no, Alan; the city manager.

10 Q And also Mr. Frazier and, his boss, Mr. Smoak were
11 there?

12 A That's correct.

13 Q And what did you make clear at that meeting?

14 A Well, we made clear that we wanted to go the southern
15 route.

16 Q Were they accepting of that idea?

17 A We were willing, no, they weren't. They wanted us to
18 go up the middle and they insisted that we look at that.

19 And if we didn't go the center route; that they would take
20 it. And, so we asked how much they were going to pay us.

21 They said, well, based on our experience, about \$8,000.00.

22 And so we told them that we would consider the center
23 route if it was the only option, but we needed more
24 information.

25 Q What did he say, what did PMPA say they had to do to

1 get you that information?

2 A They had to do a survey and a TOPO.

3 Q And they need your consent for that?

4 A I'm sorry?

5 Q They needed your approval?

6 A They needed my approval to go on the property,
7 because they had already sent a surveyor on the property
8 without my approval and staked the property down the
9 center.

10 Q Now, of course, that's a trespass?

11 A That's correct.

12 Q And you were glad to give them permission if they'd
13 asked, wouldn't you?

14 A No.

15 Q You would have let them survey if they had asked?

16 A Oh, if they'd have asked, I probably would have,
17 yeah.

18 Q All right. So where did that meeting end? The
19 November 26th, 2013, meeting when did it, how did it end?

20 A Well, it ended with the fact that they wanted
21 permission to go on the property, and I told them that we
22 would think about whether it was something that we wanted
23 to do or even consider. And that I would let them know if
24 they would have permission to get on the property to do
25 the survey.

1 Q And allowing them to survey, you were going to get
2 answers to some questions you had?

3 A That's correct.

4 Q Did you ever agree to the middle route?

5 A No.

6 Q Did you call, you called Mr. Frazier a few days after
7 that?

8 A Yes, sometime in the next week.

9 Q You told him he had permission to survey, is that
10 right?

11 A That's correct.

12 Q All right. This Defendant's exhibit 3 is a
13 transcript of your voice mail to him?

14 A Yes.

15 Q Did you ever say middle route anywhere in there?

16 A No.

17 Q Did you ever say I consent to doing it exactly the
18 way you want to do it?

19 A No.

20 Q Did you ever say I give up my right to wanting a
21 southern route which I been telling you about for the last
22 six months?

23 A No.

24 Q Did he ever write you after this and say, Mr. Oien,
25 we now have an agreement, it's the middle route?

1 A No.

2 Q Did he write you and say we have an agreement?

3 MR. BANNISTER: Your Honor, I've been trying to be as
4 quite as I can.

5 MR. POPE: Excuse me. I was leading?

6 THE COURT: All right. Rephrase it.

7 Q Did you receive any communication from PMPA, either
8 email or letter, or phone call that said, we now have a
9 deal, middle route?

10 A No.

11 Q Okay.

12 THE COURT: No letter or phone call.

13 Q No letters, no phone calls, no emails about that
14 subject?

15 A That's correct.

16 Q Now, we heard testimony earlier that Mr. Frazier said
17 he called you back. Did you ever get any voice mail from
18 him?

19 A No.

20 Q Did you notice in the answer that PMPA did not say a
21 word about you agreed to the middle route?

22 A I'm sorry?

23 Q I said did you notice in the answer that PMPA filed
24 to the complaint, that PMPA did not mention that you had
25 agreed to the middle route?

- 1 A No.
- 2 Q Now, how much did you pay per acre for your
3 retirement house and property here, not the house, the
4 land, the 116 acres?
- 5 A Paid about \$3,500.00 dollars an acre.
- 6 Q And that was in 2005?
- 7 A That's correct.
- 8 Q All right. And how much is it worth an acre now
9 without any condemning value?
- 10 A It's worth probably well over \$5,000 an acre.
- 11 Q \$5,200.00?
- 12 A Yes.
- 13 Q How much damage did it do to your land value, in your
14 opinion as a landowner, to have a line through the middle
15 of your property?
- 16 A It would probably reduce it in-half, easily.
- 17 Q And do you think your property, I know you don't want
18 to brag, but your property is truly unique?
- 19 A Yes.
- 20 Q It's isolated?
- 21 A Yes.
- 22 Q It's wooded?
- 23 A Yes.
- 24 Q It's near amenities?
- 25 A Yes.

1 Q And it's beautiful?

2 A Yes.

3 Q So you paid almost \$400,000.00 for your property?

4 A Yes.

5 Q Now, what about with the power line to the south on
6 the southern route that they had drawn, what would that
7 affect, how would that have an effect on your neighbors,
8 their property?

9 A Well, it won't have nearly the effect that a line
10 through the center of it would.

11 Q And you would claim no damage to the remainder if
12 they do the southern route?

13 A That's correct.

14 Q But by using the middle route, you said you think
15 it's fifty percent devalued?

16 A Yes.

17 Q How much money have you put into your property on all
18 of these various repairs, construction of barns,
19 underground power and all the different things?

20 A Over \$800,000.00.

21 Q And that includes the land?

22 A That's correct.

23 Q So \$430 for the land and \$370 or so for the
24 improvements?

25 A That's correct.

1 Q And you mentioned a meeting on November 26th, 2013,
2 did you have your house plans with you?

3 A Yes.

4 Q Are these, a multi-set of house plans furnished to
5 you by Lindell Logging, Lindell Homes?

6 A Yes.

7 Q And this is part of what you paid \$78,000.00 for?

8 A That's correct.

9 Q And you had them at that meeting?

10 A Yes.

11 Q Did anybody in that meeting want to see those plans
12 or ask about them or let you explain them?

13 A No.

14 Q Was the attitude in those, in this one, one and only
15 meeting you had with PMPA, was their attitude, did it
16 appear to be that they wanted to listen and understand the
17 concerns of the landowners?

18 A That they wanted to understand?

19 Q Did it appear that they wanted to understand the
20 concerns for you, the landowner?

21 A No.

22 Q What did they want to talk about?

23 A They appeared to have already selected the route and
24 that they were going to put it down the middle whether we
25 liked it or not.

1 Q And did you make it clear at that meeting that you
2 didn't like that?

3 A We didn't like that.

4 Q All right. Now, did you see later the survey
5 results?

6 A Only when they, they, Mr. Frazier sent the proposal.

7 Q And you saw the middle route?

8 A Yes.

9 Q And did you go to the City in March of 2014?

10 A Yes.

11 Q And what'd you tell them then?

12 A We told them that we weren't, we wouldn't accept
13 their offer.

14 Q And you wanted the southern route?

15 A And I wanted the southern route.

16 Q And were you, you said you had, were you expecting to
17 have a response to that?

18 A Yes.

19 Q Did you get one?

20 A No.

21 Q Did you get the right-of-way agreement in August of
22 2014?

23 A In August of 2014.

24 Q Did you get a letter, I'll show you exhibit 8, from
25 PMPA August 14, 2014, that asks for you to either sign the

1 right-of-way or give a response by August 22?

2 A That's correct.

3 Q And does that letter, in the first sentence it says,
4 PMPA had been proceeding with the transmission line route
5 that was agreed to by both you, both of you, you and your
6 wife, at the meeting we had at the City on March 14, 2014.

7 Is that true?

8 A No it is not.

9 Q Is that the letter you just described, I mean, the
10 meeting you just described?

11 A That is.

12 Q And you made it clear you didn't want, you did not
13 want the middle line, you wanted the southern line?

14 A That's correct.

15 Q All right. So that was a misstatement?

16 A Yes.

17 Q All right.

18 MR. POPE: I offer Plaintiff's exhibit 8.

19 THE COURT: Any objection?

20 MR. BANNISTER: No, Your Honor.

21 THE COURT: You may.

22 (Whereupon, Plaintiff's 8 was admitted into
23 evidence.)

24 Q All right. And here's Plaintiff's exhibit 43 which
25 is written approximately a week later, August 21. This is

1 an email from you to Mr. Frazier?

2 A Yeah.

3 Q And what do you say in the second sentence?

4 A We did not agree to any transmission line route or
5 contract proposal.

6 Q So you set the record straight?

7 A Yes.

8 MR. POPE: I offer 43 into evidence.

9 THE COURT: Any objection?

10 MR. BANNISTER: No, Your Honor. Your Honor, if I
11 can, exhibits that were previously marked, I understood
12 included a bunch of transcripts. So we don't object to
13 any of the exhibits coming in. I understood he had
14 included in his transcript excerpts in the submissions.

15 THE COURT: You're not going to have an objection?

16 MR. BANNISTER: We don't have an objection to any of
17 the exhibits you've marked prior to trial.

18 THE COURT: Subject to, that would be exhibit 1
19 through 44 inconclusive?

20 MR. BANNISTER: Yes, sir; Your Honor.

21 THE COURT: Well, those will be admitted without
22 objection.

23 MR. POPE: Okay.

24 (Whereupon, exhibits 1 thru 44 were admitted into
25 evidence.)

1 Q So you made the record clear that your letter,
2 exhibit 43 on August 21, that in neither November nor in
3 March of '14 did you ever agree to the middle route?

4 A That's correct.

5 Q And this route is put in the south instead of where
6 it is in the middle, do you intend to build your vacation
7 home, your retirement home?

8 A I would have.

9 Q I'm talking about if it goes to the south?

10 A If it goes to the south.

11 Q You will?

12 A I would, yes.

13 Q If it goes through the middle, is that suitable for
14 the kind of homesite that you had planned?

15 A No.

16 Q And neither PMPA nor its appraiser ever came on the
17 property and looked at your homesite and talked to you
18 about those plans?

19 A No.

20 MR. POPE: Okay. Thank you.

21 THE COURT: Cross-examination.

22 MR. BANNISTER: Thank you, Your Honor.

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25 By Mr. Bannister:

1 Q Mr. Oien, your lawyer asked you a lot of questions
2 about the home that you're going to build on the property.
3 Do you recall when you entered into that contract?

4 A Yes, it was in September of 2008.

5 Q And are you familiar with the contract?

6 A Yes.

7 Q Do you know when, according to the terms of the
8 contract, it expires?

9 A Yes.

10 Q And forfeit your down-payment?

11 A Yes.

12 Q And--

13 A I believe it--

14 Q --when does the contract say?

15 A It's one year, I believe.

16 Q All right. Let me refer you to line, to number 7,
17 paragraph 7 on page three of four, leading up to three
18 years.

19 A Paragraph what?

20 Q Seven.

21 A Seven.

22 Q The shipping date.

23 A The shipping date, yes.

24 Q The bottom of that paragraph?

25 A Three years.

1 Q Three years?

2 A Yes.

3 Q And did you have any materials shipped to your
4 homesite prior to June 23rd, 2011?

5 A No, I did not.

6 Q Does the proposed right-of-way through the center
7 route and the middle route interfere with your barn?

8 A No.

9 Q Did you have to move your barn?

10 A No.

11 Q Did you have to take any of your equipment out of
12 your barn?

13 A No.

14 Q Okay. Does the proposed right-of-way interfere with
15 the well that you have dug for your new home?

16 A No.

17 Q How about the electricity that you ran underground to
18 the homesite?

19 A It goes over the top of the easement; that's all.

20 Q You don't have to tear it out and start over?

21 A No.

22 Q Does part of the construction of the transmission
23 line make you ungrade or change the grade that you've
24 prepared for your homesite? I mean, are they going to put
25 dirt on there? Are they going to change the grading that

1 you've done for the homesite where you're going to build
2 your home?

3 A No.

4 Q Have you started construction of the pond yet?

5 A No.

6 Q Is the right-of-way, it looked like to me, is not
7 going to be anywhere close, it won't be, it won't
8 interfere with the construction of the pond that you were
9 planning?

10 A No.

11 Q Okay. All right. This big strip right here, can you
12 tell the Court what that is?

13 A That's the Duke Power right-of-way.

14 Q Is it a road?

15 A No, it's a right-of-way.

16 Q So there's not a road on there?

17 A No, sir.

18 Q That's just a transmission line?

19 A That's correct.

20 Q Do you know how close that transmission line is to
21 your barn?

22 A It's probably a hundred feet.

23 Q It's closer than the proposed transmission line is to
24 your barn?

25 A Yes, but the barn doesn't have anything to do with

1 it.

2 Q Okay. I'm just trying to make sure I understood,
3 because you said you built the barn to hold your equipment
4 before you knew where the transmission line was going to
5 go?

6 A Yes.

7 Q Okay. All right. And then this is, the red X is
8 your homesite?

9 A That's correct.

10 Q Do you know how close that is to the exhibit Duke
11 Power transmission line that goes through the woods right
12 there?

13 A It's probably about 350 feet or so.

14 Q Okay. So that transmission line was 350 feet from
15 your house, the dream home, right?

16 A That's correct.

17 Q And that is not going to interfere with your concept
18 of the perfect retirement location?

19 A That's correct.

20 Q Okay. All right. Now, you talked about not being
21 notified that there was, you weren't contacted by anybody
22 at the City of Newberry, or Todd Guy, or PMPA about the
23 transmission line until September, the meeting you called
24 in September, is that right?

25 A No.

1 Q No, that's not right?

2 A No.

3 Q Tell me, see I'm trying to follow what point you're
4 making by the timing of when?

5 A In June, we found out that they were out there. That
6 was all. We didn't have any discussions about the line.
7 It was just that I came out of the property and Duke Power
8 and they were having a discussion and it was obvious they
9 were, at the time it wasn't obvious. But later, it became
10 obvious they were talking about the tap point.

11 Q All right. And they were having that meeting in the
12 Duke Power right-of-way, right?

13 A That's correct.

14 Q All right. So you're not saying they were
15 trespassing that day you came out to their property?

16 A Yes, they did, because it's still my property and the
17 gate was open and then it was closed.

18 Q Okay.

19 A So they have to have access from my property, from my
20 gate in order to get on the Duke property.

21 Q So you're saying Duke property does not have access
22 to its right-of-way to take it's Duke Power employees out
23 there if it wants to?

24 A Yes, they do, but not at that point.

25 Q Not at that point?

1 A Not at my gate. They have access further down the
2 right-of-way.

3 Q They have a key to the gate?

4 A No.

5 Q How did they get through the gate?

6 A They opened the gate and came in. We were there, so
7 it was unlocked.

8 Q The gate was unlocked?

9 A Yes.

10 Q Does your gate span the Duke Power right-of-way so
11 that it blocks them from going down it?

12 A No. It spans the O'Dell Road.

13 Q O'Dell, is that a road?

14 A That's a road that comes into the--

15 Q A public road?

16 A --comes into the property.

17 Q Is it a public road or a private road?

18 A No, it's private. It's a public road up my gate, and
19 then it's private.

20 Q All right. But however they got on there, you say
21 they trespassed to get on there?

22 A No, I didn't. No, I didn't say they were
23 trespassing. I said that it appeared they were
24 trespassing, because I didn't know who they were. So I
25 stopped and asked who they were.

1 Q And did they tell you?

2 A Yes, they did.

3 Q Were they polite?

4 A Yes.

5 Q Did you have any problems with the discussion you had
6 with them?

7 A No. I let them continue to have their discussion,
8 and I went on about my business.

9 Q And at that time, you didn't know they were referring
10 to the right-of-way that would be crossing your property?

11 A No, they only, I could only guess at that point.

12 Q All right. And had you heard from Misty West prior
13 to that incident or did you hear from her afterward?

14 A Prior to.

15 Q While you were there, did you talk to her about the
16 right-of-way across your property?

17 A No, I didn't other than to get the information from
18 Todd Guy on how to contact them for contact information
19 for the City.

20 Q Okay. And when did they first contact the City about
21 the right-of-way?

22 A I called Todd Guy that next week to have him come out
23 and tell me what they were going to do.

24 THE COURT: Excuse me. I'm just not quite sure.
25 What's this, the week after Misty's email to you?

1 A No, the week after the Duke people were on the
2 property.

3 THE COURT: Thank you.

4 Q Are you sure it was in August?

5 A Not totally sure when it was. It would have been
6 June, I believe, actually is when they were on the
7 property.

8 Q All right. And you would have, it may be even May?

9 A Pardon me?

10 Q It may be May?

11 A No. May was, no, it was not done in May. We hadn't
12 heard from anybody in May other than Misty West.

13 Q So you ran into the Duke Power guy in June and called
14 Todd in June to talk to him and ask him to come out. When
15 did he come out and talk to you?

16 A I believe it was in August when we went back up,
17 because we aren't up there all the time.

18 Q All right. And you offered some testimony about the
19 delay and you had the personal meetings, but you live in
20 Florida, right?

21 A Pardon me?

22 Q You live in Florida?

23 A Yes.

24 Q So it's not like they can just bop over to Florida to
25 see you; they got to make an appointment and they got to

1 catch you when you're here, right?

2 A That's correct.

3 Q You didn't expect Todd Guy or anybody to come to see
4 you in Florida?

5 A Of course not.

6 Q Okay. All right. So the next time you were up here
7 after you saw him in June on your property, you met with
8 him and it was August and you met with Todd?

9 A Yes.

10 Q All right. You liked the homesite that you picked,
11 right, and you liked this piece of property, this 116
12 acres?

13 A Yes, very much.

14 Q All right. And you told your lawyer, you said it
15 was, the transmission line was going to reduce the value
16 of the 116 acres by half?

17 A Yes.

18 Q All right. What do you believe your property is
19 worth today as it sits with no transmission?

20 A It's worth probably in the \$650,000.00 range.

21 Q \$650,000.00?

22 A Somewhere in there.

23 Q All right. And so it's your testimony that if they
24 put the transmission line in the middle route pursuant to
25 the condemnation notice, that route, that it will be worth

1 \$325,000.00?

2 A That's correct.

3 Q What did you pay, do you remember what you paid for
4 the tract with the pond and the house on it?

5 A The original price?

6 Q Yes, sir.

7 A I believe it was about \$430,000.00.

8 Q Just the one tract?

9 A For one tract?

10 Q You know, you bought two, right?

11 A Yes. We bought them together, though.

12 Q What?

13 A One was, I can't remember the breakdown on it, but
14 one was 66 acres and one was 50 acres.

15 Q The 50-acre one with the home on it was \$280?

16 A That's about right.

17 Q And the one with no homesite with no home on it was
18 \$190,000.00?

19 A That's about right, yeah.

20 Q And do you believe, it's your testimony today that
21 those two pieces of property would be less now with the
22 transmission line than they would have been in 2005?

23 A The line splits it right in the middle. It's going
24 to have a big impact on how you sell it. You're going to
25 have to sell it as one piece.

1 Q Well, it didn't matter. You paid about \$470, I'm
2 just making sure I got it right. You paid \$470 and with
3 that transmission line, it'll be worth \$325?

4 A That's correct.

5 Q And you bought those two pieces separate? I mean,
6 you ultimately made them at the same time, but they were
7 different owners?

8 A That's correct.

9 Q And you bought one from one owner in a separate
10 transaction and one from another owner--

11 A That's correct.

12 Q --the next day?

13 A The same day or whatever. It was at the same time.
14 We did it all at the same time.

15 Q All right. In the September meeting when you talked
16 about the southern route, you did raise an issue that
17 there was some concern about the people next-door?

18 A No, I raised concern about the security from the
19 property next-door.

20 Q All right. Well, I, was the security for fear that
21 there would be dogs, horses and stuff coming over or was
22 it because there were people over there?

23 A Because there are people over there.

24 Q So you got security concerns about your neighbors?

25 A That's correct.

1 Q Okay. And whose idea was it to explore the northern
2 route?

3 A It was ours.

4 Q Your idea?

5 A Yes.

6 Q As an alternative to the southern route and the
7 middle route?

8 A That's correct.

9 Q Okay. Do you think it was reasonable for the people
10 at PMPA and the City of Newberry to believe, based on your
11 concerns about the exposure the southern route would give
12 to your neighbors and your request to explore a northern
13 route, that they believed you did not want the southern
14 route?

15 A No.

16 Q You don't believe that?

17 A No, that's correct. I don't believe that and, in
18 fact, when they drew the line for the northern route and
19 showed me that how much it would cut off the property, I
20 said that the northern route was totally out.

21 Q All right. And do you believe it was reasonable for
22 the people, the City of Newberry and PMPA to believe that
23 you for sure did not want the northern route?

24 A That's correct.

25 Q Okay. And based on it cutting off so much property?

1 A Based on what?

2 Q Based on that it cut off so much property and--

3 A That's correct. There is a little zag in there, a
4 zigzag that they have to go around, and they would have to
5 cut all that off. And they would go straight from the
6 pole across and it would take a big swath out of that and
7 it would be very close to the house.

8 Q When you were discussing the center route with the
9 PMPA and the City of Newberry, you asked if they could
10 draw the line to miss some oak trees?

11 A No. There was actually two center routes, the one
12 that they had surveyed and staked which went through the
13 center. And there was another, a second one that I said
14 if we have to put it through the center, I will like it to
15 go as close to the property line between the two pieces of
16 property as possible and that would have impacted the
17 trees going through there and that was one of the issues
18 that I had with that.

19 Q All right. And did they, subsequent to your concern
20 about the trees, did they draw a line to miss those trees?

21 A No. There was no way they could miss the trees going
22 down that line.

23 Q And didn't they angle it so as to avoid those trees
24 and put it basically in the middle of your, the little
25 field there?

1 A No. The only angle they had was at the tap point,
2 that it angled down to the property line, and then ran
3 down the property line from there.

4 Q And they never presented you with a drawing that was
5 designed to leave the oak trees in place?

6 A No, not on the property line.

7 Q And not on the property line, but somewhere down the
8 center adjusted to miss those trees?

9 A Well, the original property, the original survey was
10 down the middle and it didn't impact the trees. But that
11 was not a line that I wanted to start with. We didn't
12 want it going down the center. So we were the ones that
13 said if we have to consider a center line and a center
14 route; that we want it on the property line so that at
15 least it moves it away from where it's in plain sight of
16 the homesite. We're trying to get it as far south as we
17 could get it. But in no, and I never said that I wanted a
18 center route. I said if we have to consider it, I will
19 consider the route based on the property line.

20 Q So August 14, 2014 when you got Plaintiff's exhibit A
21 or PMPA, have you seen that?

22 MR. POPE: Which one?

23 MR. BANNISTER: A.

24 MR. POPE: Here it is.

25 MR. BANNISTER: Plaintiff's.

1 Q You were surprised to get a letter saying that PMPA
2 believed that you had agreed to the center route adjusting
3 the, hug the property line between the two tracts?

4 A Yes, that was in August of 2014, but that was when
5 they sent the proposal.

6 Q So you were or you were not surprised--

7 A Oh, I was surprised.

8 Q --when you get a letter that said, PMPA has been
9 proceeding with the transmission line route that was
10 agreed to by both of you at the meeting we had with the
11 City of Newberry.

12 A I was very shocked by that and also, I responded to
13 that immediately and told him that it was not accurate.

14 Q We're not in agreement with that?

15 A I'm sorry?

16 Q You said we're not in agreement with that?

17 A That's correct.

18 Q Was that correspondence that you weren't in agreement
19 with the terms of the right-of-way or that you wanted the
20 right-of-way agreement to have a clause, that you wanted
21 time to access, or just you didn't want anything to do
22 with it?

23 A We did not agree on anything in that meeting and
24 that's what I told him. There was nothing that we agreed
25 to. We agreed to no line, and we agreed to no or not to

1 the contract.

2 Q All right. This is a couple of questions. If the
3 transmission line takes a southern route and spans the
4 pond where you can see it from the house, do you believe
5 there is any damage to any of the remainder of your
6 property?

7 A Ask me that again, please. I'm sorry.

8 Q That's all right. If we take the southern route that
9 you've suggested, do you believe that the installation of
10 that transmission line damages any other part of your
11 property? Is there any damage to the remainder of the
12 property?

13 A There's damage just going across the property.
14 However, it's probably the least amount of damage that
15 would take place. It's like we already have one
16 transmission line going across the property and now we get
17 another one, so it's going to damage the property.

18 Q So and there will be parts of your property that are
19 located on the opposite side of the transmission line,
20 right?

21 A That's correct.

22 Q And you believe those to be damaged or not?

23 A No. Not if it's the southern route. It would be the
24 least amount of damage that could be caused.

25 Q I know. But do you understand I'm trying to figure

1 out if you mean the least amount of damage in that it
2 damages it, but just a little bit, or if you mean there is
3 no damage to the remainder?

4 A I would have a very hard time selling a million
5 dollar home to someone on a piece of property that had two
6 transmissions lines running through it.

7 Q Period?

8 A It would be very difficult.

9 Q So there would be damage to the remainder of the
10 property with the southern route transmission line that
11 was chosen?

12 A There would be some damage, yes.

13 Q And same for the northern line? If they chose the
14 northern route, which everybody rejected. But if they
15 chose that, there would be damage to the remainder,
16 because it would be a second transmission line through
17 your property?

18 A It would be some damage, yes.

19 Q Okay, And do you know how much that damage would be?

20 A No.

21 Q A third, fourth, ten percent?

22 A Probably ten to twenty percent depending upon, I
23 mean, if you put a value to the property per acre, yes.

24 Q Let's say you put a value on it that you did earlier,
25 \$600, gosh, \$650,000.00. That's what your property is

1 worth today without a second transmission line. What is
2 it worth if you put a transmission line on the southern
3 route?

4 A It would probably reduce it by somewhere in the
5 \$30,000.00 range I would guess.

6 Q Damage to the remainder?

7 A Yes.

8 Q Plus, the acquisition costs for the right-of-way,
9 right?

10 A That's correct.

11 Q And you lose some acreage when you do that?

12 A Yes.

13 Q And there'd be additional damage on top of that
14 remaining acreage?

15 A Yes.

16 Q All right. How about the northern route. I know
17 we're not, if you put it up there.

18 A It would probably be five to ten percent more just
19 because of the area it would take.

20 Q So it'd take more area, and then it would reduce it
21 by twenty percent?

22 A Probably, yes.

23 Q And it's your property--

24 A I'm not a real estate expert, so I don't know what it
25 would go for other than what I feel that I could get for

1 it.

2 Q It's your opinion as the owner of the land that the,
3 any transmission lines would have damaged the remainder of
4 the property by some percent?

5 A Yes.

6 Q All right. I got maybe two more questions or maybe
7 three more. How many proposed routes has PMPA showed you
8 throughout this process?

9 A Three.

10 Q Not PMPA, but all of the people dealing with this,
11 how many proposed routes did they put in front of you?

12 A There were four.

13 Q Four?

14 A Yes.

15 Q And which of those four have you said that's the
16 route that I want you to take?

17 A The south.

18 Q The what?

19 A The south, the southern route.

20 Q So you agree to the drawings as they were presented
21 to you for the southern route, that's your testimony
22 today?

23 A Yes.

24 Q All right. Real quick. You currently have a guy
25 who's helping you, Paul Major?

- 1 A Yes.
- 2 Q All right. He is your forester?
- 3 A Correct.
- 4 Q So if you cut timber, he gets commission?
- 5 A Correct.
- 6 Q Is he filling in a role for you; is he your appraiser
- 7 in this case?
- 8 A He is our appraiser, as well; yes.
- 9 Q Okay. And do you pay him by the hour or is he on a
- 10 contingency? How does he get paid?
- 11 A I pay him by the hour.
- 12 Q By the hour. All right. If you build a homesite,
- 13 you build a home, does he make any money?
- 14 A If I build a home, would he make any money?
- 15 Q Sure.
- 16 A No.
- 17 Q He doesn't stand to gain anything if you build the
- 18 dream vacation home?
- 19 A I'm sorry?
- 20 Q He doesn't stand to gain any money if you build the
- 21 dream vacation or retirement home?
- 22 A No.
- 23 Q Does he get any money for taking trees off the
- 24 property for the right-of-way?
- 25 A Yes.

- 1 Q What does he get for that?
- 2 A I don't know. We haven't discussed that.
- 3 Q But he would be your guy that would sell that timber?
- 4 A That's correct.
- 5 Q Do you pay him to manage your property while you're
- 6 not here?
- 7 A Pardon me?
- 8 Q Does he manage your property while you're not here?
- 9 A No.
- 10 Q Who does that?
- 11 A I have no one doing that.
- 12 Q Did you have somebody back in 2013?
- 13 A No. I had a caretaker that watched the property but
- 14 no, he didn't manage it.
- 15 Q So is Paul Major doing that now?
- 16 A I'm sorry.
- 17 Q Is anybody doing, watching the property now?
- 18 A I have a neighbor that watches the front entrance
- 19 and, basically, watches the property when I'm gone.
- 20 Q Do you pay your neighbor anything?
- 21 A No.
- 22 Q Do you give him access to the pond or house?
- 23 A No.
- 24 Q Has he got a key to the house?
- 25 A No, he does not.

1 Q Does anybody other than you and your wife have a key
2 to the house?

3 A No.

4 Q You have alleged in your complaint that the
5 substation that will service the City of Newberry is not
6 for public purpose. Do you believe that that is true,
7 that it's not for a public purpose?

8 A I believe that's true. When we were there at the
9 very first meeting with them, they were very specific
10 about the fact that they had to pull the switch at the
11 Kraft Foods facility in April of 2014, so it was pretty
12 evident that it was based on Kraft Foods.

13 Q So you have alleged in your complaint that the taking
14 is not necessary and by that, you mean they don't even
15 line it off?

16 A I didn't say that. We asked them that if we, you
17 know, if they couldn't put the line in a different route,
18 did it have to come across our property and they said yes.
19 Mark Regier said yes, that it could come a different
20 direction but that it would cost too much money. That was
21 the end of the discussion.

22 Q So you guys don't really want any transmission line
23 on your property at all?

24 A We already have one that spans the entire width of
25 the property. We just didn't want another one.

1 Q That's what I meant. So you don't want another one?

2 A We don't.

3 Q This is really about you and your wife do not want
4 another transmission line on your property?

5 A That's correct, and I don't think you would be very
6 comfortable with a transmission line across your property.

7 MR. BANNISTER: Your Honor, no other questions.

8 THE COURT: Redirect.

9 MR. POPE: Yes.

10 REDIRECT EXAMINATION

11 By Mr. Pope:

12 Q This is as he said in redirect, Mr. Oien. You've
13 confirmed here today that you want the southern route,
14 correct?

15 A That's correct.

16 Q And you've said it all along?

17 A That's correct.

18 Q Now, he asked you a question about damage to the
19 remainder and that's something that Mr. Rogers and Paul
20 Major are going to deal with that, correct?

21 A That's correct.

22 Q Have you ever worked with damage to the remainder
23 before?

24 A No, I have never.

25 Q All right. If you use the southern route, you would

1 take the position that you would be entitled to whatever
2 acreage they take, compensation for that per three acres
3 or four or whatever it is, right?

4 A That's correct.

5 Q If there's no other damage to the rest of your
6 property?

7 A No.

8 Q All right. Because you can't see this other line
9 from your homesite, correct?

10 A That's correct.

11 Q Now, he asked you questions about public purpose and
12 necessity. You have no legal training whatsoever?

13 A No.

14 Q Now, when you said that you expressed some thought
15 that you were looking at three routes about security on
16 the southern route, you never took the southern route off
17 the table?

18 A No.

19 Q And considering all three routes, there is no
20 question in your mind today that the southern route is
21 what you have been telling them all along and what you
22 wanted?

23 A That's correct.

24 MR. POPE: And nothing further, Your Honor.

25 THE COURT: All right. Thank you, sir. You may step

1 down.

2 MR. OIEN: Thank you.

3 MR. POPE: Can we take a short break.

4 THE COURT: I was about, it's 3:00 o'clock, so let's
5 take about a 15-minute break.

6 (Whereupon, a short break was taken.)

7 THE COURT: All right, Mr. Pope.

8 MR. POPE: Call Paul Major to the stand.

9 Paul Major, being first duly sworn, testified as
10 follows:

11 DIRECT EXAMINATION

12 By Mr. Pope:

13 Q And where do you live, Mr. Major?

14 A 2309 Morris Road, Prosperity, South Carolina.

15 Q Your occupation is what?

16 A I'm a forestry consultant, and I am also broker real
17 estate, and I also appraise real estate.

18 Q And what's the name of your company?

19 A Major & Company.

20 Q All right. Education-wise, you graduated from where?

21 A Clemson University.

22 Q What year?

23 A 1973.

24 Q With a degree in what?

25 A Forest Management.

1 Q And what licenses do you hold as a forester?

2 A I'm a registered forester in North Carolina and South
3 Carolina. I hold the Certified Forester designation from
4 the Society of American Foresters, and the ACF designation
5 from the Association of Consulting Foresters.

6 Q Now, how many counties do you operate in as a
7 forester?

8 A We've worked all over the state but primarily,
9 Newberry and adjoining counties.

10 Q Have you been to Orangeburg?

11 A I have.

12 Q And many other counties?

13 A Yes, sir.

14 Q All right. Now, you also do real estate appraisals?

15 A I do.

16 Q On a regular basis?

17 A I do.

18 Q And what licenses do you have, do you hold in
19 appraisals?

20 A I'm a Certified General Real Estate Appraiser in
21 South Carolina.

22 Q And you've had that designation for a good long
23 while?

24 A Thirty years.

25 Q And your practice specializes in rural properties,

1 and retirement-type properties, and timber properties?

2 A Rural properties and timberland, primarily.

3 Q Okay. And your appraisal practice, real estate
4 appraisal practice is a slightly smaller geographic area
5 than the forestry?

6 A Oh, absolutely. Yeah.

7 Q Okay. How many counties do you do appraisals?

8 A Primarily, Newberry and adjoining counties, but we
9 will go outside of that area as demand requires.

10 Q All right. Now, have you made appraisals of real
11 estate that will be used by banks in making loans and
12 things like that?

13 A I have.

14 Q And you've done appraisals that have been accepted by
15 probate courts for the purposes of establishing values of
16 property?

17 A Yes.

18 Q And many other scenarios?

19 A Yes, sir.

20 Q Okay.

21 MR. POPE: Your Honor, I would offer Paul Major as a
22 expert both as a forester and as a real estate appraiser.

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

24 MR. BANNISTER: Judge, and as it relates to, I
25 stipulate.

1 THE COURT: Okay. Very good. I find that he is both
2 an expert in forestry and real estate appraisal.

3 MR. POPE: Yes, sir.

4 THE COURT: Thank you.

5 Q Approximately, when did your first involvement with
6 the Oien property, which is exhibit 1, Plaintiff's exhibit
7 1?

8 A Sometime in late 2012, I believe, I first met the
9 Oiens and we discussed forest management.

10 Q And were they interested in doing some sort of
11 selective thinning at some point?

12 A Yes. We, ultimately, prepared a management plan and
13 planned a thinning to be done on their property.

14 Q Is that a best practices thing to do if you own
15 timberland?

16 A It is, but their particular management plan was less
17 forest management timber-production oriented as it was
18 aesthetically-driven and with the cosmetics to make the
19 place look better.

20 Q Well, tell us, tell the Court about that project for
21 the property? Tell us how it sits and how it yields and
22 what drawbacks it has, if any, and what advantages it has
23 for its highest and best use.

24 A It's a unique property mostly in timber, partly open.
25 There is a very nice pond on the property. It lays very

1 well. It's a nice combination of pine and hardwood types.
2 It's visually appealing. There is a nice little cottage
3 down near the pond. It's unique in our marketplace.

4 Q And what about its accessibility and/or lack thereof?

5 A Part of its uniqueness is the fact that it's at the
6 end of a public road. There is no through-traffic. There
7 are no adjoining roads. It is unto itself. It's quiet
8 and unique.

9 Q What about its remoteness from stores and things?

10 A That's part of its uniqueness, as well. While it is
11 very remote in its field, it's very close to all the
12 amenities that one would want to have, shopping, medical
13 care, entertainment, the Interstate, and we're only an
14 hour from the airport. So it's a combination of many good
15 things.

16 Q Would you agree that it's a truly unique property?

17 A I think it is certainly a unique property.

18 Q And when Mr. Oien bought the property and paid
19 \$35-\$3700 an acre, do you think that was like top dollar
20 for that kind of property?

21 A Yes, that property was going at a very high rate in
22 the years that he bought the property, in the year that he
23 bought the property.

24 Q And he actually assembled two similar properties
25 together into one--

1 A Correct.

2 Q --making it more desirable or would it be less
3 desirable?

4 A It's certainly more desirable.

5 Q Okay. And what is the highest and best use of the
6 Oien tract, the 116 acres?

7 A In my view, it's as a high-end rural residential
8 homesite.

9 Q Okay. And you're aware that Mr. Oien has committed a
10 substantial amount of money to improve that property?

11 A Yes, sir.

12 Q Have you seen it with your own eyes?

13 A Have I been on the property?

14 Q Yeah.

15 A Yes, sir. Many times.

16 Q Well, tell us, you've been on the property how many
17 times?

18 A Oh, dozens.

19 Q Now, is there any, literally any square foot of that
20 property you haven't walked on?

21 A I've walked on most of it; yes, sir.

22 Q Well, tell us the features that you think make it
23 unique and make it desirable that add to value?

24 A Well, the pond I think is a very important part of
25 that value. There are other pond locations on the

1 property that make it desirable to expand its uniqueness
2 in that way. There is a good bit of hardwood on the
3 property in addition to the pine that's very aesthetically
4 pleasing. From a marketing point of view, I think it's
5 very desirable. Many people would view that as a great
6 place to live. The fact that it is so quiet and removed
7 unto itself makes it even more appealing to most people.

8 Q So you've seen Mr. Oien's barn that he built?

9 A I have.

10 Q You became familiar with the property several years
11 after he did all that?

12 A Yes.

13 Q All right. And the barn is like 7,000 square feet?

14 A It's large; yes, sir.

15 Q And you've seen what's in it?

16 A I have.

17 Q Tractors, backhoes--

18 A Farm equipment.

19 Q --bulldozers?

20 A Yes, sir.

21 Q And you've seen the homesite?

22 A I have.

23 Q And you're aware of what kind of power is installed
24 for that?

25 A Newberry Electric Coop has buried a line there for

1 residential use.

2 Q And what about other utilities?

3 A I am aware that there is a well there that's been
4 drilled.

5 Q And the site for the home is graded, too?

6 A It is.

7 Q And you've seen the picture of the house that Mr.
8 Oien was planning to build?

9 A I have.

10 Q And you heard the testimony he had about his
11 commitment and his down payment were made in the year the
12 economy crashed?

13 A Yes, sir.

14 Q And he still has plans--

15 A Yes, sir.

16 Q He doesn't have a power line in front of him?

17 A No.

18 Q Do you think that the Oiens are using this property
19 to its highest and best use?

20 A They are developing. It's a place that they visit
21 frequently.

22 Q Okay. Now, you've walked the old property. You've
23 walked the southern line, as well?

24 A Yes.

25 Q Do you see anything on the southern route that would

1 make it, in your opinion--

2 A No, sir.

3 Q --that would make it undesirable for the
4 right-of-way?

5 A Not that I see.

6 MR. BANNISTER: Your Honor, I'm going to object.

7 THE COURT: I will sustain the objection.

8 MR. BANNISTER: Thank you, Your Honor.

9 Q Have you walked lots of transmission rights-of-way in
10 your--

11 A Yes, sir.

12 Q --in your life?

13 A I have.

14 Q All right. Is the lay of the land on the southern
15 route consistent with any kinds of terrains--

16 MR. BANNISTER: Objection.

17 Q --that you've walked on on other rights-of-way?

18 THE COURT: Hang on.

19 MR. BANNISTER: Judge, I'm going to object to him
20 talking about where you can and can't put a transmission
21 line. He's qualified as a forestry expert and an
22 appraiser.

23 THE COURT: I agree, but I think the question is the
24 topography similar to right-of-ways, so you can ask that
25 if that's the question.

1 MR. POPE: Yes, sir.

2 THE COURT: I overrule the objection. All right.

3 Okay.

4 A I don't see anything very different from other power
5 line rights-of-way that I've seen.

6 Q And you've walked the entire southern boundary all
7 the way to the pond?

8 A I have; yes, sir.

9 Q And around the pond?

10 A Yes, sir.

11 Q What is the before value of this property, have you
12 computed that?

13 A I have. If my memory serves correctly, about
14 \$603,000.00 dollars is my estimate.

15 Q And what is the per acre evaluation to get
16 \$603,000.00?

17 A Right at \$5,200.00 dollars an acre.

18 Q Okay. \$5,200.00 per acre?

19 A Yes, sir.

20 Q Okay. Now, what, describe what the effect of a
21 middle or central right-of-way transmission line like
22 you've seen that PMPA is intending to try to do. What is
23 the effect of that on valuation of a property that's has a
24 highest and best use of, as you described, a high-end
25 residential retirement?

1 A I think it essentially eliminates that highest and
2 best use. I don't think a reasonable person or certainly
3 a buyer of real estate would build a house like that on
4 what you just showed me overlooking a power line.

5 Q And you've experienced that in your work--

6 A I have.

7 Q --the adverse effects of unattractive conditions?

8 A Yes, sir.

9 Q And do you believe or not believe that aesthetics
10 pays a central role in fair market value of a high-end
11 residential tract?

12 A It does. It impacts the marketability of the
13 property. I don't think a reasonable person would value
14 the property, pay the price necessary to get to the value
15 that I just mentioned.

16 Q Well, with the middle line, assuming the middle right
17 of the PMPA line were allowed and it went right through
18 the middle, is that going to be plainly visible assuming
19 that the poles are 70 to 90 feet high? Is that going to
20 be plainly visible from that homesite?

21 A I think so.

22 Q Is that going to be good or bad for the fair market
23 value?

24 A Negative.

25 Q What is it, have you marked, have you walked, marked

1 the distance from the homesite to the line through the
2 middle?

3 A Yes.

4 Q What is it?

5 A I would estimate it 400 feet.

6 Q And have you been consulted about doing a pond, a
7 small pond right by the homesite?

8 A Just southwest of the homesite; yes, sir.

9 Q Why is it southwest to the homesite?

10 A Because the terrain fits perfectly for a pond
11 construction. There are two opposing hills between which
12 a dam could be built at a fairly minimal cost.

13 Q And is there a spring or some water source for that?

14 A There are a couple of good water sources there. I
15 think it would be fed by itself. I mean, it wouldn't take
16 a large surface area to fill it. I believe there are easy
17 on-site water source.

18 Q It's drawn here where Mr. Oien--

19 A Yes, sir.

20 Q And that would be how big acreage, sir?

21 A Less than two, I think.

22 Q Sir?

23 A Less than two; more than one.

24 Q And did you go out and look to determine
25 approximately how many trees we might have to remove for

1 that?

2 A We have not done that yet.

3 Q That's, you were consulted about that?

4 A Yes, sir.

5 Q So what is the after value of the Oien property
6 assuming the middle line is used?

7 A I would reduce it to about \$380,000.00.

8 Q So that's over \$200 and something thousand dollars?

9 A Yes, sir.

10 Q Why is that?

11 A I think the market goes away with a line through the
12 middle of it for the high-end user.

13 Q Well, and that's because of the damage to the
14 remainder?

15 A It is.

16 Q What percentage or range did you experience that
17 high-end residential properties suffer to the remainder if
18 there's a transmission line, some of a similar type
19 project that goes through the middle?

20 A In my report, I indicated a range between 10 and 20
21 percent.

22 Q And what is--

23 A Damage to the remainder.

24 Q --is that a conservative range?

25 A That is an exceptionally conservative range; yes,

1 sir.

2 Q What's the full range if you're just being looking at
3 all options?

4 A I would say that the potential range would be up to
5 40 and maybe as much as 50 percent damage to the
6 remainder.

7 Q So what is the, assuming a 20 percent damage to the
8 remaining 112 acres middle ground, what is the value of
9 the damage to the remainder?

10 A As I recall, about \$116,000.00.

11 Q And if it's 15 percent worth of damage to the
12 remainder?

13 A Rated \$87,000.00.

14 Q Now, the opinions you've given about these values and
15 these damages, are they based on a reasonable degree of
16 certainty in your expertise as an appraiser and a
17 forester?

18 A Yes, sir.

19 Q Now, in your opinion, would it be likely that a
20 person based on your knowledge of a real estate sales with
21 whether he buys or whether he's selling, would a person
22 with a middle line through this property build a house, if
23 they build a house, but a house with the scope and scale
24 that Mr. and Ms. Oien were planning for their retirement?

25 A I don't think that the builder of a high-end home

1 like that would purchase this property for that purpose.

2 Q Now, is there any damage to the remainder if PMPA
3 takes the southern route that was drawn out on exhibit 12?

4 This is a blow-up of Plaintiff's exhibit 12. Have you
5 seen that?

6 A I did. I have.

7 Q And is that route, would that route produce any
8 damage to the remaining acreage of the Oiens property?

9 A Essentially, no. There's a, depending on the
10 location, the final location of that line, there might be
11 some sliver of land between the power line and the
12 property line, but I don't think that would be
13 significant.

14 Q That wouldn't consist of any damage, though?

15 A I'm sorry, sir?

16 Q That wouldn't be damage to the remainder, would it?

17 A No.

18 Q All right. Now, can you, is this property along the
19 southern border, the Oiens property, is it low or high?

20 A It's lower.

21 Q So can you visualize what a 70-foot line along the
22 southern route would be, whether it'd be visible from the
23 on-site or not?

24 A I don't think it would be at all.

25 Q Now, you're aware that there's a cottage down here at

1 the pond?

2 A Yes, sir.

3 Q And you've said there's no damage to the remainder
4 from the southern route?

5 A Correct.

6 Q So even though there's a house near the southern
7 route, you're saying there's no damage to the remainder?

8 A Correct.

9 Q And is that because the Oiens have told you that they
10 want the homesite to be where they've marked it on the
11 northern part?

12 A That would be my understanding in that from the
13 homesite you could not see the route, the line on the
14 southern route.

15 Q Now, did you, were you involved with the Oiens and
16 their discussions with PMPA and the City?

17 A Yes.

18 Q Did you go to the meeting on September 27th, 2013?

19 A I believe I did.

20 Q And that was you and the Oiens and the City?

21 A I believe that's correct.

22 Q And what was made clear by the Oiens about their
23 choice in the route?

24 A Their preference was clearly the southern route.

25 Q Did PMPA ever express an interest in using the

1 southern route?

2 A I don't recall any conversation from them affirming
3 the southern route in any way.

4 Q Did they push the conversation toward the middle
5 route each time?

6 A They were steadfast about the middle route--

7 Q Okay.

8 A --in every conversation.

9 Q Did Mr. Oien ever reject the southern route?

10 A Not in my presence.

11 Q And you were with him every time he met, when you met
12 again with the City, you were present, weren't you?

13 A There was a meeting in November, and I was with him
14 then.

15 Q Well, in the November 2013 meeting, who was present?

16 A Myself and the Oiens. I believe Al Harvey was there.
17 Mark was there. Mr. Smoak and Mr. Frazier from PMPA.

18 Q PMPA. And what was expressed by Mr. Oien and his
19 wife about what route they wanted there?

20 A I think, again, I came away with the impression that
21 clearly they wanted the southern route, but they had
22 questions about the central route to have information on
23 which to make the final decision.

24 Q What was said by PMPA about answering the questions
25 about the middle route?

1 A My recollection is they said they couldn't answer any
2 of those questions without a survey.

3 Q And they needed Mr. Oien to consent to a survey so
4 they could answer questions about this--

5 A Correct.

6 Q --about the central or middle route?

7 A Correct.

8 Q All right. When the meeting is over, was it clear to
9 you that the Oiens maintained their position and that PMPA
10 would maintain its position?

11 A Yes.

12 Q And PMPA's position was the middle route?

13 A Always.

14 Q And the Oiens position was the southern route?

15 A Always.

16 Q All right.

17 A But the willingness to question the middle route to
18 have full information to make a decision.

19 Q And did you feel like the Oiens just wanted some
20 quick answers and they wanted to really see data before
21 they could consider whether anything they could do in the
22 middle would be suitable?

23 A I think they were looking for full knowledge to make
24 a well-informed decision, but their preference clearly was
25 the southern route.

1 Q Okay. Now, did you go to another meeting in March
2 2014--

3 A Yes.

4 Q --with the Oiens at the City?

5 A I believe so; yes, sir.

6 Q And at that point, what was said by the Oiens to the
7 City?

8 A That the southern route was the route that they would
9 agree to.

10 Q The Oiens said that?

11 A Yes.

12 Q And they were rejecting the middle route?

13 A Yes, sir.

14 Q Okay. Did PMPA or the City ever produce any route
15 analysis showing the pros and cons of one route compared
16 to the other route, the southern and the middle?

17 A I never saw one.

18 Q Did they ever explain to you what costs might be
19 involved in the southern route or they may specifically
20 had shown you data?

21 A No, sir.

22 Q Do you feel like the Oiens were entirely reasonable?

23 A I think they were imminently reasonable.

24 Q Okay.

25 MR. BANNISTER: Object, Your Honor.

1 THE COURT: I sustain the objection. Go ahead.

2 Q And you've helped landowners in condemnation
3 situations before?

4 A Yes, sir.

5 Q And it's very delicate, is it not?

6 A It is.

7 Q And is it fair to say that many of them have
8 questions about procedures and--

9 A Yes.

10 Q --the routes and things like that?

11 A Yes.

12 Q Do you feel that PMPA was, what did you observe
13 PMPA's reaction to the Oien's questions and concerns to
14 be?

15 A I found them to be dismissive.

16 Q And what else?

17 A Arrogant.

18 Q What did they do that was arrogant?

19 A They failed to answer basic questions that we had.
20 They seemed resolved in getting that central route and
21 that any question that the Oiens raised was simply bother,
22 an irritant, a hurdle.

23 Q A hindrance; you just said a bother to them?

24 A Yes.

25 Q All right.

1 MR. POPE: Thank you, Mr. Major.

2 MR. BANNISTER: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 By Mr. Bannister:

5 Q Mr. Major, how many right-of-way appraisals have you
6 done before this one?

7 A Two.

8 Q Two others?

9 A Yes, sir.

10 Q Have you ever been qualified as an expert to any
11 right-of-ways in a condemnation case?

12 A Not specifically.

13 Q All right. Do you recall providing a report that
14 discovery, where did we put that?

15 MR. BANNISTER: Plaintiff's 45?

16 Q Let me show you this and ask if you recognize it.

17 A I do recognize it.

18 Q All right. And this is the report you produced in
19 discovery regarding your appraisal of the Oien family
20 property, is it not?

21 A Yes.

22 MR. BANNISTER: I don't think anybody has marked this
23 one.

24 THE COURT: Okay. All right.

25 MR. POPE: We don't object to it into evidence.

1 damage to the remainder of the middle route, if that's the
2 one that's chosen, was between 10 and 20 percent,
3 \$116,000.00?

4 A Yes.

5 Q And that there would be an additional 3.93 acres
6 taken at \$5,200 an acre; that would be the actual
7 right-of-way?

8 A Yes, sir.

9 Q All right. Where did the other money come from?

10 A What other money, sir?

11 Q Well, you testified that the damage to the property
12 would be \$213,000.00. According to your written
13 appraisal, it would be \$116 plus four acres at \$5,200.
14 You have damaged some additional property unless I'm doing
15 the math wrong, which I like to, let me add it up. 116
16 plus 3.93 times 52, what is that? Let me ask you a
17 different question. What's the total damage to the
18 property?

19 A About \$220,000.00.

20 Q And that's made up of what numbers?

21 A What I feel in my opinion would be the difference
22 between what the property is worth as it sits today with
23 the highest and best use that the Oiens have placed upon
24 the property and what the property could sell for today if
25 the power line in question on the central route were

1 constructed.

2 Q And maybe I'm not asking you these questions right.

3 It looks like in your report that you said \$116,000.00

4 would be the damage to the remainder?

5 A Yes.

6 Q In your report, you reference the balance of the,

7 taking the right-of-way.

8 A Yes.

9 Q And that's 3.93 times \$5,200 an acre, right? It is
10 approximately \$20,500.00.

11 A Yes.

12 Q So \$116 and \$20,500.00, that leaves about what,
13 \$80,000.00 in additional damage?

14 A Yes, sir.

15 Q Where is that from? Did you just make it up?

16 A Oh goodness, no.

17 Q Okay. It's not referenced in your report that
18 there's some diminishing of value it's, \$80,000.00, so I'm
19 just trying to figure out where it is.

20 A There is--

21 Q You can take a minute to read your report if you need
22 to.

23 A No. There are components of value here that vary
24 with circumstance. Things that may have impacted that
25 would be the value of the cottage at the lake. The value

1 of the barn that has been built on the property. Those
2 are kind of variables.

3 Q No wait, explain that to me. So the value of the
4 cottage goes up or down with the middle route?

5 A It remains the same.

6 Q Okay. All right. So that's not part of the
7 \$80,000.00 additional damage you've assigned to this
8 taking?

9 A No.

10 Q All right. How about the barn, are you damaging the
11 barn?

12 A I am not.

13 Q Okay. All right.

14 A But it contributes--

15 Q Where does that \$80,000.00 come from?

16 A It contributes to the value of the property as it's,
17 if it were to be sold with the right-of-way on it.

18 Q All right. And I apologize. I may be missing
19 something. Well, you're an appraiser, right?

20 A I am.

21 Q So what you're, if I understand your role, your role
22 is to take the property and determine what a willing buyer
23 and a willing seller would agree would be the fair market
24 value?

25 A Yes.

1 Q Not Mr. Oien, not anybody else in this courtroom, but
2 just a willing buyer, a willing seller with general
3 motivation to buy and sell?

4 A Yes.

5 Q And it's your testimony in your professional opinion
6 as an appraiser and as it sits now, the property would
7 sell for \$603,000.00?

8 A Yes.

9 Q And then it is your testimony, if I understood it
10 correctly, that if the right-of-way is put in the middle
11 of the property, the value of the property after the
12 taking would be \$380,000.00?

13 A Yes.

14 Q All right. And I'm asking you, because you gave us a
15 report in discovery. And we asked you about it in your
16 deposition. And you said there would be a \$116,000.00
17 reduction in value as a result of having a transmission
18 line.

19 A Yes.

20 Q That's your damage to the remainder?

21 A Yes.

22 Q We got that?

23 A Yes.

24 Q And then it would be the 3.93 acres, about \$20,000.00
25 for the right-of-way, actual ground where the transmission

1 line is going to go?

2 A Correct.

3 Q So on top of the \$116, I guess, just to, how much
4 that gets us to?

5 A \$131,040.00.

6 Q Okay. \$136.

7 A Right.

8 Q So what's the difference? Like what is the basis of
9 your opinion for why the fair market value has dropped an
10 additional \$80,000.00?

11 A In my report, I was being very conservative.

12 Q You were?

13 A I was.

14 Q Okay. So your report is wrong?

15 A It's not wrong; it's conservative.

16 Q Okay. So maybe I misunderstood your testimony. Why
17 don't you go back through your opinion as to the things
18 that affect the value of the property? What's the value
19 of the right-of-way?

20 A The value of the right-of-way itself?

21 Q Yes.

22 A Whatever the acreage is times the \$5,200 dollars that
23 I found.

24 Q \$20,000.00?

25 A Yes.

1 Q Okay. So what else did you use to determine the
2 diminishing value?

3 A Looking at the, not only at the comparable sales, I'm
4 aware of--

5 Q All right. So which comparable sales?

6 MR. POPE: Your Honor, he has to let him finish his
7 answer.

8 THE COURT: Just one second. Have you requested
9 comparable sales to be discovered?

10 MR. BANNISTER: We requested everything, we didn't
11 get it. In his deposition, he said he had it in his file
12 and we still don't have them.

13 THE COURT: Mr. Pope, you need to have that--

14 MR. POPE: They haven't requested anything. They
15 haven't made a single request for production. They didn't
16 file one. Nothing.

17 MR. BANNISTER: We asked for his report.

18 THE COURT: I want those here tomorrow, okay?

19 MR. POPE: Sir?

20 THE COURT: Those comparables have to be here
21 tomorrow.

22 MR. POPE: Okay.

23 THE COURT: And subject to him being re-called, but
24 go ahead.

25 MR. POPE: That's fine.

1 Q All right. So you looked at comparables. What else?

2 A There were, because this is a unique property and a
3 unique circumstance. I looked at other situations. I
4 found four different litigations, two of which were in
5 Newberry County, in which a right-of-way was imposed on a
6 property and juries found damages for those properties.
7 Those damages ranged from 20-25 percent up to as much as
8 60 percent. That gave me some guidance as to where things
9 could be. I found on the conservative side of that. I
10 also--

11 Q Okay. Can I interrupt you.

12 A Please do.

13 Q We can do them one at a time. So you relied on jury
14 verdicts for contested right-of-way cases in Newberry
15 County?

16 A Two of them.

17 Q Two, to determine the fair market value of the Oiens
18 property?

19 A No.

20 Q No.

21 A Just to kind of serve as a confirmation of what I was
22 finding from comparable sales.

23 Q Okay. All right. So you referred to jury verdicts
24 to confirm your comps?

25 A Right.

1 Q Okay. Go ahead.

2 A I also had a conversation with a gentleman named Mike
3 Fisher, who is the director or, yeah, Director of Luxury
4 Property Sales for an organization called United Country
5 Real Estate. It's a national franchise firm specializing
6 in the sale of rural properties and recreational
7 properties. One of their specialty property groups is
8 Luxury Properties. Mike Fisher is the director of that
9 property group. I described to him the scenario that I
10 found on the Oien property and asked him under those
11 circumstances, in your experience, how would that, if it
12 would at all diminish the value of the property. And he
13 said that in his experience that would result in a
14 diminution of value of between 10 and 50 percent depending
15 on the market at the time.

16 Q And so he's a real estate agent?

17 A Yes. He's an auctioneer.

18 Q Okay. So the auctioneer, you asked an auctioneer
19 what he thought?

20 A I did.

21 Q You based your opinion on the auctioneer's opinion of
22 what the diminution value would be?

23 A To confirm my opinion based on the comparable sales
24 that I had seen.

25 Q His name is Mike Fisher?

1 A It is.

2 Q Luxury, tell me the name of his company again?

3 A His company is the Redfield Group. It's an auction
4 company in Alabama. He is associated, he's an affiliate
5 of United Country Real Estate based in Kansas City.

6 Q So you asked an Alabama/Kansas City auctioneer
7 whether or not the comps you were seeing were right?

8 A He has sold property all over the United States.

9 Q In Newberry?

10 A He's sold some property in Newberry, yes.

11 Q All right. What else did you do?

12 A That's it.

13 Q All right. Describe for me the comps that you used,
14 how many acres, how long ago were they sold, did they have
15 a house, did they not have a house. Give me some idea
16 like what those looked like.

17 A I looked at rural property sales ranging in age and
18 ranging in size from 50 to 200 acres.

19 Q So I'm just talking about the four. Now, give me the
20 first one. Tract one of the comps that you looked at to
21 determine that this was the damage?

22 A I don't have those numbers or references in my head.
23 I can produce the documents, but I can't, don't have them
24 in my mind.

25 Q But there were four of them?

- 1 A Comparable sales?
- 2 Q Yes, sir.
- 3 A Yes, sir.
- 4 Q Did they have houses on them?
- 5 A One did.
- 6 Q Did you adjust for the homesite--
- 7 A I did.
- 8 Q --or the house?
- 9 A I did.
- 10 Q And they were between 50 and 200 acres?
- 11 A Yes, sir.
- 12 Q And how recent were they?
- 13 A Within the last twenty-four months.
- 14 Q Twenty-four months. And they, all in Newberry
- 15 County?
- 16 A No, sir.
- 17 Q Do you recall whereabouts they were?
- 18 A I believe one was in Newberry and others, the others
- 19 were in others, other counties. One, I believe, was in
- 20 Laurens, two in Laurens, and one in Union.
- 21 Q Can you tell me anything else about the comps, if
- 22 they're square, if they're regular size, did they border a
- 23 power transmission line?
- 24 A I don't think there were transmission lines already
- 25 on any of them already.

1 Q All right. And you mean that there were transmission
2 lines after you looked at them or they weren't on there
3 yet?

4 A These were not lines involved in takings. These were
5 lines, these were comparable sales indicating land values
6 in these, in our general market area.

7 Q All right. And maybe I didn't understand. Did the
8 four comps that you used have anything to do with power
9 lines?

10 A Not specifically; no, sir.

11 Q So there weren't power lines going through the center
12 up them and that's not how you developed this theory of
13 the 20 percent reduction of every acre, property?

14 A I looked at what I believe the value of the property
15 as it is today, the Oien property, the subject property.

16 Q \$603,000.00.

17 A Yes, sir.

18 Q We got you.

19 A All right. And I looked at what the value of
20 properties would be if their highest and best use were not
21 as a high-end rural residence that would not be typically
22 attractive to that purpose.

23 Q So what made those properties not attractive to being
24 a high net worth retirement--

25 A -- lack of the amenities that this subject property

1 has.

2 Q Okay. Wait. All right. So lack of amenities being
3 what, they weren't close to town; they were close to a
4 hospital; they weren't close to the Interstate?

5 A Yes.

6 Q Right. And how, I mean, I'm trying to understand how
7 you get there.

8 A Right.

9 Q Just walk us through it. And those properties do not
10 have what amenities?

11 A They lack the unique character that the Oien property
12 does have in terms of their remote environment compared to
13 their proximity to other facilities or amenities being
14 shopping and the city and so forth.

15 Q All right. So after the power line goes through the
16 center of this property, will the property still have
17 access to the amenities in Newberry, the hospital, the
18 Interstate, it will still be at the end of a private or a
19 public road with no neighbors. All right. So which
20 amenities go away when we put the utility line in?

21 A The purchasers of that property in my view, in my
22 opinion that the power line in the middle of this property
23 will remove the highest best use of the Oien property. It
24 eliminates that as a potential homesite of the, for the
25 type of home that the Oiens have planned and have been

1 developing their property towards the construction of.

2 Q But, Mr. Major, you understand, don't you, that it's
3 not about the Oiens or the Oien's plans. It's about the
4 fair market value of the property. So just because the
5 Oiens are frustrated with the future plans they had
6 doesn't mean that because they are frustrated and they are
7 not going to do what they planned to do, the property is
8 worth less. It's worth whatever, and tell me if I'm
9 wrong, worth whatever a willing buyer would pay to
10 purchase it and you're saying that there are no buyers
11 that would buy the piece of property that the Oiens
12 currently own for any value above the \$380 that you put on
13 it, there are just no buyers? Are there no rich guys who
14 wanted to stay out there?

15 A There are, I don't think there are any buyers for the
16 property to be used as the Oiens intended it to be used,
17 intend to use it.

18 Q Would you agree with me that there are buyers out
19 there who would pay more than \$380,000.00 for that
20 property even with the transmission line down the middle?

21 A I don't believe there would be.

22 Q So that's your testimony? Your testimony is nobody
23 would pay that much? They'd pay that much but no more for
24 that piece of property with that second transmission line?

25 A I think a reasonable typical, typically motivated

1 buyer wouldn't pay more than that in order to put a
2 high-end home on it.

3 Q Well, what about to put a low-end home on it?

4 A Certainly.

5 Q For a low-end home?

6 A No, they, no, I misunderstood your question. Ask it
7 again, please.

8 Q Is there anybody, is there any purchasers out there
9 who would use the property for something different than a
10 9,000 square foot pond lake house that would pay more than
11 \$380,000.00 for the 116 acres minus the middle route
12 that's out there? Is it your testimony that there's no
13 willing buyers that would pay more than that?

14 A I think that's probably where it is, yes and I think
15 that--

16 Q Well, you're the expert.

17 A Yes.

18 Q So you got to either say yes or no.

19 A Yes. Yes.

20 Q That's your opinion?

21 A Yes.

22 Q And you have comparables that you say support that
23 opinion?

24 A In my opinion.

25 Q All right. The last thing. In talking about the

1 aesthetics of the power line. I understand that going
2 through the middle you'd be able to see it from a certain
3 distance, right?

4 A Yes.

5 Q When you talk about aesthetics, is the view of the
6 power line really what you're talking about or are there
7 other things that go with aesthetics?

8 A I'm not sure if I understand your question.

9 Q All right. Well, how does, is the damage to the
10 remainder a result of the fact that you can see the power
11 line or is the damage to the remainder the fact that it's
12 there or is the damage to, what is the damaged remainder?
13 How, like what is it about the power lines, is it just the
14 location, the fact that it's in the middle?

15 A The fact of its middle location does adversely affect
16 the value of the property, yes.

17 Q The entire property?

18 A In my opinion; yes, sir.

19 Q So the lake house and the pond that's currently on
20 the property--

21 A Yes.

22 Q --is worth less as a result of the power line being
23 put at the top of the hill even though you can't see it?

24 A I didn't say, well, the property as a whole is worth
25 less with the power line on it.

1 Q If you put the power pole and the transmission line
2 on the southern route where it runs in front of the lake
3 house and over the pond and through the marsh that way,
4 does it devalue or hurt the value of the lake house in any
5 way?

6 A I don't think it adversely affects it much at all.

7 Q The property as it sits now, barn, cleared site for a
8 luxury home and as it is worth \$603,000.00. It's your
9 testimony that that lake house is not worth any less by
10 having a power line run by it with no power line?

11 A And now it's not worth less, with the intended
12 southern route.

13 Q So I understand that you are offering your opinion of
14 what the Oiens want to do with their property, but I'm
15 talking about the fair market value of the property as it
16 sits today.

17 A Yes.

18 Q The barn, a cleared-out field, a well, and a lake
19 house. Are you telling me that the lake house to a
20 willing buyer and willing seller is worth just as much
21 with a power line running across it as it is without it?

22 A I don't think the southern route is going to
23 adversely impact the value of the lake house, the cottage.
24 It's an old home, old cottage that doesn't contribute that
25 much to the value of the home.

1 Q Doesn't contribute that much to the value of the
2 home?

3 A Correct.

4 Q Even though you can see the transmission lines from
5 the porch overlooking the lake, pond, whatever it is?

6 A Yes. Yes.

7 Q So if you took the lake house and stuck it up there
8 where the luxury home is going to be, it would have the
9 same effect on the lake house sitting on the Oiens
10 homesite as it does sitting on the pond where it is now;
11 would the value of it be the same?

12 A It would not.

13 Q Why?

14 A The location of the intended Oien home is well-suited
15 to developing the property as they intended. The highest
16 and best use, in my opinion, is, is the site of a luxury
17 home, high-end rural residential property. I think that
18 the cottage at the, on the pond is inconsequential, not
19 inconsequential, but contributes very little. If one
20 takes the middle out of the property with the
21 right-of-way, which most people would view as unsightly,
22 people don't build 9,000 square foot homes to overlook a
23 power line. So yes, it affects the marketability. It
24 limits the market. A reasonable typically motivated buyer
25 would not purchase the property for a high-end home.

1 There might be plenty of homesites there for smaller
2 homes, but the uniqueness of the property goes away if
3 it's not used at its highest and best use which, in my
4 opinion, is as a high-end rural residential property.

5 Q Do you have an opinion of the value of timber, land
6 per acre in Newberry County?

7 A I do.

8 Q What is that?

9 A Depending on what's on it and where it is, I would
10 say anywhere from \$1,500.00 to \$3,000.00 an acre depending
11 on the amount of timber in its location.

12 Q Do you have an opinion on the value of that little
13 lake house and pond?

14 A The pond contributes significantly to the property,
15 because it's difficult to build a pond these days. The
16 lake house, I would say contributes some to the property,
17 \$50-\$75,000.00, something like that.

18 MR. BANNISTER: No other questions, Your Honor.

19 THE COURT: Thank you. Any redirect?

20 MR. POPE: Yes, sir.

21 REDIRECT EXAMINATION

22 By Mr. Pope:

23 Q Can you identify the Newberry County range for timber
24 property is \$1,600.00 per acre to \$3,000.00 per acre or
25 something like that?

1 A Yes, sir.

2 Q And you also identified that you felt like the after
3 value with this middle route on this property is
4 \$380,000.00 which is about \$33-\$3,400.00 an acre, is that
5 right?

6 A Yes, sir.

7 Q And is that also about, if you do the math and I'm
8 trying to do it, I guess, about 35 percent damage to the
9 remainder?

10 A I would say so, yes.

11 Q All right. Is that, you've identified in your report
12 that a conservative number would be 10 percent, 15
13 percent, and 20 percent, but you felt the full range was
14 10 percent to 40 percent or 35 to 40 percent?

15 A I think that's justified, yes.

16 Q So, so the, the \$3,800.00, \$380,000.00 range that you
17 said the after value is with that middle route still
18 values the property for somebody. Do you think there's a
19 buyer at \$3,400.00 an acre?

20 A Yes, sir.

21 Q But not at \$5,200.00 an acre?

22 A That's correct.

23 Q Is that what you're saying?

24 A Yes, sir.

25 Q Okay. So the range or the value afterwards is still

1 higher than what you identified as the county average?

2 A Yes, sir.

3 Q Because the property is close to town, even though
4 you, if you had a power line it'd be open-looking and
5 you'd still have access to amenities. You'd still have a
6 dead-end road, a cul-de-sac on the property, correct?

7 A Yes.

8 Q And you'd still have nice trees that had been
9 carefully managed over the years?

10 A Yes, sir.

11 Q But you don't have the high-end residential highest
12 and best use, is that what you're saying?

13 A Correct.

14 Q All right. And you're going to get the comparable
15 sales that the Judge requested?

16 A Absolutely.

17 Q But at that deposition, you weren't requested to
18 bring them to them?

19 A I did not understand to bring them.

20 Q And as far as you know, no request to produce
21 anything was ever made through me?

22 A No, sir.

23 Q All right. But you will certainly comply?

24 A Sir?

25 Q You will certainly comply?

1 A I will.

2 Q Okay. So you're saying that, as I heard you describe
3 the before situation with the property, you said it's
4 extremely unique, it's a 100 acres, which is a somewhat
5 large tract for residential, very near town, very isolated
6 and quiet, peaceful. Is there another tract of 100 acres
7 within three miles of Newberry like that?

8 A Not that I'm aware of.

9 Q Within 20 miles of Newberry that you're aware of?

10 A Not that I'm aware of.

11 Q You think it's that unique?

12 A It's very unique.

13 Q So it still has a value with the line?

14 A It does.

15 Q \$3,400.00 an acre is what you're saying?

16 A I think so.

17 MR. POPE: I think that's all I have. Thank you.

18 THE COURT: Anything further?

19 MR. BANNISTER: No, Your Honor.

20 THE COURT: And may this witness be excused for the
21 day?

22 MR. POPE: Sir?

23 THE COURT: May this witness be excused for the day?
24 He might have a problem?

25 MR. POPE: No, sir. I think he's going to go dig up

1 that information.

2 MR. BANNISTER: Just bring those comps back tomorrow.

3 THE COURT: Right. He's going to bring them back
4 tomorrow.

5 MR. MAJOR: Certainly.

6 THE COURT: Does that present you with any problems?

7 MR. MAJOR: Not a problem. No, sir.

8 THE COURT: Thank you so much.

9 MR. MAJOR: Thank you.

10 MR. POPE: We call Bill Rogers.

11 BILL ROGERS, being
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 By Mr. Pope:

15 Q What's the name of your company, Mr. Rogers?

16 A It's William Rogers Company, LLC.

17 Q All right. And you live in Irmo?

18 A I do.

19 Q All right. Where did you work and you retired
20 recently, is that correct?

21 A I did. I retired from Central Electric Power
22 Cooperative, Incorporated.

23 Q And for the last 12 years up until your recent
24 retirement and your position was Manager of Right-of-way
25 Services?

1 A That's correct.

2 Q Is that the highest right-of-way position at Central
3 Electric?

4 A It is.

5 Q All right. Central Electric Power Cooperative does
6 transmission services for all the cooperatives in South
7 Carolina?

8 A Right. Central Electric is owned by all of the
9 electric coops in the State of South Carolina, and they
10 are tasked with doing the electric transmission line
11 projects for the specific coops.

12 Q And do you have memberships in right-of-way
13 acquisition organizations?

14 A Right. I'm a senior member of the International
15 Right-of-Way Association.

16 Q And do you have a designation or a certification
17 through them?

18 A It's called SRWA. That means Senior Right-of-Way
19 Agent.

20 Q And do you go, and the membership of that is
21 comprised of folks that involve an electric transmissions,
22 gas lines, and other things like that?

23 A Right. It's all the folks that are, really any
24 utility industry. Includes right-of-way personnel,
25 surveyors, attorneys, appraisers, different types of

1 consultants, nationwide and internally. It's got
2 thousands of members.

3 Q All right. Now, when you started and you finish,
4 what college did you go to?

5 A I graduated from Georgia State University in 1972
6 with a Bachelors in Real Estate.

7 Q But before you went to Central Electric and just to
8 go through your work history, you worked for Georgia Power
9 for a number of years?

10 A I worked for Georgia Power for about 14 years in
11 their land department and right-of way acquisition, plant
12 site acquisition, substation acquisitions and acquisitions
13 of office buildings and office headquarters.

14 Q And then you, after leaving Georgia Power in 1984,
15 you were a real estate consultant?

16 A Right. I was a real estate, commercial real estate
17 broker in the Atlanta area and along with that did
18 consultant work for different power companies, including
19 Georgia Power Company, Oglethorpe Power Corporation, which
20 is now called Georgia Transmission.

21 Q All right.

22 A I then went, you want me to take it from there.

23 Q Go ahead.

24 A I then went to work for Central Electric in 1990 as a
25 contract right-of-way agent, specifically tasked with the

1 doing appraisals for their individual tracts on
2 right-of-way projects.

3 Q And when you were manager of Right-of-Way Services at
4 Central Electric, that was from 2004 to 2016, January?

5 A Right. I started at Central in 1999 as supervisor of
6 Right-of-Way Services, and then they promoted me in 2004,
7 I believe, to manager of Right-of-Way Services.

8 Q As manager of Right-of-Way Services, did you
9 regularly work with staff people who were engineers?

10 A Sure. We had a team that was comprised of my area
11 which was right-of-way acquisition. We had three agents
12 and a paralegal. We also had a team of engineers that we
13 worked closely and in tandem with on our projects from
14 the, from the beginning portion of it which is really the
15 siting of the routing portion of it, and then going
16 forward.

17 Q Now, how many different transmission projects did you
18 work on with Central Electric first?

19 A There are over a 100 that I can, that I know of.

20 Q And those are all over South Carolina?

21 A Yes, they're all over South Carolina.

22 Q And each of them would involve multiple landowners,
23 is that right?

24 A Yes.

25 Q And you actually performed right-of-way acquisition

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 Q And you've sat through as an expert witness at
2 condemnation cases, have you not?

3 A Yes, I have.

4 Q And you've seen the power lines, because all of your
5 occasions would be power lines and transmission lines?

6 A They've been power lines and our process, we've been
7 enjoined a couple of times, too, when I was at Central
8 and, of course, we've been challenged and the studies much
9 deeper in scope than this, because this is applicable to
10 only one tract, were introduced in those cases. And,
11 fortunately, we were upheld as to our process. We had a
12 written trail, paper trail showing exactly--

13 Q And this ultimate route study was prepared in
14 connection with the underlying acquisition or for
15 condemnation and not for court in a challenge, is that
16 right?

17 A It's done ahead of time.

18 Q So you're going to have it in every file that you
19 acquire property, is that right?

20 A Yes, you are.

21 Q And, in fact, you said you were challenged four times
22 when you were with Central?

23 A Four times.

24 Q And you just went to your file and pulled out the
25 alternate route studies, and then there was clearly a

1 basis that the law says developed by you?

2 A Yes. We wrote that process in 1991. I know we were
3 challenged twice in the nineties from IP, and I think
4 different lines, the same county, and then another
5 challenge in Darlington County; two different lines, the
6 same property owners, so the same thing.

7 Q You've walked out--

8 A The same thing.

9 Q Excuse me. I'm sorry.

10 A Go ahead.

11 Q You've walked out to the property?

12 A I have.

13 Q And you've seen now where they've cleared out to this
14 part right here?

15 A Yes, I have.

16 MR. POPE: And this is exhibit 44, Judge.

17 Q And the Oien property closely identified on the right
18 side and it's tract 338-2 is where they cleared it. So
19 the connection point is right there?

20 A Yes.

21 Q Did you assess the route studies using the end of the
22 northern route or the southern route was rejected by
23 everybody using a northern route connection point there, a
24 middle route connection point there, and a southern route
25 connection point there?

1 A Yes.

2 Q And the southern route was similar to exhibit 12,
3 except you had a different connection point at the end?

4 A Yes.

5 Q Now, tell us what your estimated total costs were for
6 the, we've skipped the northern route.

7 A I'm going to get to that page. Did you say forget
8 the northern?

9 Q Did you do the construction costs for the north?

10 A I did construction engineering costs.

11 Q And then you also did right-of-way--

12 A Right-of-way acquisition. And the right-of-way
13 acquisition, again, this is only applicable to this
14 particular tract, but our construction costs I used were
15 based on a, like I said, 115 KD line, 70-foot wide
16 right-of-way. It's about a seven-mile line in Newberry
17 County. These costs are not estimates. These costs are
18 actual.

19 Q In 2015?

20 A Now, Central builds a different type of line than
21 PMPA, so their, you know, theirs may be a little bit. But
22 PMPA's cost estimates were even less than Central. But to
23 compare apples to apples, what I knew to be correct as to
24 what Central paid for the construction costs of a 115 KD
25 line in Newberry County that had angles, guide wires and

1 so forth.

2 MR. BANNISTER: Judge, I'm going to object. He's an
3 expert who's qualified as an expert with the procedures
4 for acquiring right-of-ways and land condemnation cases.
5 He is now testifying to what he believes in his expert
6 opinion it would cost to put in the lines that are subject
7 to the three routes. He's not an engineer. There's no
8 testimony about him qualifying as an engineer so far as to
9 corroborate that.

10 THE COURT: All right. I got you. Tell me what
11 basis he has for giving his opinion.

12 MR. POPE: All right. Under Rule 703, Bases of
13 Expert Opinion.

14 THE COURT: No, no, no, no. I'm familiar with, I'm
15 talking about his basis.

16 MR. POPE: Yeah. He works with engineers and he does
17 these studies with their input. He regularly relies on
18 their input, and he relied on it here that these are the
19 actual costs for a project in Newberry County in 2015.

20 THE COURT: Are you saying that those are reports
21 that are prepared for him and he'll go sit down and study
22 them?

23 MR. POPE: I'm sorry. I didn't hear the--

24 THE COURT: In other words, an engineer prepares the
25 report as to the cost to construct the middle line, the

1 north line, the whatever one it is.

2 MR. BANNISTER: In consultation of him.

3 THE COURT: Hang on. Hang on. I'm trying to ask a
4 question. Then, there is an engineering cost associated
5 with that. Those figures are provided by engineers,
6 right?

7 MR. POPE: Right.

8 THE COURT: Just because he, allows him to give
9 expert testimony. There's not a lot of hearsay, and it
10 places on his expertise, but go ahead.

11 Q All right.

12 THE COURT: Stop for a second.

13 MR. BANNISTER: So, I need to make sure I follow
14 this. I believe what he just testified to is that those
15 costs are from a line different from this one that he
16 worked on previously that he's taken his knowledge of
17 those engineering costs and he's plucked them out of a
18 different line and he's dropped it down on the Oiens
19 property and said, eh, it's about the same.

20 THE COURT: Is that true?

21 A It is. It is to a degree.

22 MR. BANNISTER: I will renew my objection.

23 THE COURT: I'm going to entertain what he has to
24 say, and then I will rule on your objection. I just want
25 to hear it first.

1 MR. BANNISTER: Thank you, Your Honor.

2 THE COURT: Because you are saying to me, Mr. Rogers.

3 A Yeah, that's okay.

4 THE COURT: I am so sorry.

5 A No problem.

6 THE COURT: That essentially, and when I did my job
7 as right-of-way guy people brought me these figures and
8 these are the figures that we used at Central and we build
9 different type of lines than what the PMPA folks do, so
10 their figure is a little bit less.

11 A It is different. From my review of the, and also I
12 think whereas the PMPA, and I told Mr. Pope this, PMPA
13 number may be higher on that route is that on their angle
14 turns, they probably use self-supporting poles as opposed
15 to using guide and anchor poles and Central's, of course,
16 it is different. It's smaller poles. It's still a 115 KD
17 line. We use taller poles. They span further. But and
18 the bottom line is this. When you get down to comparing
19 the two alternatives is that the cost of the middle route
20 is known by PMPA, the cost to build it. They know that.
21 The unknown is the right-of-way acquisition cost. They
22 don't know what that's going to be regardless of who has
23 appraised what and what their testimony is going to be,
24 they don't know what a jury will end up doing. That's an
25 unknown. And if you take their numbers and kind of play

1 around with it of the increased construction costs and
2 engineering costs, it's almost offset by the cost to
3 acquire the southern route. In other words, it's going to
4 cost more to build the southern route, but it's going to
5 cost you, you'll have a known number as to what it's going
6 to cost.

7 THE COURT: Hang on. I'll sustain your objection. I
8 think that's beyond his expertise and just because it is
9 something relied upon it's hearsay information by other
10 folks and it's not necessarily this case. I am not saying
11 you're not, okay, sir?

12 A I got you.

13 THE COURT: Okay. Go ahead. So I'm going to sustain
14 the objection.

15 MR. BANNISTER: Thank you, Your Honor.

16 THE COURT: I'll let you proffer the records for the
17 record.

18 MR. POPE: Yes, sir.

19 THE COURT: But I'm not going to consider for
20 testimony.

21 MR. BANNISTER: All right.

22 Q Mr. Rogers, the type of information you used for your
23 estimated total cost is based on the same unit, is it
24 based on the information you were provided by engineers
25 working on a job in Newberry County and you regularly rely

1 upon experts such as those engineers in your field in
2 forming opinions on a regular basis, is that right?

3 A I do.

4 Q All right. Do you feel that the information you use
5 from engineers on this route analysis is reliable and
6 standard procedure that you've been following for the last
7 twenty plus years?

8 A Yes.

9 THE COURT: All right. Let's take a, I hear you and
10 I note you're moving to have it considered, but I'm not
11 going to do that, but you're on the record. Let's take a
12 break.

13 (Whereupon, a short break was taken.)

14 THE COURT: I want to amend my prior ruling somewhat.
15 I was back there banging around with my law clerk and
16 thinking about it. Concern, my primary concern is he's
17 taking testimony and figures from somebody else that he
18 doesn't have, to develop himself, but still the hearsay
19 rule is it's provided by somebody else. Just because you
20 can allow it, doesn't mean it's admissible in his opinion.
21 But the concern I have is my understanding of what this
22 guy's function is look, we want to be prepared for
23 alternate routes if we have somebody we can't deal with or
24 we can't do it, and it's all about economics--

25 MR. POPE: Right.

1 THE COURT: --basically and at the end of the day, we
2 want to, because it's peaceful to do so on a cost basis or
3 we're prepared to go in front of a jury to justify what
4 we've done, but it's all economics. So that being said,
5 part of his expertise would be making a determination
6 whether the alternate routes cost more or less than--

7 MR. POPE: Right.

8 THE COURT: --but not necessarily the exact figures
9 which come from somebody else. Okay? So, you know, and I
10 don't mind him giving some qualifiers substantially more
11 or significantly more or significantly less, somewhat and
12 it might even be more, but the actual figures themselves,
13 I'm not going to let in, okay? I know that you may
14 proffer and you move, you made an objection to--

15 MR. POPE: Judge, can I proffer a couple of more
16 things on that before?

17 THE COURT: Yeah, absolutely.

18 MR. POPE: Sir?

19 THE COURT: Renew your basis for me so that at the
20 end so I'll know that that's what you're going to do.
21 Thank you.

22 MR. BANNISTER: Judge, and just so I can make sure I
23 got it.

24 THE COURT: Am I just being totally confusing to you?

25 MR. BANNISTER: Maybe.

1 THE COURT: Okay.

2 MR. BANNISTER: The objection was him testifying to
3 what construction costs would be on the different routes,
4 because he's getting those numbers from discussions with
5 engineers about lines that were done somewhere else--

6 THE COURT: Okay.

7 MR. BANNISTER: --and he's taking those engineering
8 costs for a different power company and say, well, they'd
9 probably be about the same on this project and, therefore,
10 I'm just going to use general math. And so that's about
11 this much, and he's putting actual numbers on paper that
12 are unrelated to this project.

13 THE COURT: Right.

14 MR. BANNISTER: And so we were objecting to him
15 testifying to numbers on construction costs or engineering
16 costs unless he has actual, unless someone has actually
17 done the engineering construction on these three
18 properties, on these three routes. And he said he was in
19 no way giving an actual number on this route; he was just
20 taking his prior experience and guessing what the
21 construction costs would be.

22 THE COURT: Well, and when I made my ruling it was
23 based on hearsay, relevancy and credibility. Three bases
24 I gave for it. But I do hear and that what you're saying
25 is not relevant to this case.

1 MR. BANNISTER: Thank you, Your Honor.

2 THE COURT: Okay. And I will sustain it. Go ahead.

3 MR. POPE: Shall I continue with the proffer?

4 THE COURT: Yes. No, please and you make it for the
5 record.

6 MR. POPE: Thank you.

7 Q Mr. Rogers, you've done, as you've said, you've done
8 previous route studies and which were then the cases were
9 subject to a challenge later?

10 A Yes.

11 Q And you presented your route studies?

12 A Yes.

13 Q Did you use the same methodology in those that you'd
14 used in the one from the Oien case?

15 A Yes.

16 Q And you took unit costs from a project in Newberry
17 County in 2015, did you not?

18 A Yes.

19 Q And those unit costs included reports and
20 conversations and what not with engineers or construction,
21 correct?

22 A Correct.

23 Q Something you'd been doing for 25 years?

24 A Longer than that.

25 Q Okay. As part of your rendering an opinion, every

1 time you do a route study, it's an opinion, isn't it?

2 A It is an opinion. That's all it is.

3 Q And the basis--

4 A It's an estimate.

5 Q --basis for it is includes consultations with
6 engineers on those cases that you, while you were employed
7 by Central?

8 A Right.

9 Q And that's the same methodology you're using today,
10 are you not, the unit costs based on a line in Newberry
11 County in 2015?

12 A Right. Striving for consistency in each particular
13 one you do.

14 Q Now, I want to ask you to go through the estimated
15 costs for each of the routes. It is in your report there.
16 Let's go to the middle and southern route.

17 A Are you looking at that summary there?

18 Q Well, I'm looking at--

19 A Or you want to go to the specific. Well, basically,
20 the middle, basically, what I did is I had that exhibit
21 that showed the routes done to scale so I could scale off
22 some distances and try to figure it out from there as far
23 as the distances that you needed to input into your
24 developing a construct cost and engineering cost. And
25 again, I base that using the same numbers as the

1 Central/Fairview line. The cost estimates, right-of-way
2 cost estimates were done specifically in accordance to the
3 cost estimate process that I wrote in 1991 for Central
4 Electric and that's to look at the right-of-way acreage,
5 the actual acreage.

6 Q Look at your summary on the right-of-way costs that
7 you have in your report.

8 A You want it on the middle one?

9 Q Yeah.

10 A Okay. On the middle one, I estimated it to be 2200
11 feet, 3.95 acres and the actual right-of-way costs. I used
12 \$5,200 dollars per acre. That's based on Mr. Major's
13 appraisal and that comes to \$20,540. The damage to
14 remainder, again, I relied on Mr. Major, the 112 acres at
15 15 percent. Now, I've seen that number vary from 10 to 35
16 percent from studies and you just don't know about that.
17 The reason I put the \$75,000, that came in because again,
18 this is what you're doing here is you're just trying to
19 find out where the landowner is coming from and where the
20 company is coming from to try to match the number, and he
21 has \$75,000.00 in it. I since learned he's got more money
22 than that into this particular house site. Duke area is
23 only eight-hundredths of an acre. It's just a simple math
24 there, and so I got that the total right-of-way cost
25 estimate was--

1 MR. BANNISTER: Judge--

2 A --was \$182,960.00.

3 MR. BANNISTER: Your Honor, are we still in the
4 proffer?

5 THE COURT: He's still in the proffer.

6 MR. BANNISTER: I'm sorry.

7 MR. POPE: This is in his report and it's already in
8 evidence. This is exhibit 40.

9 THE COURT: Well, hang on. That's why I asked you to
10 move at the end of your proffer, so I'd know.

11 MR. POPE: Oh, okay. I thought I'd gone past the
12 proffer.

13 MR. BANNISTER: Okay.

14 THE COURT: So you're done with your proffer?

15 MR. POPE: Well, before I got to this topic.

16 THE COURT: Okay. And this report is in evidence by
17 stipulation, is that correct?

18 MR. POPE: Right. Yes, sir.

19 THE COURT: Okay.

20 MR. BANNISTER: It is, Judge. I believe what he
21 testified to was the \$75,000.00 came from Mr. Major. Mr.
22 Major did not testify to that.

23 THE COURT: I think he said the \$5,200.00 came from
24 Mr. Major.

25 A All of these numbers came from Mr. Major's report.

1 He put \$75,000.00 in his report. I got that from
2 somewhere or either that or it came from Mr. Oien,
3 interview with Mr. Oien.

4 THE COURT: Let's stop for a second. I mean, I'm
5 sorry to keep interrupting.

6 A No, you're okay.

7 THE COURT: What is your objection?

8 MR. BANNISTER: My objection is he just testified
9 that Mr. Major testified that there's \$75,000.00 damage to
10 the homesite. And I do not believe Mr. Major offered
11 testimony that there was any damage to the homesite, just
12 a general decrease in value of the property. And I kept
13 asking what's the \$80,000.00 and he just said that
14 generally that's what it is. So if Mr. Rogers is saying
15 that there's damage to homesite, that's inconsistent with
16 Mr. Major's testimony, unless he got it from somewhere
17 else.

18 THE COURT: Now, please, I mean, listen, I'm slow. I
19 am from Anderson. So you have got to give me a break. I
20 believe in the sense what this gentleman said. I put in a
21 lot of money in the preparation of this land or something,
22 the cost factor. But then your expert appraiser said
23 there's been damage to the, well, there is damage to it.
24 looks like the middle--

25 MR. BANNISTER: He said that was part of the damage

1 to the remainder.

2 THE COURT: Sure. I mean, \$75,000.00 dollars go to
3 the remainder.

4 MR. BANNISTER: Judge, that's damage to the
5 remainder, 112 acres.

6 THE COURT: I don't have it in my notes that I've
7 seen that. I don't have it in front of me, so let me see
8 it.

9 MR. BANNISTER: I'm just trying to make sure if he's
10 repeating what he says--

11 THE COURT: He needs to be consistent.

12 MR. BANNISTER: I think it's the one I wrote on.
13 Disregard my notes.

14 THE COURT: Well, he has damages to remainder there
15 of \$75,000.00, so that's what, that would be consistent
16 with what--

17 MR. POPE: Right.

18 THE COURT: --this gentleman right here said, right?

19 MR. POPE: Yes, sir.

20 THE COURT: Okay. I'm going to note your objection.
21 I'm going to overrule the objection.

22 MR. BANNISTER: Thank you, Your Honor.

23 Q Continue on, Mr. Rogers, please.

24 A And so I got a total estimated right-of-way cost of
25 \$182,960.00.

1 Q And do you think using 15 percent damage to the
2 remainder per acre was conservative or liberal?

3 A It'd probably be on the conservative side, because
4 it's just impossible to tell what a jury would do, but
5 certain tracts, larger tracts are damaged less. Smaller
6 tracts are damaged more, but when you go through the
7 middle, you can expect to be hit with damages pretty good.

8 Q All right. Now, you're going now to your total
9 right-of-way on the route, the southern route?

10 A The southern route, it's further. It's 3,200 feet,
11 approximately. That's to get to the, back to the exit
12 point from the tap. 5.51 acres of right-of-way and \$5,200
13 dollars per acre is \$28,650.00. I did not damage the
14 remainder there simply because the request was to put it
15 on the south side by the landowner, and the landowner
16 wasn't expecting damages there. So using that premise, we
17 did not damage that at all. I put the Duke area in there
18 and I got \$29,100.00.

19 Q So the, you said that the right-of-way costs for the
20 southern route are, conservatively speaking, about
21 \$160,000-\$50,000 less than the middle route costs?

22 A Yes. Yes.

23 Q And if the damage to the remainder was, in fact,
24 higher, 20 percent, 30 percent or 35 percent, then that
25 number would rise?

1 A It could.

2 Q All right. Now, tell us what the estimated total
3 cost you analyzed in your report?

4 A Two--

5 THE COURT: Hang on. That is information that Mr.
6 Bannister has objected to and I've sustained that
7 objection, so are you making a proffer?

8 MR. POPE: This is a proffer.

9 THE COURT: Okay. Please let me know, thank you.

10 MR. POPE: I'm sorry.

11 Q The estimated total cost that was computed by you and
12 your note says that they were actual costs, is that right?

13 A Yes.

14 Q And then did you use the same unit costs that were
15 used by Central Electric's construction people on a line
16 in Newberry County during 2015?

17 A Yes.

18 Q And you, the unit costs was noted to be how much?

19 A Construction \$3.25 a mile or \$61.55 a foot.

20 Q And the engineering costs?

21 A \$1.10 a mile or \$20.83 a foot.

22 Q Is that based on the actual engineering costs?

23 A That's actually what they paid for that line for
24 engineering costs and constructions costs.

25 Q Well, would the, and you noted here that the PMPA

1 estimate of construction costs higher or lower than what
2 you've got?

3 A Their costs is lower based on their study they issued
4 in February, what they didn't, yeah, their cost is lower,
5 \$378 instead of \$570. That's a total. Central, it was
6 \$435.

7 Q \$435,000.00?

8 A Yes.

9 Q Did you compare apples to apples? On each route, did
10 you use the same consistent number?

11 A I did.

12 Q And is this the kind of analysis that you did relying
13 on construction numbers throughout your career at Central
14 Electric?

15 A Yes, we did.

16 Q Now, would you say--

17 MR. POPE: I think the proffer is over, Your Honor.

18 THE COURT: I'm going to still, I know you're, I
19 assume that you're moving to go ahead and allow that
20 testimony. I'm going to deny that. I'm going to ask you
21 did you have an exhibit that reflects that other than the
22 blow-up?

23 MR. POPE: Yes, sir. He's got it in his report.

24 THE COURT: He's got it in his hand. Let's make that
25 Court exhibit number 2 in case I'm incorrect in my ruling.

1 REPORTER: Okay. That report is already marked as an
2 exhibit.

3 A Okay. 40, the Plaintiff's.

4 THE COURT: Well, hang on.

5 A Plaintiff's 40.

6 THE COURT: I thought 40 was different numbers.

7 MR. POPE: 40 was his whole report.

8 THE COURT: Well, if we can go back for a second,
9 then, Mr. Bannister if y'all stipulate this is admissible.
10 What is the objection right after we've already admitted
11 it?

12 MR. BANNISTER: It's an objection to him testifying
13 to the numbers.

14 THE COURT: But the numbers were contained in his
15 report.

16 MR. BANNISTER: Yeah, until he said they weren't from
17 this project.

18 THE COURT: All right.

19 MR. BANNISTER: I thought he had talked to engineers
20 about what this project was, and I recognize that he can
21 rely on other experts to form an opinion.

22 THE COURT: Right.

23 MR. BANNISTER: And that creates a problem in this.

24 THE COURT: I got you. You know, I'm going to let it
25 in for what it's worth. It's already into evidence. I do

1 note your objection, and I'm just, exhibit for what it's
2 worth.

3 MR. BANNISTER: Thank you, Your Honor.

4 THE COURT: I do overall agree with Mr. Bannister.

5 MR. POPE: Thank you.

6 THE COURT: All right.

7 MR. POPE: But it's in evidence for what it's worth?

8 THE COURT: Sir?

9 MR. POPE: It's in evidence for what it's worth.

10 THE COURT: It's in evidence for what it's worth.

11 Thank you. No, we're not marking number 2 a court
12 exhibit, because it's already in evidence as number 40, is
13 that correct?

14 MR. POPE: Yes, sir.

15 REPORTER: Okay. Well, wait a minute. I got one of
16 them marked 40, so I'll just mark that one also as a court
17 exhibit, you want to pull some of that out of it and mark
18 that as a court exhibit?

19 THE COURT: No, it's already in.

20 MR. POPE: It's all part of it.

21 THE COURT: It's already part of one exhibit number
22 40, is that correct?

23 MR. POPE: The whole thing is in there.

24 THE COURT: How much longer do you think you have
25 with this gentleman?

1 MR. POPE: How much longer?

2 THE COURT: Yeah.

3 MR. POPE: I don't think a whole lot.

4 THE COURT: Okay. I'm not trying to, you know, to
5 rush you. I want you to be able to talk to him all you
6 want. I just want to make sure that we have a good time
7 for everybody else to break.

8 MR. POPE: But we will, will we do his cross before
9 we leave?

10 THE COURT: Sir?

11 MR. POPE: Will we do cross-examination today?

12 THE COURT: My intention was going ahead and breaking
13 for the day unless that's a problem for everybody. You
14 know, I'm fine, but I just want the staff and everybody to
15 be okay, too. I'm here and I'm staying here, so it
16 doesn't make a difference to me.

17 MR. POPE: Yes, sir.

18 THE COURT: Okay.

19 MR. POPE: We're happy either way. I would like to
20 finish it.

21 THE COURT: Okay.

22 CONTINUE DIRECT EXAMINATION

23 By Mr. Pope:

24 Q Now, you were deposed, the report was furnished over,
25 what's today, about a month ago, three weeks ago, wasn't

1 it?

2 A Yes.

3 Q And you were deposed two weeks ago or I think was it
4 ten days ago?

5 A I think it's a little, last week?

6 Q And you were questioned about this very report then,
7 were you not?

8 A Yes.

9 Q All right. So now we've, in going through the
10 estimated total costs, you had said that the total cost of
11 the middle route was \$364,000.00, is that right?

12 A That's my opinion, yes.

13 Q And that's construction, engineering and right-of-way
14 acquisition?

15 A Yes.

16 Q All right. What are the total costs of the southern
17 route?

18 A \$292,007.00.

19 Q All right. So that's whatever that is, \$70,000.00 or
20 so later, lower than the middle route?

21 A Yes.

22 Q All right. And that includes construction,
23 engineering and right-of-way?

24 A Yes.

25 Q And no damage to the remainder?

1 A It's got damages to remainder in it.

2 Q To the south?

3 A None in the south, no.

4 Q All right. Now, did you, this is an important
5 component of a route study, is it not?

6 A Yes.

7 Q That's related total costs?

8 A Yes.

9 Q All right. Now, route ratings is where you make your
10 conclusions as a right-of-way expert, the route ratings?

11 A Yes.

12 Q Explain to the Court what each category on that sheet
13 in your report, exhibit 40, right before your conclusion,
14 explain what this means?

15 A Well, basically, I rated them on a scale of one to
16 three, one being the best and three being the worst.
17 Looking at the various, the variables that go into
18 evaluating these particular routes, one being the costs,
19 two being the tap, three being the access, aesthetics,
20 wetlands, structures. And so by structures, those are
21 buildings or proposed buildings or whatever you can,
22 whatever may be out there, and the environmental, and then
23 did a ranking of it and, basically, these were my
24 opinions, of course. The north was the least, you want me
25 to go through it?

1 Q Yeah, we pretty much cancel out the north in the
2 interest of time because neither did the condemnor or the
3 Oiens compare the middle and southern. Let's focus on
4 those two parts.

5 A Okay. I had the southern being ranked two and the
6 middle being ranked three regarding costs. Tap, it's been
7 my experience that when you can tap with great access,
8 easy access that the southern tap was superior to the
9 middle tap. You had to go up the right-of-way.

10 Q Now, show, come down here if you would and just point
11 to the map to show the Court where the southern tap is
12 versus the tap for the middle.

13 A This is that O'Dell Road going into the property.
14 There's a circle here and there's a gate somewhere in here
15 and this is the Duke right-of-way. There is a pole up
16 here. This is the middle tap here. This is about 600
17 feet up this right-of-way. It's kind of rough and all,
18 but this is a paved road here. There's tap points in this
19 cleared area through here that are possible to be used.

20 Q Have you worked with Duke in acquiring tap points on
21 a frequent basis?

22 A We've done about, I guess, 10 or 11 with Duke, yes.

23 Q Were they easy to work with?

24 A Fairly easy, yes.

25 Q Do you have any reason to think that the southern tap

1 point for the southern route wouldn't work?

2 A Not to my knowledge. I don't see any reason why it
3 would not work.

4 Q Now, is the area on the left here as wide is as flat?

5 A It is.

6 Q And is it almost like a parking lot near that pole?

7 A It is.

8 Q And Duke likes to do tap points not on the pole?

9 A No, they like to go sort of near mid-span like
10 everybody does.

11 Q Okay. All right. So you go through tap. What about
12 access?

13 A Well, that, obviously, that access you have paved
14 road access to it and the middle route, you would have to
15 go up the right-of-way about 5-600 feet.

16 Q Is it hilly up there?

17 A It's an incline yeah, and, you know. It'd be harder
18 to get your trucks in there.

19 Q What about the rating for aesthetics?

20 A That's based on the, what the use of the property was
21 going, is going to be. Clearly, from the landowner's
22 perspective, the aesthetics on the southern route, he
23 doesn't have a problem with or they don't have a problem
24 with. The middle route, they have great problems with,
25 because it's a planned home he is going to build on it.

1 Q Is consideration for aesthetics totally different if
2 you have a timber tract if he was just growing timbers and
3 no residences on it and no houses and stuff?

4 A Yes, it would be less. I mean, there would be not as
5 much aesthetic problem with a timber tract unless you're
6 talking to timber people.

7 Q So you say the south is the best and the middle is
8 the worst aesthetically?

9 A Yes.

10 Q All right. And so then you go to, what's the next
11 criteria you look at?

12 A Wetlands, and I put that the south, obviously, has
13 the pond that you have, you'll have to design around. Try
14 to, actually, figure a way you go down there and try to
15 span it would be the best way to design something through
16 there. But, obviously, you have a wetlands area there,
17 although those are, that's a perpendicular wetland
18 cross-land, relatively nothing to those. Central falls
19 under a nationwide permit. Most utilities do where they
20 don't have to apply for specific mitigation for wetlands.
21 So that's not a big deal. That's every line that Central
22 does wetlands are involved with some shape or fashion.
23 The middle route came in number two because there is, it
24 goes down near the dam area of the pond and I just, you
25 know, you couldn't tell, it's not on a National Wetlands

1 Inventory list, and you'd have to do site-specific
2 wetlands study to determine that. But, obviously, it
3 would not have as obviously problems as the southern
4 route.

5 Q All right. What's the next category of route
6 ratings?

7 A Structures. On the southern, there is no apparent
8 problem with the lodge house or the caretaker's home, so I
9 evaluate it as number one with the least incursion on
10 structures. The third one, the middle route would have
11 the, would be number three because of the proposed home
12 that Mr. Oien is planning on building on it and the pond
13 that he'd planned on putting in the area which would be
14 opening up more cleared space and making the line more
15 visible.

16 Q All right. So after you presented all your ratings,
17 what conclusion did you come up to?

18 A Well, I came up that the southern route would be the
19 best ranked rating of the three or the two. The middle
20 route, and this is as it applies to this particular
21 property, yes.

22 Q Did you see any factual basis, objective basis using
23 a route study in the PMPA records or testimony, any
24 factual basis to justify selecting a middle route?

25 A I didn't see a route study, period. There was no

1 route study done on this line, from the information.

2 Q So your answer is, was there a factual basis or none
3 for that phase?

4 A None.

5 Q Now, you believe the criteria you have identified
6 today for a proper alternate route study requirement for
7 each property owner on a transmission line is the industry
8 standard, the standards you are given and those that are
9 followed by your industry, the utilities?

10 A It is.

11 Q All right. Do you feel like that standard was
12 adhered to here by PMPA?

13 A No.

14 Q And your opinions as stated herein have been to a
15 reasonable degree of certainty for someone with expertise
16 in the area of right-of-way acquisitions?

17 A Yes.

18 Q And route studies?

19 A Yes.

20 Q All right.

21 THE COURT: How long do you anticipate your
22 cross-examination to be?

23 MR. BANNISTER: Thirty minutes. That's my best
24 guess.

25 THE COURT: Well, I'm not going to hold you to it,

1 guessing. Do you, would anybody have a problem with going
2 ahead and letting him try to finish up and we can excuse
3 this witness for today until he has to come back in cross
4 for the Plaintiffs?

5 MR. BANNISTER: No, Your Honor.

6 THE COURT: All right. Let's do that.

7 MR. BANNISTER: If it suits the Court, it suits us.
8 If it suits Your Honor, it suits us.

9 CROSS-EXAMINATION

10 By Mr. Bannister:

11 Q Mr. Rogers.

12 A Yes.

13 Q In your report, you talked about industry standards,
14 the South Carolina legal, courts of South Carolina, those
15 are all based on the Southern Development case, is that
16 right?

17 A They're based on that, plus my experience of being
18 involved in injunctions and challenges for the last 20
19 years.

20 Q So what other cases do you rely on where the Court
21 has said or the statute or what statutes do you rely on
22 where it says you must do a written, alternate route
23 selection prior to commencing condemnation? Other than
24 Southern Development, what other cases or statutes are you
25 relying on?

1 A I'm relying on what my counsel has told me to do,
2 which is to do written studies. I don't know how you do a
3 study without doing it in-writing.

4 Q Mr. Rogers, in other words, your lawyer has told you
5 that's the way to do it. And in your opinion, your
6 lawyers are right?

7 A Yes.

8 Q Did you ask your lawyers if that was the only way to
9 do an alternate route study?

10 A No. I was tasked with developing the process, I
11 wrote the process, and they accepted it. And again, it's
12 been submitted in various challenges and injunctions.

13 Q So you wrote the written policy for the company that
14 you worked for?

15 A I did.

16 Q And you believe that created the industry standard by
17 which every other condemnor should follow?

18 A No. I've worked with other, that was our, that's the
19 way we did it. But I've worked with other, at that time,
20 again, I was contract right-of-way agent for Central
21 Electric, and I did work for other utilities in the state.
22 I worked for Progress Energy. I've done work with SCE&G
23 and I've seen their studies. They're very similar to
24 these types of studies. So that's, I'm just saying they
25 had written reports for their studies.

1 Q As long as a study is done that complies with the
2 Southern Development case, isn't that all the Court and
3 the statutes require?

4 A I don't know.

5 Q Okay. Well, let's talk about this report.

6 A Okay.

7 Q You did a route rating, right?

8 A Correct.

9 Q Are all of those factors considered equal?

10 A In this particular case, yes.

11 Q All right. And are you aware in your experience of
12 acquiring right-of-ways that the courts believe that cost
13 should be weighed the most other than, you know, ease of
14 access or wetlands or aesthetics, you look at cost first?

15 A I would say cost and the cost to acquire.

16 Q Sure. You weigh costs heavier than you weigh all the
17 others?

18 A Right.

19 Q Okay. So what adjustments did you make in your
20 expert report on route ratings to give a greater weight to
21 costs.

22 A I didn't.

23 Q Okay. All right. And then did you, you did not
24 contact an engineer about the actual construction costs or
25 engineering costs for any of these routes, did you?

1 A I talked with our engineers and I actually saw the
2 invoices of what we paid for the Fairview line which is,
3 again, it's a different line.

4 Q Okay. But not for this one?

5 MR. POPE: Well, Your Honor, he hadn't finished his
6 answer.

7 THE COURT: All right. I think he was done, but go
8 ahead and let him finish his answer first. Go ahead.

9 A It is a different line, but I did rely on their
10 information from the actual and not estimated costs. I
11 wanted to use actual costs and, again, it's a different
12 type of line.

13 Q All right. But, I guess, let me ask you the next
14 question.

15 A Okay.

16 Q If the construction costs for the north, middle and
17 south routes are different than what you presume they are
18 and let's say the construction costs for the south route
19 is a million dollars. That would eliminate the south
20 route, wouldn't it, it'd be too expensive?

21 A It would.

22 Q All right. And at some point, less than a million
23 dollars, you have to start weighing the factors?

24 A Yes.

25 Q Yeah. Okay. All right. Let's talk about the

1 acquisition costs. You relied on Mr. Major's testimony
2 and his report, did you not?

3 A I did.

4 Q And when you worked for Central, did you always use
5 the landowner's appraisal when determining the acquisition
6 costs or did sometimes you used the appraiser that you
7 hired through Central to make that analysis?

8 A Basically, the way, when we looked at this is a
9 location type of request where you're looking at different
10 locations on the landowner's property. So you wanted to
11 look at all possibilities there. So if he had appraisals
12 and he had other information that you could use in
13 presenting that information to your management, you would
14 use that in addition to your own appraisals and your own
15 studies. So you weigh, all of that would go into that
16 ball of wax.

17 Q All right. Mr. Rogers, in acquiring right-of-ways
18 for Central and where you gained your expertise and the
19 procedures used, did you use, have you ever had the
20 opportunity to use Mr. Graydon's appraisals in determining
21 route selection?

22 A Not in determining route selection.

23 Q What have you used his appraisals for?

24 A To acquire easements.

25 Q Okay. Do you know Mr. Graydon?

1 A We've hired him.

2 Q Not on this case?

3 A No. He worked for us at Central.

4 Q All right. But you know him?

5 A I know Dave.

6 Q You think his work product is okay?

7 A It's a good product.

8 Q Is he a fairly decent appraiser?

9 A Yes.

10 Q Certified?

11 A Yes.

12 Q Isn't he an MAI?

13 A He's an MAI.

14 Q Is that a designation for, what is that, please?

15 A Member of the Appraisal Institute.

16 Q All right. And so as the condemnor and we're just

17 talking about the procedure by which a condemnor acquires

18 the right-of-way. If they're looking at the cost of

19 acquisition, is it normal for the condemnor to rely on

20 their expert as it relates to the cost of acquisition as

21 opposed to the opinion of the landowner or the landowners

22 appraisal?

23 A Well, to do it, if you're trying to resolve the

24 matter and that's what you're all, that's the goal of what

25 you're trying to do. You're trying to buy a right-of-way.

1 MR. BANNISTER: Instruct him to answer the question.
2 And then he can give hypothetical--

3 A It's not a hypothetical.

4 THE COURT: Y'all, stop, stop, stop, stop, stop.
5 Answer the question he asked you, then explain it if you
6 need to, okay, sir?

7 A Okay. Go ahead. Could you restate the question,
8 please?

9 Q Yes, sir. In the procedures by which you determine
10 which route to use, in your experience, does the condemnor
11 use their own experts to determine the cost of acquisition
12 or do they rely on the landowner's expert to determine the
13 cost of acquisition?

14 A They use their own.

15 Q Okay.

16 THE COURT: Now, do you want to explain that?

17 A I would like to.

18 THE COURT: Okay, sir.

19 A In this particular case and in any kind of case, you
20 get a, you're doing your due diligence, so you have
21 appraisals on each tract, so you're trying to buy
22 right-of-way. You run in a situation like this where you
23 meet with a property owner and he's got issues, serious
24 issues and it could be resulting in big monetary problems,
25 so you want to look at as much information as you can to

1 avoid having to get to where we are today. And so you, if
2 he's got appraisals, if he's got different, he's got
3 information such as these plans, that should give you a
4 red flag, okay. You're presenting your appraisal as your
5 offer to buy the right-of-way. The landowner, at the same
6 time, is giving his counter to you. You're trying to make
7 a deal. And so by looking at the situation, if you're, if
8 I'm trying to buy this right-of-way and I'm working for
9 PMPA, I'm taking the deal back to PMPA and said look,
10 here's what might do the deal if you can move it. Well,
11 you're going to say, you know, we're going to look at this
12 appraisal, we're going to look at what he's got to say and
13 may take a different look, another look at it and go from
14 there. And the whole idea is to get the two together
15 somewhere to reach an agreement where your group can live
16 with it and the landowner can live with and you got to
17 sign the easement and go your own way.

18 Q All right. So bear with me on this hypothetical,
19 okay? After a certain number of meetings, you reach the
20 point as the condemnor that you cannot make an agreement.

21 Have you ever reached that point with a landowner?

22 A Certainly.

23 Q Okay. And the condemnor then has to condemn a route?

24 A Correct.

25 Q And if the condemnor considers their expert's opinion

1 as to relates to the acquisition costs and damage to the
2 remainder, they consider their engineer's expert opinion
3 as it relates to the cost of construction, of constructing
4 their routes and they look at the aesthetics and they look
5 at all the other factors, safety, reliability,
6 accessibility, the whole deal and they locate the route.
7 Does the landowner's opinion trump the condemnor's
8 decision about where to put the line?

9 A At that point, you've filed a condemnation, I assume?

10 Q Yes, sir.

11 A Once you file a condemnation, you know, that's what
12 you're condemning the route that you've selected. And
13 you're basing your condemnation on the proposed
14 acquisition which is, I guess, on a survey and on an
15 easement that is drawn up for the landowner to look at.
16 But once you file, then it goes into the next step which
17 is either trying to resolve it somehow which a lot of
18 cases get resolved before they ever go to trial or you go
19 to the mediation. And at that point, their side gets
20 brought in, too, and I've been in a lot of mediations and
21 while we would love to be able to mediate everything, it's
22 never that way. It's some of theirs and some of yours.
23 It's trying to work out a solution to the deal.

24 Q Okay. So as I understand, you are here to testify
25 about the proper procedure from the time PMPA decided that

1 they needed a transmission line, to the point they file a
2 condemnation. Is that right or wrong about what you're
3 here for?

4 A I'm here to testify or to give an opinion on whether
5 or not PMPA did alternate studies, and I've given that
6 opinion and to also testify or give an opinion as to
7 whether or not they followed proper procedures or went
8 through the process and through the acquisition process.

9 Q Okay. You relied, if I remember, on the opinion of
10 Mr. Major in his, if I remember right, you said the damage
11 was \$182,000.00, \$182,916.00 was the acquisition cost
12 according to Mr. Major?

13 A Yes..

14 Q All right. If Mr. Major had not provided that
15 appraisal prior to the notice of condemnation being sent,
16 would it change your opinion about whether or not PMPA had
17 followed the appropriate procedure to determine which of
18 those routes to select?

19 A Well, if I was asked to do an independent study of
20 it, an independent review and to provide my input into the
21 situation regarding the middle route, then I would
22 recommend or to advise whomever is choosing that route
23 that there could be some damages, serious damages to it,
24 but simply because you're going through the middle and
25 simply based on our experience. Both Dave and Paul came

1 very close to the same per acre price. The deal is the
2 damages. The damages are always then, and so in this
3 particular case, I felt like using Mr. Major's information
4 would be more accurate than my trying to insert an
5 estimate.

6 Q Okay. And, I guess, in your report, you point out
7 that you have the benefit. So we getting a little bit
8 back in time and have all the information available to
9 you, that's available today.

10 A Yes.

11 Q But what you, what I'm asking you to do is go back in
12 time if you're PMPA and you're doing the procedures
13 necessary to determine the route that you're going to
14 condemn and you've been provided no appraisal, the \$182 is
15 never provided. All you have is the appraisal from Dave,
16 the appraisal you got. If you only have one appraisal, is
17 there any reason why you would assign a higher number than
18 your appraiser said it's worth in doing the alternate
19 route study for acquisition costs?

20 A In doing the route acquisition costs, that's not,
21 that's different from the appraisal, okay? Let me,
22 let's--

23 Q I mean, you only have one appraisal. That's what I'm
24 asking you.

25 MR. POPE: He needs to allow him--

1 THE COURT: Yeah. Let him finish his answer.

2 A All right. When you do alternate route studies,
3 which there were none done on this project?

4 Q There were no written one done, right?

5 A No written one and I still don't know how you do, I
6 still don't know how you present that to anybody. I don't
7 know how you present it here in this courtroom. I just
8 don't know how to do it. You have to have, to me, you
9 have to have the written documentation of how you do
10 things and again, as I stated earlier, companies I've
11 worked for whether it's Central or SCE&G or whoever it is,
12 they go out and they get market studies on various land
13 uses. They look at each individual tract. They look, and
14 this is on proposed, their current alternatives, A, B, C,
15 and D, whatever they are, each individual tract and they
16 give an estimate as to what it will cost to acquire that
17 tract. That estimate is not just taking 20 acres and
18 multiplying it by \$5,000.00 an acre and getting
19 \$100,000.00. That estimate is based on applying
20 information which you've gleamed from the market using
21 your experience and applying that to each individual
22 property and coming up with the cost to acquire that
23 particular route. So that is done extraneously. Once,
24 and you're talking about two different things. The
25 alternate route studies are done and a selected route is

1 made. Once a selected route is made, then you go through
2 the process of obtaining, of your due diligence where
3 you're doing your title work, you're doing your appraisal
4 work, you're doing forestry consultant work. You're
5 getting all that done. So there are two different phases
6 here that you're talking about. The main thing I'm giving
7 an opinion on, two things really. One is the alternate
8 route cost study and alternate route studies, which I
9 still think they need to be in-writing. I don't know if
10 there is a written law to say that fact, but I'm saying
11 that companies do use it. They produce everything
12 in-writing. How do you, how else do you have a paper
13 trail. And then when you are in an acquisition process,
14 once you've selected that route based on that information,
15 then you get your appraisal, and then you go try to buy
16 the right-of-way from Mr. Oien. And then at that time
17 when you make, separate from the alternate route
18 appraisals and now you're trying to buy the right-of-way,
19 Mr. Oien has got information. I'm the right-of-way agent.
20 I've got Dave's appraisal, I'm armed with it. I got to
21 meet with him. I give it to him. I show it to him and
22 make a presentation and an offer on that basis and go from
23 there. So there are two different, there's separate
24 things. So I'm doing on the three possibilities crossing
25 Mr. Oien's property. I've got the luxury of looking at it

1 retrospectively through their appraisals, not appearing
2 ahead of time. That should have already been done. The
3 routing should have already been selected based on the
4 criteria I stated earlier. I don't think that was done in
5 this case.

6 Q And you base it on the fact there's nothing
7 in-writing?

8 A There's nothing in-writing.

9 Q Right. But if they did it, and they had a meeting
10 where they went through all the alternate routes with a
11 study of that of PMPA like Mr. Frazier said they did
12 earlier, then you would, if they did all the steps that
13 you're talking about and they considered all of the input
14 and market data and jury potential verdicts and everything
15 else, if they considered everything at a meeting like Mr.
16 Frazier suggested that they did with their engineer in his
17 testimony, if they did that, then did they comply with the
18 alternate route analysis?

19 A I don't know how you would do that, because how do
20 you tell, they had, at one time, I saw six different
21 routes, and I think they've testified they had 12 or 15
22 landowners per involved in this one. So if you've got six
23 different routes and say you just got 12 landowners,
24 that's 72 different properties that you've got to be able
25 to recall and how you crossed them and what their cost is.

1 I don't know how you do without either having some written
2 notes or some written report. And so if they're able to
3 do that, if they are able to do that and they can prove
4 that, that they did that in a venue such as this, then I
5 would say yes. But I don't know how you do that without
6 having it in-writing.

7 Q So the good news is the burden of proof is on the
8 Oiens, so they got to prove that we didn't do it. You
9 understand that, right?

10 A I don't.

11 Q Okay. All right. So a couple of more questions.
12 You were, we've sort of gotten away from the northern
13 route.

14 A Yes.

15 Q When you were doing your consideration of the
16 northern route, some of those such as aesthetics got a
17 better ranking than the middle route. Is it possible that
18 the, the transmission line, now I'm talking about your
19 route rating.

20 A I got you.

21 Q Is it possible that the transmission route going
22 through their homesite would have a worse aesthetics on
23 the property than the transmission line going through the
24 center; is that just a judgment call that you made?

25 A That's a judgment call I made based on measuring,

1 trying to measure the distances.

2 Q So the north route is ranked higher than the middle
3 route as it relates to wetlands, but don't they both
4 cross, basically the same wet spot underneath the dam?
5 Regardless of how you come out of there, you're coming out
6 over that wet spot. Shouldn't they be ranked equally or
7 did you just make a judgment call that the middle route
8 was--

9 A I made a judgment call on that based on proximity of
10 the middle route to the dam.

11 Q All right.

12 A We figuring this may be a little further from it.

13 Q Okay. And structures, you put that the northern
14 route ranked better based on the existing structures that
15 the, well, I guess, structures, and generally you said
16 that the north route was better than the middle route and
17 you ranked the middle route last?

18 A Yes.

19 Q But all the testimony I've heard today is that the
20 middle route doesn't interfere with any structures and it
21 certainly is further away from the proposed hypothetical
22 structure than a line that would be directly behind it.
23 So I'm trying to figure out how you ranked the northern
24 route as a better route for structures than the middle
25 route?

1 A Again, that's a judgment call I made just trying to
2 scale it off, scaling off various from the home place,
3 from the proposed home place to the northern route and to
4 the middle route.

5 Q All right. Well, how about access. You said the
6 south has access. You talking about access to the
7 right-of-way--

8 A To the tap point and to the tap point.

9 Q All right. So you got the tap point as the second
10 one.

11 A Yes.

12 Q So explain to me how you rank the tap point; what
13 does that mean?

14 A Well, a tap, you got better access so the two really
15 go hand-in-hand. So the key is from all the projects I've
16 done with Duke, they want easy access to the tap point.
17 We've even had to go buy additional access to get to tap
18 points.

19 Q So the tap point is off the Duke right-of-way?

20 A Yes, it's off the Duke right-of-way.

21 Q And does Duke have access to their right-of-way?

22 A They have access to their right-of-way.

23 Q And it's a straight shot, right?

24 A It is.

25 Q So what's the difference between?

1 A You've got a paved road to the south. You've got a
2 paved road and relative level area right in there dropping
3 down from the pole.

4 Q All right. Is the paved road behind the fence or in
5 front of the fence?

6 A It goes through the fence. It leads in right up to
7 the transmission line right-of-way.

8 Q I know, but who has access to that paved road past
9 the fence?

10 A It turns, well, the Oiens, sits there.

11 Q All right. Does Duke have a right-of-way down that
12 paved road?

13 A Their right-of-way crosses the paved road. Okay.
14 The paved road is perpendicular crossing it. The O'Dell
15 Road and, I guess, we show it on that map.

16 Q It would appear that Duke will have access to its
17 right-of-way and they would have, it would just be this
18 pole versus the next pole versus the next pole?

19 A I mean, you got to go, to go to the middle route,
20 you'd have to go up about 400 or 500 feet up the
21 right-of-way. You could come in the paved road and go up
22 their right-of-way. But and see, I mean, this is right
23 here at it.

24 Q I mean, does it go--

25 A It's my opinion.

1 Q They go up, and I'm just asking you and subjectively,
2 you're ranking the southern route better, because you only
3 have to go 100 feet instead of 400 feet to get to the tap?

4 A You have better access, and you have better tapping,
5 in my opinion.

6 Q Okay. And the access is based on the same thing?

7 A The same thing.

8 Q To get to that right-of-way, you got to, instead of
9 100 feet, you got to go 400?

10 A Yes, that's my opinion.

11 Q So don't you kind of count the tap and the access
12 twice.

13 A They go hand-in-hand. Again, they go hand-in-hand,
14 yes.

15 Q All right. Did you consider the fact that in this
16 other route you got to go through the wetlands and the
17 marsh and maybe across the pond, and then perhaps access
18 to the entire right-of-way would not be as desirable as
19 you would have if you went on a route that is not in a
20 marsh?

21 A I looked at that, and I think the access could be
22 virtually the same here, the same application as you just
23 made going out that right-of-way here. You could go down
24 the right-of-way there and come in from the other side on
25 the other side of the pond and when you have physical

1 features that maybe can cause some problems, then you try
2 to access it different ways.

3 Q But that was another judgment call.

4 A Judgment call, yes.

5 Q Access to do work if you needed to?

6 A Yes.

7 Q Okay. And then we agreed the cost, we don't actually
8 have any actual engineering construction costs? You don't
9 have any actual engineering costs to put in this line?

10 A For this type and this particular time of
11 construction, no.

12 Q For this particular line?

13 A No.

14 Q You don't. Is it possible that PMPA in analyzing
15 those routes would use their own judgment and come to a
16 different conclusion than you have?

17 A Possibly.

18 Q And that's a duty and responsibility that's been
19 placed on PMPA and as a condemnor, somebody granted that
20 power by the state, to decide the appropriate route to
21 condemn.

22 A That's correct.

23 MR. BANNISTER: No other questions, Your Honor.

24 THE COURT: Thank you, sir. Any redirect?

25 MR. POPE: Yes, sir.

REDIRECT EXAMINATION

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By Mr. Pope:

Q Now, he's asking the question if construction costs for the southern line was going to be a million dollars, would that make a difference. Is there anything in the record to support the fact that the southern route would involve any extraordinary costs other than making just a couple of turns?

A No, there's not.

Q Now, you've also been a certified appraiser in past years, have you not?

A Yes, in the past.

Q Now, when you look at Mr. Graydon's appraisal and, of course, he's a good appraiser?

A He is.

Q Is it obvious from that appraisal that he never spoke to Mr. Oien?

A He would have it in his report that he would have had a site visit with Mr. Oien or spoke to him on the phone.

Q And Mr. Oien said he didn't speak to him.

A And it was not in his report that he did.

Q And was it clear that Mr. Graydon had not seen the homesite details that we've heard testimony about today, the clearing and well and all that?

A He may have been able to physical inspect that, but

1 what he didn't have knowledge of were the plans that Mr.
2 Oien has gone to a lot of trouble to develop an expense.

3 Q Yes.

4 A Also his photo of his type of home he's going to
5 build there. He didn't have that information simply
6 because he didn't talk to Mr. Oien.

7 Q All right. And would you say that would be an
8 important piece of information?

9 A That's something I would want him to find out.

10 Q All right. Now, if I understand you correctly, in
11 your expertise as a right-of-way acquisition person for
12 transmission lines, if you see a proposed line based on a
13 Google Map or anything else, if you see it going through
14 the middle of a tract that's residential, has a
15 residential component, particular high-end residential, is
16 that not a red flag?

17 A It is. It is and there's going to be possible
18 damages to the remainders.

19 Q And you are testifying that that range could be from
20 10 percent to the remainder to 40 percent of the
21 remainder?

22 A I've seen 10 to 35, but I've seen higher than that.
23 It depends on who's doing the study.

24 Q Okay. Now, questions were asked to you about the,
25 well, there's no written study but maybe they talked about

1 it or are there any notes in any of the PMPA documents
2 that showed any relevance or any touching on a route
3 study, an alternate cost study or any such study that's
4 required?

5 A Not at all.

6 Q Now, the question was asked to you was it possible
7 that PMPA came and looked at the data and came to a
8 different conclusion that you do. You said it's possible,
9 and is it probable if they had done due diligence that
10 that would have happened?

11 A I don't think so.

12 Q Is that your professional opinion?

13 A That's my opinion.

14 Q When you sit here at this time after
15 cross-examinations, looking at everything and asking
16 everything and do you see any factual basis for selecting
17 the middle route over the southern?

18 A No.

19 THE COURT: May this witness be excused?

20 MR. BANNISTER: Yes, sir. May I ask him one
21 question?

22 THE COURT: Yes.

23 RE CROSS-EXAMINATION

24 By Mr. Bannister:

25 Q Are you aware that Mr. Oien had Mr. Major escort the

1 appraiser out on the property?

2 A I'm not. I'm not aware of that at all.

3 Q Okay.

4 MR. BANNISTER: That's all, Judge.

5 THE COURT: Sir, you may be excused.

6 MR. ROGERS: Thank you.

7 THE COURT: All right. Anything from the Plaintiff
8 before we break for the day?

9 MR. POPE: We have nothing.

10 THE COURT: From the Defense?

11 MR. BANNISTER: Just I want, I was just interested if
12 he had any additional witnesses that he's going to call or
13 if that is it.

14 MR. POPE: It is possible I won't call any more.

15 THE COURT: Since you're an out of town, what time
16 you want to start?

17 MR. BANNISTER: So I got a witness coming from
18 Charlotte, and so if I knew that his plan was on
19 additional witnesses. Actually, that's not true. I can
20 start whenever you want to.

21 THE COURT: Let's, how about you, do you have a
22 preference?

23 MR. POPE: It doesn't matter, Judge.

24 THE COURT: I like starting early.

25 MR. BANNISTER: 9:00 o'clock is fine.