

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Circuit Court Judge

Case No. 2012-CP-23-04064
Appellate Case No. 2015-001909

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

v.

Richeous Smith, Worthly Smith a/k/a Worley Smith, Pearl Terry, Ethel Butler, Tweety Smith a/k/a Tweety Smith Harris, Doreth Smith, Fletcher Lee Harris, Alma Williams Smith, James R. Smith, Loree Smith, Gene A. Smith, Adolf Smith, Janie Sue Smith, Samuel Paul Smith, Ruby Smith Mansell, Buford Mansell, Ethel Mae Smith, Wilson Smith, Patrick R. Smith, Reginald Lamont Smith, Eric Smith, Christine Smith Dawkins, William G. Dawkins, Alma Renee Smith Murry, Sharai Smith Brock, Robert Lee Smith, Melissa F. Smith, Rosalyn Annette Steven, Edith Smith Foster, George Waymon Foster, Bridgette Smith Blassingame, Tara Smith, Waymon Odell Smith, Martha Miller Smith, Calvin Lee Smith, Reece W. Smith, Raymond Eddie Smith, Michael Smith, Odell Smith, Dorothy Smith Pearson, Gary Pearson, Jerome Smith, Jaygo Terry, Ida Terry, Mack Terry, Zone Terry, Leola Terry Smith, James Smith, J.P. Terry, David Brayvell Terry, Ettie Pearl Booker, Tecora O. Terry Mason, Odell Mason, Lenora Holley, Dorothy Terry Sheppard, Orangelee Sheppard, Vernon Sheppard, Kasandra Sheppard Jenkins, Karen Sheppard Spates, Theodore Terry, Sr., Gracie Terry, Kelvin F. Terry, Theodore Terry, Jr., Keith Terry, Leola Terry Daniels, Wilford Daniels, Terrance Leslie, Sr., Derrick McGee, Jr., Fred Smith, Jr., Mannell Terry, Patricia Terry, Sheila Terry, Barbara Evans, Leonard Evans, Linda Evans, Thomas Evans, Johnny R. Williams, Connie Evans, Michael Evans, Iola Terry Cox, William Henry Cox, Johnny F. Cox, Joyce A. Smith, Anthony Cox, Alfred Cox, J. Henry Cox, Charlette J. Cox, Charles J. Cox, Michael Cox, Supearl Terry Gilliam a/k/a Supearl Terry Gilliam Miranda, Eugene Gilliam, Terry Gilliam, Jerry Gilliam, Warren Gilliam, Eugene Gilliam, Jr., Melvin Gilliam, Rodney Gilliam, Cindy Gilliam, Shakima Gilliam, Carmella Cottom, Nina Gilliam, Vermell Gilliam Phillips, Shaynise Alston, John Gilliam, Donald Gilliam, Sr., Leunette Gilliam, Donnette Gilliam Ortchere, Leslie Gilliam Peter, Angela Gilliam, Donald E. Gilliam, Raymond T. Gilliam, Juan Miranda, Carmen Miranda a/k/a Carmen Miranda Glavin, John Glavin, Sr., John Glavin, Jr., Miranda Glavin, Jeffrey Glavin, Yolanda Glavin, Ezell Terry, Magaline Terry, Leroy Terry, Kenneth Terry, James (Jimmy) Terry, Pearlie Mae Terry, Winnie L. Terry Anderson, Furman Anderson, Tommy Anderson, Abigail Dodd, Angela Reid, Sandra McDowell, Harold Anderson, Mary Ann Davis, Charlene Peake, Albert

Anderson, Paul Terry, Betty Jo Terry, Donald E. Terry, Deloris I. Terry, Paul A. Terry, Mark G. Terry, Terry Sholer, Jamie Terry, James O.C. Smith, Pauline Smith, Gloria Gore, Paul Smith, Ethel Allen, Desiree Golden, Pauline Workman, Brenda Moulhem, and if any of the aforementioned be deceased, then their heirs, successors, devisees, distributees, Administrators, Executors and Personal Representatives, and any party claiming by or through them, Landowners,

and

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

and

John Doe and Mary Roe, being fictitious names used to represent all persons and condemnees whose true names are not known, including the heirs, successors, devisees, distributees, Administrators, Executors and Personal Representatives of any of the above named Landowners and Other Condemnees who may be deceased; and also all Condemnees whose names are not known, including heirs, infants, persons under disability and persons who may be in Military service, who claim, or may claim, an interest in the property being condemned, and also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the Condemnation Notice and Tender of Payment herein, said property being identified as a portion of Greenville County Tax Map Numbers 053101010200 and 0531010102101,
.....Unknown Claimants,

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

.....Respondents/Appellants,

and

Unknown landowners, Reece W. Smith, Raymond Eddie Smith, Michael Smith, Odell Smith, United States of America and the United States of America, acting by and through its Agency, the Internal Revenue Service, Midland Funding, LLC, Sharonview Federal Credit Union, SC Department of Revenue, County of Greenville, Arrow Financial Services, LLC, SC Dept. of Mental Health, SC Attorney General, and Bullhead Investments, LLC, Zachery Arnold, Ettie Pearl Booker, Ira K. Carol, Johnny F. Cox, Wilford Daniels, Angela Gilliam, Bianca S. Gilliam, Demetrius J. Gilliam, Jerry Gilliam, Kehiminnie S. Gilliam, Terry Gilliam, John Glavin, Jr., John Glavin, Sr. Jeffrey Glavin, Miranda Glavin, Yolanda Glavin, Terrance Leslie, Terrell Leslie, Tearia Leslie, Donnette Ortchere, Jerome Smith, Melissa F. Smith, Michael Smith, James (Jimmy) Terry, Patricia Terry, Pearlie Mae Terry, and Sheila Terry, ... Respondents

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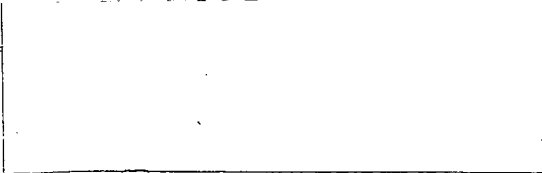
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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE) C.A. NO.: 2012-CP-23-4064

Piedmont Natural Gas Company, Inc.,)
)
 Condemnor,)

Vs.)

ORDER

Richeous Smith, et al.,)
)
 Landowners,)

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMER
 2015 JUN 25 PM 3 29

The within matter came before me pursuant to an order of reference consented to by all parties in appearance. Piedmont Natural Gas Company, Inc. (hereinafter "PNG") instituted the within eminent domain proceeding pursuant to S.C. Code §28-2-10 et. seq.

Michael S. Chambers appeared on behalf of PNG. The landowners consist of several generations of the Richeous Smith family. Those in appearance were represented by Erin Culbertson and David B. Ward. Also, Paul Andrew McKee, III recently appeared representing several landowners.

Proper notice was given to all of the parties herein, including the unrepresented and unknown heirs. Also present and participating was attorney Kelley Y. Woody, the duly appointed Guardian ad Litem for the unknown claimants.

The property in question consists of a 73.6 acre tract located at the end of Rock Road in Greenville County. A bridge across Rock Road is the only access to the subject property. The property is surrounded by high-end residential real estate developments and the Enoree River on the northeast. Its highest and best use is for high-end residential development.



ENTERED COMPUTER

Scanned

PNG took a fifty foot (50') right of way (hereinafter "ROW") for a high pressure natural gas transmission pipeline across the front of the property at the bridge over Rock Road. Important to understand is that this ROW is located fairly soon after you cross over the only access point to the tract, the bridge noted above, and the ROW runs on both sides of the roadway along the full length of the tract. The area within the ROW totals 2.515 acres, and a severance strip totaling .747 acres adjoins the ROW. The ROW is approximately one thousand nine hundred feet (1900) feet in length across the entire width of the front of the subject property. The ROW includes various ground markers including a gate, a monitoring device and a caution sign located immediately at the entrance to the subject property. Such caution sign, monitoring device and gate were a part of the original taking. The caution sign in question is at the front of the property at the entranceway, not more than approximately twenty feet five (25') to thirty (30') feet or so onto the tract, and is clearly visible from Rock Road. Copies of the sign were introduced into the record. The subject sign reads:



The background of the sign is bright yellow and the word CAUTION is in bright red. The purpose of the sign is to give notice to the public of the natural gas transmission line. The parties stipulated that the take took place on June 22, 2012.

At trial PNG first called its engineer, Adam Long, the Engineering Project Manager for the Line 378 Project, which involves the tract in this litigation. Mr. Long testified to the extent of the right of way, with the plat of the same being introduced without objection. Mr. Long testified that the pipe line is a transmission line not a distribution line. Therefore landowners along the pipe line may not tap into it. Mr. Long stated that the CAUTION sign was not required and had been subsequently removed. Mr. Long indicated he did not know when the sign had been installed nor removed. However, the evidence establishes that the sign was present on the date of the taking, June 22, 2012. As noted below, there are similar caution signs along the same transmission line ROW's involving other tracts of land.

At that juncture, counsel for the landowners offered and referred to discovery which had taken place, reading into the record appropriate portions. Firstly, it was noted that on October 27, 2014 notice was given to PNG attorneys that photographs of the caution sign would be among the exhibits offered at trial. Then reference was made to supplemental interrogatory responses from PNG filed on May 18, 2015, which indicate that the landowners were first informed on April 28, 2015 that the sign had been removed on February 17, 2015. Landowners counsel then asked the court to take judicial notice of the ADR report filed in the action which indicates that mediation had taken place on some twelve days earlier on February 5, 2015 without success.

Evidence was then introduced both on cross-examination of Mr. Long and by the testimony of appraiser of the landowners, Bruce Owen, that three of the landowners along the same ROW had previously settled their cases, which were not part of this lawsuit, but the above described caution signs remained on those properties.

A handwritten signature in black ink, consisting of a large, stylized 'B' followed by a long, sweeping horizontal line that curves upwards at the end.

A member of the Smith family, Alma Rene Smith Murray, who has lived on the property all of her life, testified the caution sign had been placed on the gate when the pipe line was installed initially. She also testified about her concern, fear and the stigma of the transmission ROW being on the tract of land and that, in her opinion, the ROW negatively impacted the value of the tract.

The landowners proffered the testimony of Mr. Bruce Owen as an expert real estate appraiser. PNG stipulated that he is an expert real estate appraiser. In addition, Mr. Owen has been actively involved in real estate development and construction, having constructed more than fifty houses (50) himself. Mr. Owen's record of many years experience clearly indicates he has interfaced with developers and contractors in various aspects of his experience and training, as well as constructing houses himself. Mr. Owen testified that in his opinion, in addition to the value of the land within the take and damage to the small severance area, there was significant damage to the remainder based upon the size and nature of the ROW. He testified that one methodology that he considered appropriate to ameliorate damage to the remainder would be to allow for a buffer zone along the right of way and depreciating the buffer zone for additional damages.

The value of the entire premises by both appraisers, who are both well qualified and experienced, was approximately the same. Mr. Owen testified that he had made an investigation into the land values by comparable sales of tracts of land. He also testified that he had discussions with developers to determine the extent, if any, to which the offending right of way with accompanying caution sign would diminish the value of the remaining tract.

A handwritten signature in black ink, consisting of a large, stylized 'B' or 'O' shape with a vertical line through it, and a horizontal line at the bottom.

Based on his research above and his years of experience, Mr. Owen determined that the damages for the area within the right of way and the small severance equal the sum of One Hundred Seventy Five Thousand Three Hundred Twenty Four (\$175,324.00) Dollars. Also, he determined that the remainder had suffered significant damages in the sum of Two Hundred Thirty Nine Thousand Four Hundred Twenty Eight (\$239,428.00) Dollars for allowance for the proposed buffer zone. Therefore, he determined total damages for the take in the sum of Four Hundred Fourteen Thousand Seven Hundred Fifty Two (\$414,752.00) Dollars.

In addition to the buffer zone methodology, Mr. Owen further offered the opinion that he had considered general damages to the remainder without specifying or without considering the buffer zone as a method of ameliorating damages. In that vein, he arrived at an estimate of 6% diminution in value to the remainder, such figure being nearly identical to his initial analysis using the criteria set forth above.

The appraiser for PNG, H. Corbin Haskell, offered an opinion as to damages for only the portion of the premises lying within in the fifty foot (50') right of way and a small severance strip, for total damages of the 3.262 acre in the sum of One Hundred Seventy Two Thousand Two Hundred (\$172,200.00) Dollars. Mr. Haskell's investigation and opinion did not make any allowance for proximity damages to the remainder since in his opinion there was no such damage or diminution based upon the ROW. It should be noted that he visited the premises and conducted his initial appraisal on March 30, 2012, which was before the installation of the pipeline, gate, monitoring device and caution sign. Moreover, his testimony indicates he did not visit the property again until after the caution sign had been taken down.

A handwritten signature in black ink, appearing to be a stylized 'H' or 'K' with a long horizontal stroke extending to the right.

PNG through its expert, H. Corbin Haskell, offered examples of other subdivisions whereby a natural gas line ROW, in his opinion, did not negatively affect the relative sales prices of houses within those subdivisions. In Mr. Haskell's opinion, in the present case, the existence of the natural gas pipeline ROW did not decrease the property values nor would it deter builders from placing lots and houses near or on the ROW.

One of these subdivisions used as a comparable was The Townes at Riverwood Farm. In that instance, the fifty foot (50') gas line right of way runs parallel along a one hundred foot (100') Duke Power right of way. Mr. Owen testified he had visited that property and examined the public records of it. There, the developer had designated all of such right of way areas as "common area", and had installed a road along the fifty foot (50') PNG right of way as a "buffer area". Mr. Owen testified that having a road with dwellings only on one side shifts all of the cost of the road and utility improvements to one side. He testified that the cost of such road would typically be between Four Hundred (\$400.00) Dollars and Five Hundred (\$500.00) Dollars per foot, and that by only constructing houses on one side, additional costs of approximately Three Hundred Thousand (\$300,000.00) Dollars would be incurred by the developer to use the road as a buffer zone. There was evidence that the road in question may have been only one thousand feet (1,000') or so, but nevertheless it is apparent that the developer did in fact use a buffer zone methodology for the purpose of ameliorating or minimizing damages. Mr. Owen further testified that there was no caution sign on that ROW.

A second subdivision referred to by PNG is located in Spartanburg County and is known as Mason's Crossing. Mr. Owen testified that he also visited that subdivision. He offered into evidence the deed showing that that property had been purchased for One

A handwritten signature in black ink, consisting of a large, stylized 'P' or 'B' shape with a horizontal line extending to the right.

Hundred Thirty Thousand (\$130,000.00) Dollars for 26 acres, or some \$5,000.00 per acre. Mr. Owen did not consider that subdivision comparable to the high-end real estate as involved in the present action. He indicated that the houses built were smaller houses or starter houses, and a number of them had constructed privacy fences or buffers, and a number of them had constructed privacy fences or buffers behind their residences. Moreover, he indicated that the right of way in question was not across the front of the subdivision but off to one side, and there was no caution sign delineating the right of way.

At the beginning of the trial PNG made a *motion in limine*, which was denied except as to the Court prohibiting use of Wikipedia, to exclude the testimony of Mr. Owen on the premise that it was improper for Mr. Owen to:

(1) Offer opinion of diminution of value to the remainder of the property due to any claim negative conception in the market place caused by fear or "stigma" associated with proximity to the natural gas pipe line.

(2) That there is no scientific basis for using a buffer zone as a method of ameliorating proximity damages.

(3) That in his written report Mr. Owen, in support of his conclusion that negative perception exists as to proximity to a natural gas line, included an addenda from Wikipedia titled "List of Pipe Line Accidents in the United States in the Twenty First Century".

PNG argues, among other things, that no South Carolina legal precedent directly addresses the question of whether fear or stigma would be a proper element of damages to be considered by a qualified real estate expert.

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South Carolina has always been deferential and liberal in allowing testimony of damages in eminent domain actions. The adoption of S.C.R.C.P. Rule 703 allowing experts to rely upon inadmissible evidence, actually confirms a long standing practice in this state.

Cartee v. Lesley, 286 S.C. 249, 333 S.E.2d 341 (S.C.App. 1985) involved a dispute over assets of an estate. The trustees argued that the expert witness was never properly qualified as an expert, and was allowed to testify from hearsay sources, answer improper hypothetical questions and was allowed to testify to irrelevant comparable rentals. The court held that opinion testimony by an expert witness regarding rental value of the property was not improperly based on what would otherwise be inadmissible hearsay, where the witness derived much of his knowledge from a publication listing market values and from talking with renters in the area. The court observed:

The trustees next argue that the Cartees' expert witness was never properly qualified as an expert, was allowed to testify from hearsay sources, was permitted to answer improper hypothetical questions, and was allowed to testify to irrelevant comparable rentals.

We find no merit to any of these arguments. Whether a witness has qualified as an expert, and whether his opinion is admissible on a fact in issue are matters resting largely in the discretion of the trial judge. *State v. Lambert*, 276 S.C. 398, 279 S.E.2d 364 (1981); *Prince v. Associated Petroleum Carriers*, 262 S.C. 358, 204 S.E.2d 575 (1974). The Cartees' witness who testified as an expert on rental values was an M.A.I. appraiser with seventeen years of experience in appraising properties in South Carolina. Cartee, at 346

The court also stated:

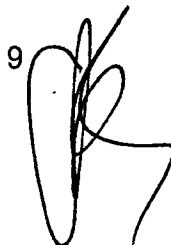
Further, an expert may base his opinion on information "whether or not inadmissible, made available to him before the hearing if the information is of a type reasonably relied upon in the field to make opinions." *Dreher, a Guide to Evidence Law in South Carolina*, P.20 (1979). The trustees' objection relates to the fact that much of the expert witness' knowledge regarding rental value

for the subject property came from a publication called "Market Valuation Service" and from information he obtained from talking to renters in the area. As stated in the case of *Miller v. Travelers Insurance Co.*, 111 Ga.App. 245, 141 S.E.2d 223 (1965), "every expert derives much of his knowledge from books as well as from experience." Cartee, at 346

See also, State Highway Commission v. E. R. Conrad and Sally D. Conrad, 263 N.C. 394, 139 S.E.2d 553 (1965). The expert relied upon a drawing prepared by a non-civil engineer in arriving at his estimate of damages. The condemnor objected as the drawing was not prepared by a civil engineer and did not comply with good engineering practices. The court held:

"A witness who has knowledge of value gained from experience, information and observation may give his opinion of the value of specific real property * * *." Stansbury: North Carolina Evidence, 2d Ed., s. 128, p. 300. "The fact that certain elements are not independently admissible in evidence * * * does not bar their consideration by an expert witness in reaching an opinion. Thus, it has been said: 'An integral part of an expert's work is to obtain all possible information, data, detail and material which will aid him in arriving at an opinion. Much of the source material will be in and of itself inadmissible evidence but this fact does not preclude him from using it in arriving at an opinion. All of the factors he has gained are weighed and given the sanction of his experience in his expressing an opinion. It is proper for the expert when called as a witness to detail the facts upon which his conclusion or opinion is based and this is true even though his opinion is based entirely on knowledge gained from inadmissible sources.' Conrad, at 557

Contrary to the argument of PNG, Mr. Owen based his decision on his vast experience as an appraiser and as one experienced in dealing with land development in every aspect, including building and dealing with developers. The central question is whether or not a developer or other

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purchaser would be inhibited to some degree in an offering price to purchase the property given the natural gas transmission ROW in the particular location on this tract.

In Western Farmers Electric Coop. v. Enis, 1999 OK CIV APP 111, 993 P.2d 787 (1999), the appellate court allowed an expert appraiser's opinion about the impact on value of perceived fear of EMFS (electrical) based on public disseminated information as a relevant factor in determining fair market value. The court went on to observe that the generally accepted definition of fair market value is the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.

The court went on to observe:

Unfortunately, the effect of fear on the willingness of a buyer to purchase a piece of land is not easily assessed or measured, but the same is true of other intangible factors such as aesthetic qualities of land. The difficulty in quantifying or valuing fear should not prevent both parties from offering available evidence to show that certain fears either do or do not have an effect on the value of property. Western Farmers Electric Coop., at ¶16.

The court also stated:

The "considerations" that go into fair market value include "any factors which a reasonably prudent buyer would consider before purchasing property," State by and through Alabama State Docks Dept. v. Atkins, 439 So. 2d 128, 131 (Ala. 1983), and "all elements reasonably affecting value." Wright v. Metropolitan Atlanta Rapid Transit Authority, 293 S.E.2d 466, 469 (Ga. 1981). Fair market value should also reflect "all favorable and unfavorable circumstances." Bellingham Community Hotel Co. v. Whatcom County, 70 P.2d 301, 304 (Wash. 1937); and, "any competent evidence of matters which would be considered by prospective vendor or purchaser or which tend to enhance or diminish value of property." Douglas County Bank & Trust Co. v. Stamper, 505 N.W.2d 693, 696 (Neb. 1993). Western, at ¶13.

The Court in Western found no error in admitting expert testimony which took into account the depreciating value of land near the transmission line occasioned by perception on the part of the general public. Obviously, that perforce would apply to a major natural gas transmission line.

Perhaps more telling is the case of Arents v. ANR Pipeline Co., 2005 WI App 61, 696 N.W.2d 194, 281 Wis. 2d 173, cited by PNG. There the court allowed expert appraisal testimony as to fear or stigma damages to the remainder excluding only the testimony of pollsters (conducting "man on the street interviews"), as not being scientific. The trial court allowed the landowner's appraiser to testify about fear and stigma and to how it purportedly decreased the property values.

The greater weight of authority and modern trend is to allow testimony of fear or stigma damages. In fact, even the notion that the fear may be unreasonable does not preclude evidence of such fear in considering damages.

Indeed, the authorities cited by PNG support the conclusion that such testimony of fear or stigma by a qualified expert is proper. Joseph Criscuola et al. v. Power Authority of the State of New York, et al., 81 N.Y.2d 649, 621 N.E.2d 1195, 602 N.Y.S.2d 588 (1993) cited by PNG establishes that the modern view is to allow such damage claims even if the fear is unreasonable.

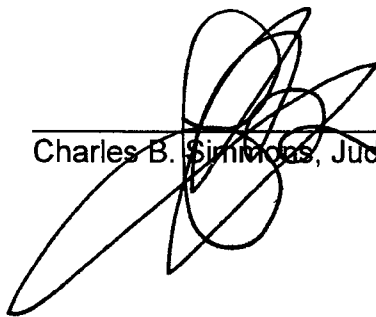
That case involved the issue of whether or not "cancer phobia", even though it may be an unreasonable fear, could be considered as a public perception in assessing damages.

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It is my conclusion and I so find that fear or stigma associated with the particular natural gas pipe transmission line ROW involved herein and the accompanying signage and markers are proper element to be considered by the Court. Further, I find that the methodology employed by Mr. Owen in forming his appraisal is both reasonable and appropriate. Simply put, the evidence establishes under the unique facts of this case that the purpose, location, size, length, signage and warning markers on the ROW have diminished the value of the tract as more fully set forth above.

Based on the foregoing, it is my conclusion and I find that the landowners are entitled to just compensation for the taking, including damages to the remainder, in the sum of Four Hundred Fourteen Thousand Seven Hundred Fifty Two (\$414,752.00) Dollars.

IT IS SO ORDERED.



Charles B. Simmons, Judge

June 23, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Piedmont Natural Gas Company,)
Condemnor,)
vs.)
Richeous Smith, et al.,)
Condemnees.)

IN THE COURT OF COMMON PLEAS
CA No. 2012-CP-23-4064

**ORDER DENYING CONDEMNOR'S
MOTION TO RECONSIDER**

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. JOHNSON
2015 AUG 10 3 PM 06

This issue is before me on Condemnor's Motion to Reconsider, Alter, or Amend Judgment (the "Motion"), related to this Court's Order dated June 23, 2015 (the "Order"). At a hearing on the Motion held before this Court on July 20, 2015¹, counsel for the parties were given the opportunity to argue their respective positions, all of which were more fully stated and argued in their written Memoranda.

After a thorough review of Condemnor's Motion, Condemnee's Memorandum in Opposition, common and statutory law, and oral arguments presented by counsel at the hearing, I find that Condemnor's Motion, based upon Rules 52, 59, and 60, SCRCP, is denied.

RULE 52

Under the terms of Rule 52(a), in all non-jury actions, the Court's order must contain findings of fact and conclusions of law. South Carolina has determined that the language of Rule 52(a) is "directory and that noncompliance would not form the basis for invalidating a judgment." Noisette v. Ismail, 304 S.C. 56, 56, 403 S.E.2d 122 (1991). The Noisette Court further held that an order in substantial compliance with Rule 52(a),

¹ The Court also conducted a conference call with all counsel of record on July 24, 2015, to further discuss and to announce its ruling on this matter.



which “adequately states the basis for the result it reaches” is sufficient to withstand appellate scrutiny. Id. The Order herein contains clear findings of fact and conclusions of law; therefore, Condemnor has failed to articulate a basis upon which the Order should be altered or amended pursuant to Rule 52(a).

Rule 52(b) permits the court, upon motion of a party, to amend or add to its findings of fact. Rule 52(b), SCRCP. Condemnor’s Motion raises no new issues sufficient to warrant an amendment or addition to the Order. South Carolina courts are highly deferential to the finders of fact. See e.g., Townes Assoc., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773 (1976) (“findings of fact will not be disturbed on appeal unless found to be without evidentiary support or against the clear preponderance of the evidence”). Condemnor has not shown the Court’s findings of fact to be lacking in evidentiary support; therefore, the Court declines to alter or supplement its Order pursuant to Rule 52(b).

RULE 59

Rule 59(e), SCRCP, requires litigants to bring a motion to alter or amend a court order, if at all, within ten days of receipt of the order. Condemnor’s Motion seeks review and reconsideration of a large number of factual and legal issues; however, Condemnor has presented no new issues or arguments to persuade the Court that an alteration or amendment to the Order is necessary. Condemnor’s Rule 52(b) Motion is hereby denied.

RULE 60

Pursuant to Rule 60(b), SCRCP, “[up]on motion and upon such terms as are just, the court may relieve a party...from a final judgment, order, or proceeding” for any of five categories of reasons. Condemnor has failed to articulate any of the 60(b) reasons;

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instead, Condemnor merely references the rule by number in its opening and concluding paragraphs and seeks relief thereunder by invocation. Because Condemnor has failed to present evidence sufficient to entitle it to the requested relief, the Court hereby declines to grant Condemnor 60(b) relief from the Order, in part or in whole.

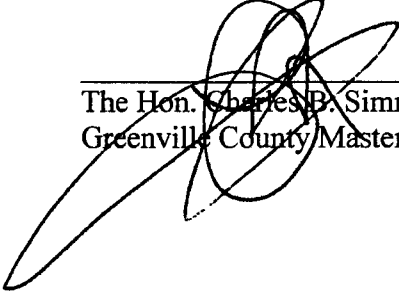
NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

(A) Condemnor's Motion to Reconsider, Alter, or Amend Judgment is hereby denied.

(B) The Court's Order dated June 23, 2015, shall stand as written.

IT IS SO ORDERED.

Greenville, SC
8/7, 2015



The Hon. Charles B. Simmons, Jr.
Greenville County Master-In-Equity

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
 CA No. 2012-CP-23-4064

Piedmont Natural Gas Company,

Condemnor,

vs.

Richeous Smith, et al.,

Condemnees.

**ORDER REGARDING ATTORNEYS'
 FEES AND COSTS**

FILED - CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL E. WICKENHAUSER
 2015 JUL 10 PM 1 00

This issue is before me on the Application for Litigation Expenses and Affidavit in Support of Claim for Attorney's Fees filed by David B. Ward, Esq., and the Application for Award of Costs and Litigation Expenses filed by Erin Culbertson, Esq., in this matter, pursuant to Section 28-2-510 of the South Carolina Code of Laws. At a hearing on the matter held before this Court on July 20, 2015¹, Condemnor's attorney was given the opportunity to examine Mr. Ward and Ms. Culbertson under oath regarding their respective Applications and Affidavits. Both Mr. Ward and Ms. Culbertson submitted itemized statements of their time spent on this matter.

After a thorough review of the Applications and Affidavits submitted by Mr. Ward and Ms. Culbertson, as well as a hearing on the matter, I make the following findings of fact and conclusions of law:

(1) Condemnees are entitled to an award of their reasonable litigation expenses in this matter, pursuant to S. C. Code Ann. § 28-2-510.

(2) Mr. Ward and Ms. Culbertson submitted their applications for expenses in a timely manner, and the applications properly included a statement that the landowners had prevailed, a request for the amount sought, and an itemized accounting which included the

¹ The Court also conducted a conference call with all counsel of record on July 24, 2015, to further discuss and to announce its ruling on this matter.

ENTERED COMPUTER

fee charged, the basis therefor, the actual time expended, and all actual expenses for which they sought recovery.

(3) I find that all time spent and expenses incurred by Mr. Ward and Ms. Culbertson were necessarily incurred.

(4) I find that Mr. Ward spent 119.6 hours and incurred expenses in the amount of \$6,831.59.

(5) I find that Ms. Culbertson spent 167.6 hours and incurred expenses in the amount of \$2,218.51.

(6) Although not required to do so under the holding in S.C. Dep't of Transportation v. Revels, 766 S.E.2d 700 (2014), I also considered the factors identified in Jackson v. Speed, 486 S.E.2d 750 (1997), as follows:

(a) The nature, extent, and difficulty of the case: this matter had in excess of a hundred parties, seventy of whom were represented by Mr. Ward and Ms. Culbertson. Further, there were novel issues of law involved.

(b) The time necessarily devoted to the case: Mr. Ward's itemized timesheet accounts for 119.6 hours and separate paralegal time of 62.1 hours. Ms. Culbertson's itemized timesheet accounts for 167.6 hours.

(c) Professional standing of counsel: both Mr. Ward and Ms. Culbertson are members in good standing of the Greenville Bar, are well-respected, and have appeared before this Court numerous times.

(d) Contingency of compensation: Mr. Ward and Ms. Culbertson represent their clients on a one-third contingency fee arrangement, according to their Affidavits.

(e) Beneficial results obtained: the Court's order of an award of \$414,752 is significantly higher than the proffer made by the Condemnor in the amount of \$172,200.

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(f) Customary legal fees for similar services: Mr. Ward's hourly rate of \$400 and Ms. Culbertson's hourly rate of \$300 are well within the "customary" range.

(7) Having conducted a Revels analysis as well as a Jackson analysis, the Court finds that an award of costs and attorneys' fees is appropriate; however, due to the complexity of the legal issues, the existence of unique and novel legal arguments which were not solely created by the Condemnor, and the frequently changing number and names of Condemnees claiming an interest in the real property, I find that Mr. Ward and Ms. Culbertson should be awarded 85% of their requested fees.

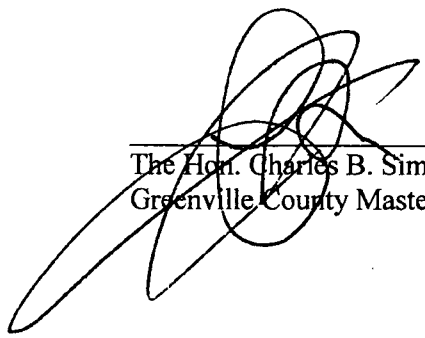
NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

(A) Condemnor shall pay expenses in the amounts of \$6,831.59 to Mr. Ward and \$2,218.51 to Ms. Culbertson.

(B) Condemnor shall pay attorneys' fees in the amount of \$40,664.00² to Mr. Ward and \$42,738.00³ to Ms. Culbertson.

(C) Pursuant to S.C. Code Ann. § 28-2-510(B)(1), the amounts described above shall become part of the judgment awarded to Condemnees and shall accrue interest at the statutory rate.

IT IS SO ORDERED.



The Hon. Charles B. Simmons, Jr.
Greenville County Master-In-Equity

Greenville, SC
8/7, 2015

² 119.6 hours x \$400 = \$47,840.00 x 85% = \$40,664

³ 167.6 hours x \$300 = \$50,280.00 x 85% = \$42,738

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Piedmont Natural Gas Company,)
Condemnor,)
vs.)
Richeous Smith, et.al.,)
Landowners, Other)
Condemnees and)
Unknown Claimants.)

IN THE COURT OF COMMON PLEAS
CA No. 2012-CP-23-4064

ORDER DETERMINING INTEREST
DUE ON VERDICT

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL W. JACKENSHIMER
2015 AUG 10 5 PM 1 00

THIS MATTER comes before this Court pursuant to Landowners' Motion to Determine Interest Due on Verdict.

Condemnor commenced this action under the South Carolina Eminent Domain Procedure Act (Section 28-2-10, Code of Laws of South Carolina, *et. seq.*) by filing its Condemnation Notice and Tender of Payment on June 22, 2012. At the same time, Condemnor deposited the amount of \$172,200.00 with the Greenville County Clerk of Court, said amount being the amount stated in the Condemnation Notice and Tender of Payment as just compensation for the property, the amount having been determined by the Condemnor pursuant to Section 28-2-70(a), Code of Laws of South Carolina, before initiating the action.

A bench trial on the issue of just compensation was held on May 28, 2015. By Order dated June 23, 2015, and filed on June 25, 2015, this Court found the amount of just compensation to be \$414,752.00.¹ On June 25, 2015, Landowners filed a Motion to Determine Interest Due on Verdict pursuant to Section 28-2-420(A), Code of Laws of South Carolina. A hearing on this Motion was held on July 20, 2015.

Section 28-2-240(A), Code of Laws of South Carolina, provides as follows:

¹ Condemnor filed a Motion to Reconsider, Alter or Amend this Order. A written Order denying said Motion will be entered separately.

A condemnor shall pay interest at the rate of eight percent a year upon sums found to be just compensation by the appraisal panel or judgment of a court to the condemnee. This interest shall accrue from the date of filing of the Condemnation Notice through the date of verdict or judgment by the court. Interest accruing on funds on deposit with the clerk of court must be offset against the interest computed pursuant to this section. Interest shall not accrue during the twenty day period commencing upon the date of verdict or order of judgment. If the judgment is not paid within the twenty day period, interest at the rate provided by law for interest on judgments must be added to the judgment. Thereafter, the entire judgment shall earn interest at the rate provided by law for interest on judgments.

Landowners contend that the above statute provides that interest shall accrue at the rate of eight percent (8%) a year upon the entire amount of \$414,752.00 awarded as just compensation herein. It is Condemnor's position that interest does not accrue on the amount previously deposited with the Clerk of Court simultaneously with the filing of the Condemnation Notice and Tender of Payment (\$172, 200.00), but rather accrues on the amount representing the difference between the funds previously deposited and the award for just compensation (\$242,552.00). Based upon the applicable Sections of the South Carolina Eminent Domain Procedure Act, and the opinion of the South Carolina Court of Appeals in South Carolina Department of Transportation v. Faulkenberry, 337 S.C. 140, 522 S.E.2d 822 (S.C. App. 1999), I find and conclude that interest accrues at the rate of eight percent (8%) a year on the difference between the amount initially deposited by Condemnor and the award of just compensation in this matter (i.e., the amount of \$242,552.00).

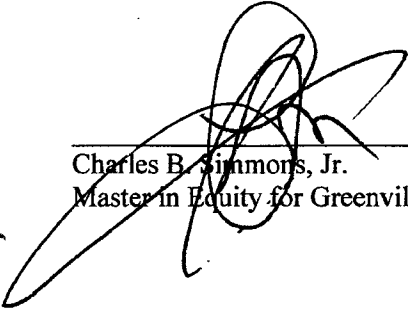
Section 28-2-480, Code of Laws of South Carolina, allows a landowner to "draw down" up to fifty percent (50%) of the funds deposited with the clerk of court by the condemnor. As referenced in the Faulkenberry, the parties may agree for a landowner to draw down one-hundred (100%) of the funds so deposited. The South Carolina Court of Appeals cites numerous authorities from other jurisdictions in its Faulkenberry opinion for the proposition that no interest is allowed on a payment into court by the condemning authority. The Landowners' rights to draw down the funds on deposit are the "fruits of possession" of those funds. Per Faulkenberry, the "fruits of possession" and the full statutory interest are mutually exclusive – there is no right upon the part of either party to both. Because Landowners were the only parties with the right to draw

down the funds on deposit with the clerk of court (the "fruits of possession"), they cannot now also claim a right to the full amount of interest thereon as the two are mutually exclusive.

NOW, THEREFORE, based upon the foregoing,

IT IS ORDERED that, pursuant to Section 28-2-420(A), Code of Laws of South Carolina, interest at the rate of eight percent (8%) a year is assessed on the amount of \$242,552.00, which is the difference between the amount initially deposited by Condemnor and the award of just compensation in this matter. Calculating this amount at \$53.16 per day from June 22, 2012, through June 25, 2015, produces the sum of \$58,371.96. Offsetting the interest accruing on funds on deposit with the clerk of court (\$52.08) yields the sum of \$58,319.88, for the interest assessed pursuant to the aforementioned Code Section.

IT IS SO ORDERED



Charles B. Simmons, Jr.
Master in Equity for Greenville County

Date: 8/7/15

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2012CP2304064

Piedmont Natural Gas Company vs. Richeous Smith

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.
- ☐ **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: _____

IT IS ORDERED AND ADJUDGED:

☐ See attached order;☐ Statement of Judgment by the Court:**NOTICE**

This is a notice to you that an Order Determining Interest Due on Verdict in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to cnoblitt@greenvillecounty.org. If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 10th day of August, 2015.

PRESIDING JUDGE -

Alan Lance Crick Assistant United States Attorney
 55 Beattie Place, Suite 700 Greenville, SC 29601

Charles Nathaniel Griffin III Kirschbaum, Nanney,
 Keenan & Griffin, PA P.O. Box 19806 Raleigh, NC
 27619

Wylie Westmoreland Clarkson Clarkson Law Firm,
 LLC P.O. Box 287 Columbia, SC 29202-0287

David B. Ward 307 Pettigru Street Greenville, SC
 29601

Erin Culbertson 114 Manly St. Greenville, SC
 29601

Paul Andrew McKee III PO Box 2196 409
 Magnolia Street Spartanburg, SC 29304-2196

Michael Stephen Chambers 121 Manly St., Suite B
 Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
 - Clerk of Court

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
2012-CP-23-04064

Piedmont Natural Gas Company,)

Condemnor,)

vs.)

Richeous Smith, et al)

Landowners.)

ORDER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 AUG 19 PM 3 49

This matter is before the Court pursuant to Landowners' Motion to Reconsider, Alter or Amend Judgment relative to payment of interest for funds previously deposited with the Clerk of Court.

Upon a full review of the record and the Order filed August 10, 2015, the Court denies Landowners' Motion.

AND IT IS SO ORDERED.

Charles B. Simmons, Jr.
Judge

August 17 2015

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

CASE NO: 2012CP2304064

IN THE COURT OF COMMON PLEAS

Piedmont Natural Gas Company vs. Richeous Smith**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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ 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; ☐ Statement of Judgment by the Court:

NOTICE

This is a notice to you that an Order Denying Landowners Motion to Reconsider in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to cnoblitt@greenvillecounty.org. If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 19th day of August, 2015.

PRESIDING JUDGE -

Alan Lance Crick Assistant United States Attorney
 55 Beattie Place, Suite 700 Greenville, SC 29601

Charles Nathaniel Griffin III Kirschbaum, Nanney,
 Keenan & Griffin, PA P.O. Box 19806 Raleigh, NC
 27619

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 Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)**ATTORNEY(S) FOR THE DEFENDANT(S)**

Paul B. Wickensimer Greenville County Clerk Of Court

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

Piedmont Natural Gas Company,)

Condemnor,)

vs.)

Richeous Smith, Worthly Smith,)

Pearl Terry, Ethel Butler, Tweety)

Smith, Doreth Smith, Alma)

Williams Smith, Janie Sue Smith,)

Waymon Odell Smith, Martha)

Miller Smith, Calvin Smith, Reece)

W. Smith, Dorothy Smith Pearson,)

Jerome Pearson, Raymond Smith,)

Michael Smith, Odell Smith,)

Christine Smith Dawkins, William)

G. Dawkins, Alma Renee Murry,)

Sharai R. Brock, Ethel Mae Smith,)

Patrick R. Smith, Reginald L. Smith,)

Eric Smith, Adolf Smith, Ruby L.)

Smith Mansell, James Richeous)

Smith, Loree Smith, Robert Lee)

Smith, Melissa F. Smith, Rosalyn)

Annette Freeman, Edith Smith)

Foster, Bridget Blassingame, Tara)

Smith, Gene Allen Smith, Samuel)

Paul Smith, Jaygo Terry, Ida Terry,)

Mack Terry, Zone Terry, Leola)

Terry Smith, James Smith, Ezell)

Terry, Magaline Terry, Manel Terry,)

David Terry, J. P. Terry, Theodore)

Terry, Dorothy Sheppard, Iola Cox,)

William Henry Cox, Joyce Dale)

Cox, Johnny Cox, Michael Cox,)

Anthony Cox, Efford Emanuel Cox,)

Supearl Miranda, Tecora O. Mason,)

Lenora Holley, James O. C. Smith,)

Paul Smith, Gloria Gore, Ethel)

Allen, Pauline Workman, James)

Ricardo Smith, Ceceilia Jones Smith,)

Travis Smith, Provita Smith,)

Christopher Smith, O. C. Smith,)

2012-CP-23- 4064

FILED
CLERK OF COURT
GREENVILLE CO. SC
JAN 22 2012
7:56 AM

CONDEMNATION NOTICE AND
TENDER OF PAYMENT
(Non-Jury)

Jason Smith, Jeremy Smith, Jessica)
 Smith, Brenda Moulhem, Storme)
 Stevens, Taylor Barleston and Fletch)
 Harris,)

Landowners,)

and)

The United States of America, acting)
 by and through its agency, The)
 Internal Revenue Service, The South)
 Carolina Department of Revenue,)
 and Greenville County,)

Other Condemnees,)

and)

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

Unknown Claimants.)

TO: THE LANDOWNER(S), OTHER CONDEMNNEES AND UNKNOWN
CLAIMANTS ABOVE NAMED:

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

1. Piedmont Natural Gas Company ("PNG") is the Condemnor herein and
seeks to acquire an easement over and upon the real property described herein for a
public purpose, i.e., for construction, maintenance and use of a natural gas pipeline(s).

2. Richeous Smith, Worthly Smith, Pearl Terry, Ethel Butler and Tweety
Smith are named as Landowners in this action by virtue of their claims of title as shown
by that certain Deed from Ezell Smith to Richeous Smith, Worthly Smith, Pearl Terry,
Ethel Butler and Tweety Smith, dated July 25, 1928, and recorded on July 26, 1928, in
the Register of Deeds for Greenville County, South Carolina, in Deed Book 86 at page
299, conveying the real property over which the aforementioned easement is to be
acquired. The Condemnor is informed and believes that Richeous Smith, Worthly Smith,
Pearl Terry, Ethel Butler and Tweety Smith are deceased.

3. Doreth Smith is named as a Landowner in this action by virtue of the fact
that she may claim an interest in the real property being condemned herein. Condemnor
is informed and believes that Doreth Smith was married to Richeous Smith and survived
him as his widow. Condemnor is further informed and believes that no children were
born of the marriage between Richeous Smith and Doreth Smith. Condemnor is further
informed and believes that Doreth Smith is deceased, and that there is no recorded
probate of an estate for Richeous Smith or Doreth Smith in the public records of
Greenville County, South Carolina.

4. Alma Williams Smith is named as a Landowner in this action by virtue of the fact that she may claim an interest in the real property being condemned herein. Condemnor is informed and believes that Alma Williams Smith was married to Worthly Smith and survived him as his widow. Condemnor is further informed and believes that twelve (12) children were born of the marriage between Worthly Smith and Alma Williams Smith. Condemnor is further informed and believes that Alma Williams Smith is deceased, and that there is no recorded probate of an estate for Worthly Smith or Alma Williams Smith in the public records of Greenville County, South Carolina.

5. Janie Sue Smith, Waymon Odell Smith, Christine Smith Dawkins, Ethel Mae Smith, Adolf Smith, Ruby L. Smith Mansell, James Richeous Smith, Loree Smith, Robert Lee Smith, Edith Smith Foster, Gene Allen Smith and Samuel Paul Smith are named as landowners in this action by virtue of the fact that they may claim an interest in the real property being condemned herein. Condemnor is informed and believes that the aforementioned individuals are the children of Worthly Smith and Alma Williams Smith. Condemnor is further informed and believes that Janie Sue Smith, Waymon Odell Smith, Christine Smith Dawkins, Ethel Mae Smith, Adolf Smith, Ruby L. Smith Mansell, Robert Lee Smith, Edith Smith Foster and Samuel Paul Smith are deceased. Condemnor is further informed and believes that Janie Sue Smith, Adolf Smith, Ruby L. Smith Mansell and Samuel Paul Smith were not survived by any spouses, children, issue or lineal descendants.

6. Martha Miller Smith, Calvin Smith, Reece W. Smith, Dorothy Smith Pearson, Jerome Pearson, Raymond Smith, Michael Smith and Odell Smith are named as landowners in this action by virtue of the fact that they may claim an interest in the real

property being condemned herein. Condemnor is informed and believes that Martha Miller Smith was married to Waymon Odell Smith and survived him as his widow. Condemnor is further informed and believes that Calvin Smith, Reece W. Smith, Dorothy Smith Pearson, Raymond Smith, Michael Smith and Odell Smith are the children of Waymon Odell Smith. Condemnor is further informed and believes that Dorothy Smith Pearson is deceased, and is survived by her son, Jerome Pearson.

7. William G. Dawkins, Alma Renee Murry and Sharai R. Brock are named as landowners in this action by virtue of the fact that they may claim an interest in the real property being condemned herein. Condemnor is informed and believes that William G. Dawkins was married to Christine Smith Dawkins and survived her as her widower. Condemnor is further informed and believes that Alma Renee Murry and Sharai R. Brock are the children of Christine Smith Dawkins.

8. Patrick R. Smith, Reginald L. Smith and Eric Smith are named as landowners in this action by virtue of the fact that they may claim an interest in the real property being condemned herein. Condemnor is informed and believes that Patrick R. Smith, Reginald L. Smith and Eric Smith are the children of Ethel Mae Smith.

9. Melissa F. Smith and Rosalyn Annette Freeman are named as landowners in this action by virtue of the fact that they may claim an interest in the real property being condemned herein. Condemnor is informed and believes that Melissa F. Smith was married to Robert Lee Smith and survived him as his widow. Condemnor is further informed and believes that Rosalyn Annette Freeman is the child of Robert Lee Smith.

10. Bridget Blassingame and Tara Smith are named as landowners in this action by virtue of the fact that they may claim an interest in the real property being

condemned herein. Condemnor is informed and believes that Bridget Blassingame and Tara Smith are the children of Edith Smith Foster.

11. Jaygo Terry and Ida Terry are named as Landowners in this action by virtue of the fact that they may claim an interest in the real property being condemned herein. Condemnor is informed and believes that Jaygo Terry was married to Pearl Terry and survived her as her widow. Condemnor is further informed and believes that eleven (11) children were born of the marriage between Pearl Terry and Jaygo Terry. Condemnor is further informed and believes that, subsequent to the death of Pearl Terry, Jaygo Terry married Ida Terry. Condemnor is further informed and believes that Jaygo Terry and Ida Terry are deceased, and that there is no recorded probate of an estate for Pearl Terry, Jaygo Terry or Ida Terry in the public records of Greenville County, South Carolina.

12. Mack Terry, Leola Terry Smith, Ezell Terry, Manel Terry, David Terry, J. P. Terry, Theodore Terry, Dorothy Sheppard, Iola Cox, Supearl Miranda and Tecora O. Mason are named as landowners in this action by virtue of the fact that they may claim an interest in the real property being condemned herein. Condemnor is informed and believes that the aforementioned individuals are the children of Pearl Terry and Jaygo Terry. Condemnor is further informed and believes that the aforementioned individuals are deceased.

13. Zone Terry, James Smith and Magaline Terry are named as landowners in this action by virtue of the fact that they may claim an interest in the real property being condemned herein. Condemnor is informed and believes that Zone Terry was married to Mack Terry. Condemnor is further informed and believes that James Smith was married

to Leola Terry Smith. Condemnor is further informed and believes that Magaline Terry was married to Ezell Terry. Condemnor is further informed and believes that the aforementioned individuals are deceased.

14. William Henry Cox, Joyce Dale Cox, Johnny Cox, Michael Cox, Anthony Cox and Efford Emanuel Cox are named as landowners in this action by virtue of the fact that they may claim an interest in the real property being condemned herein. Condemnor is informed and believes that William Henry Cox was married to Iola Cox and survived her as her widower. Condemnor is further informed and believes that Joyce Dale Cox, Johnny Cox, Michael Cox, Anthony Cox and Efford Emanuel Cox are the children of Iola Cox.

15. Lenora Holley is named as a landowner in this action by virtue of the fact that she may claim an interest in the real property being condemned herein. Condemnor is informed and believes that Lenora Holley is the daughter of Tecora O. Mason.

16. James O. C. Smith is named as a Landowner in this action by virtue of the fact that he may claim an interest in the real property being condemned herein. Condemnor is informed and believes that James O. C. Smith is the son of Ethel Butler. Condemnor is further informed and believes that James O. C. Smith is deceased, and that there is no recorded probate of an estate for Ethel Butler or James O. C. Smith in the public records of Greenville County, South Carolina.

17. Paul Smith, Gloria Gore, Ethel Allen, Pauline Workman, James Ricardo Smith, Brenda Moulhem, Storme Stevens and Taylor Barleston are named as landowners in this action by virtue of the fact that they may claim an interest in the real property being condemned herein. Condemnor is informed and believes that the aforementioned

individuals are the children of James O. C. Smith. Condemnor is further informed and believes that James Ricardo Smith is deceased.

18. Ceceilia Jones Smith, Travis Smith, Provita Smith, Christopher Smith, O. C. Smith, Jason Smith, Jeremy Smith and Jessica Smith are named as landowners in this action by virtue of the fact that they may claim an interest in the real property being condemned herein. Condemnor is informed and believes that Ceceilia Jones Smith was married to James Ricardo Smith and survived him as his widow. Condemnor is further informed and believes that Travis Smith, Provita Smith, Christopher Smith, O. C. Smith, Jason Smith, Jeremy Smith and Jessica Smith are the children of James Ricardo Smith.

19. Fletch Harris is named as a Landowner in this action by virtue of the fact that he may claim an interest in the real property being condemned herein. Condemnor is informed and believes that Fletch Harris was married to Tweety Smith and survived her as her widower. Condemnor is further informed and believes that no children were born of the marriage between Tweety Smith and Fletch Harris. Condemnor is further informed and believes that Fletch Harris is deceased, and that there is no recorded probate of an estate for Tweety Smith or Fletch Harris in the public records of Greenville County, South Carolina.

20. The United States of America, acting by and through its agency, The Internal Revenue Service, is named as an Other Condemnee in this action by virtue of the following:

- a. Notice of Federal Tax Lien against Reginald L. Smith and Mary J. Smith, dated August 21, 2003, and recorded on September 15, 2003, in the ROD

for Greenville County at File No. 107952, in the original amount of \$35,991.23, Serial Number 130672103;

- b. Notice of Federal Tax Lien against Reginald Smith dated August 31, 2005, and recorded on September 7, 2005, in the ROD for Greenville County at File No. 2005083136, in the original amount of \$2,834.65, Serial Number 246134905;
- c. Notice of Federal Tax Lien against Reginald Smith and Mary Smith, dated August 31, 2005, and recorded on September 7, 2005, in the ROD for Greenville County at File No. 2005083137, in the original amount of \$2,184.43, Serial Number 246135005.

21. The South Carolina Department of Revenue is named as an Other Condemnee in this action by virtue of a South Carolina Tax Lien filed against Reginald Smith, dated February 17, 2011, and recorded on April 11, 2011, in the ROD for Greenville County in Book MI-59 at page 484, in the original amount of \$5,493.82, File Number 88010748.

22. Greenville County is named as an Other Condemnee in this action by virtue of the following:

- a. Easement for the construction and maintenance of slopes in Rocky Creek, from Christine Dawkins, Ethel Mae Smith, Ruby Mansell, James Richeous Smith, Loree Smith, Edith Foster, Gene Allen Smith and Alma Renee Murry to Greenville County, recorded on February 24, 1997, in the ROD for Greenville County in Deed Book 1673 at page 1.

R037

- b. Easement for the construction and maintenance of slopes in Rocky Creek, from O. C. Smith to Greenville County, recorded on February 19, 1997, in the ROD for Greenville County in Deed Book 1672 at page 386.
- c. Easement for the construction and maintenance of slopes in Rocky Creek, from Supearl Miranda to Greenville County, recorded on March 6, 1997, in the ROD for Greenville County in Deed Book 1675 at page 869
- d. Temporary Easement for Construction of Road Shoulder & Drainage Ditches (Rock Road), from Christine Dawkins, Ethel Mae Smith, Ruby Mansell, James Richeous Smith, Loree Smith, Edith Foster, Gene Allen Smith and Alma Renee Murry to Greenville County, recorded on February 24, 1997, in the ROD for Greenville County in Deed Book 1673 at page 9.
- e. Temporary Easement for Construction of Road Shoulder & Drainage Ditches (Rock Road), from O. C. Smith to Greenville County, recorded on February 19, 1997, in the ROD for Greenville County in Deed Book 1672 at page 390.
- f. Temporary Easement for Construction of Road Shoulder & Drainage Ditches (Rock Road), from Supearl Miranda to Greenville County, recorded on March 6, 1997, in the ROD for Greenville County in Deed Book 1675 at page 871.
- g. Title to Real Estate (Road Improvements on Rock Road), from Christine Dawkins, Ethel Mae Smith, Ruby Mansell, James Richeous Smith, Loree Smith, Edith Foster, Gene Allen Smith and Alma Renee Murry to

Greenville County, recorded on February 24, 1997, in the ROD for Greenville County in Deed Book 1672 at page 999.

- h. Title to Real Estate (Road Improvements on Rock Road), from O. C. Smith to Greenville County, recorded on February 19, 1997, in the ROD for Greenville County in Deed Book 1672 at page 374.
- i. Title to Real Estate (Road Improvements on Rock Road), from Supearl Miranda to Greenville County, recorded on March 6, 1997, in the ROD for Greenville County in Deed Book 1675 at page 829.

23. John Doe and Mary Roe, being fictitious names used to represent all persons and condemnees whose true names are not known, including the heirs, successors, devisees, distributees, Administrators, Executors and Personal Representatives of any of the above named Landowners and Other Condemnees who may be deceased; and also all Condemnees whose names are not known, including heirs, infants, persons under disability and persons who may be in the Military service, who claim, or may claim, an interest in the property being condemned, and also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the Condemnation Notice and Tender of Payment herein, are made parties to this action as "Unknown Claimants" by reason of the fact that there may be persons whose names are unknown to the Condemnor who may claim some interest in the property being condemned.

24. The following is a description of the real property subject to the action and description of the interest sought to be acquired in and to the property by the Condemnor:

a. The property which is subject to this action is described as follows:

All the piece, parcel or tract of land in Butler Township, Greenville County, S.C., Containing 75 acres, more or less, and bounded, now or formerly, by lands of the Estate of J. W. Baker, Brooks Mahaffey, and of Arch Burnett, lying on the Enoree River, about 18 miles from the Greenville Court House.

The above described property being the same property conveyed to Richeous Smith, Worthly Smith, Pearl Terry, Ethel Butler and Tweety Smith by Deed of Ezell Smith, dated July 25, 1928, and recorded on July 26, 1928, in the ROD for Greenville County in Deed Book 86 at page 299.

TMS Numbers 0531010102100 and 0531010102101

b. The interest sought to be acquired by the Condemnor in and to the above described property is described as follows:

A permanent easement, approximately 50 feet in width, upon, over, through and crossing the above described real property, encumbering approximately 2.52 acres, or 109,574 square feet, and a "Temporary Work Space", covering 0.12 acre, or 5,228 square feet, being more particularly shown and described on a survey plat dated February 7, 2012, prepared by McKim & Creed for Piedmont Natural Gas Company, attached hereto as Exhibit A and incorporated herein by reference.

Portion of TMS Numbers 0531010102100 and 0531010102101

The above interest also includes access to the easement and right of way over the above described property and land and other rights, referenced below:

A right of way and easement rights for the purpose of laying, constructing, maintaining, operating, repairing, altering, replacing, removing, and protecting one or more pipelines for the transportation of natural gas under, upon, over, through, and across the above described land and real property of Landowner(s) (or in which Landowner(s) has/have an interest) situated in Greenville County, South Carolina, as described in deed(s) recorded in the Register of Deeds for Greenville County in Deed Book at page .

Condemnor shall have all rights necessary or convenient for the full use and enjoyment of the rights herein granted, including without limitation: (1) free and full right of access to and from said right of way over and across the aforesaid

land; (2) to keep said right of way cleared of trees, buildings, and other obstructions; and (3) to construct, install, operate, utilize, rebuild, remove, protect and maintain pipes, valves, markers, cathodic protection equipment, anode beds and other appurtenant devices in conjunction with said gas facilities.

Landowner(s) reserves the right to use the land over which said right of way and easement rights are hereby granted for all purposes not inconsistent with said easement rights, the South Carolina Utilities Commission, Condemnor's current encroachment specifications, and any federal, state, or local law, rule, or regulation, provided that Landowner(s) and Condemnor agree that: (1) notwithstanding anything to the contrary herein, Landowner(s) shall give written notification to Condemnor and Condemnor shall obtain written approval from Landowner(s) prior to any activity as defined in items (2)–(7) of this paragraph; (2) the depth of said gas facilities below the surface of the ground shall not be reduced nor increased by grading or any other work and any slopes allowed within said right of way shall be no greater than a four to one (4:1) ratio; (3) if streets, roads, equipment crossings, fences or utility lines are constructed across said right of way, they shall cross as nearly as possible at right angles to gas line(s) and in no event shall they be constructed laterally along and over the easement; (4) fences shall have minimum twelve (12) foot wide gate(s) (5) Removable pavers shall be installed along the entire length and width of the pipeline easement in paved parking areas; (6) improvements shall not adversely affect, in Condemnor's sole discretion, the access to, safety, construction, reconstruction, operation, or maintenance of Condemnor's facilities and Condemnor shall not be liable for damages to said future improvements installed within said right of way; (7) landscaping on the right of way shall be limited to lawn grasses and shrubs which have a maximum mature height of four (4) feet, (8) buildings, storage sheds, mobile homes, wells, septic tanks, and/or related drain fields, absorption pits, detention ponds, irrigation systems (except crossing), sprinkler heads, swimming pools, ponds, lakes, erosion control sediment traps, underground vaults, burial grounds, explosives or flammable materials, fires of any type, fire hydrants, catch basins, air strips, electrical transformers or enclosures, utility poles, dumpsters, trash, uprooted stumps, boulders, rubble, building materials, junk or inoperable vehicles, satellite signal receiver systems, or other obstructions are prohibited within said right of way; (9) Landowner(s) shall not: (a) interfere with Condemnor's access or maintenance to its facilities, or (b) endanger the safety of Landowner(s), Condemnor, or the general public; (10) Condemnor reserves the right to construct future pipelines within said right of way and Landowner(s) shall not interfere with or object to the construction of said future pipelines; and (11) all facilities installed by Condemnor shall be and remain the property of Condemnor and may be removed by it at any time and from time to time.

Condemnor agrees that it shall be responsible for actual damages to improvements that existed prior to this EASEMENT and annual crops of Landowner(s) both inside and outside said right of way on the above-referenced

land caused by the construction, installation, operation, utilization, inspection, rebuilding, removal, and maintenance of said facilities, and in going to and from said right of way, and shall be responsible for the breakage caused to any bridge and any extraordinary damage to any road due to heavy hauling to and from said right of way, if claim is made within sixty (60) days after such damages are sustained.

Landowner(s) expressly give(s) Condemnor, its successors and assigns, the right to assign, license, lease, or otherwise transfer, in whole or part, this GRANT OF EASEMENT or any rights given herein, to any person or entity, including but not limited to, any affiliated parent or subsidiary entity of Condemnor, for the uses and purposes expressly stated herein.

25. PNG is vested with the power of Eminent Domain pursuant to Section 28-2-10, *et. seq.*, Section 58-7-10 and Section 58-9-2030, Code of Laws of South Carolina.

26. The property sought herein is to be acquired for public purposes, more particularly for the construction, installation, maintenance and use of an underground natural gas transmission pipeline(s).

27. This action is brought pursuant to Section 28-2-240, Code of Laws of South Carolina.

28. PNG has complied with the requirements set forth in Section 28-2-70(a), Code of Laws of South Carolina, by having the subject property interests appraised and making the appraisal available to the Landowner(s) where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the commencement of this action.

29. Attached as Exhibit A to this Condemnation Notice is a sketch, map or diagram of the property and, if less than all of a whole parcel, the location of the interest taken upon or within the whole parcel.

30. Project plans may be inspected at the Office of John P. Bishop, Operations Manager, Piedmont Natural Gas Company, Greenville SC Resource Center, 100

Woodruff Industrial Lane, Greenville, S.C. 29601, (864) 286-7850, during regular business hours.

31. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, TO BE THE SUM OF ONE HUNDRED SEVENTY-TWO THOUSAND TWO HUNDRED AND NO/100 (\$172,200.00) DOLLARS, AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER(S).

32. Payment of this amount will be made to the Landowner(s) if, within thirty (30) days of service of this Condemnation Notice, the Landowner(s) in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent by first class certified mail with return receipt requested or delivered in person to Condemnor's Attorney, Michael S. Chambers, 121 Manly Street, Suite B, Greenville, S.C. 29601. If no Agreement and Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected.

33. 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(s) and Other Condemnee(s) 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.

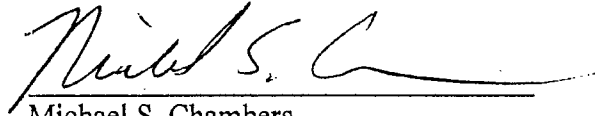
34. AN ACTION CHALLENGING THE CONDEMNORS RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE

COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY (30) DAYS OF THE SERVICE OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER(S) WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

35. 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(s). That Notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The Landowner(s) 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(s) written notice by mail of the call of the case for trial.

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

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

A handwritten signature in black ink, appearing to read "Michael S. Chambers", written over a horizontal line.

Michael S. Chambers
Attorney for the Condemnor
121 Manly Street, Suite B
Greenville, S.C. 29601
(864) 242-9245
S.C. Bar I.D. No. 001178

Date: June 22, 2012

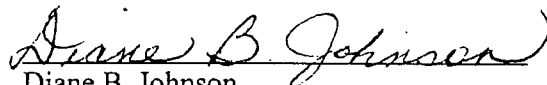
Greenville, South Carolina

STATE OF NORTH CAROLINA)
)
 COUNTY OF MECKLENBURG)

CERTIFICATE AND AFFIDAVIT

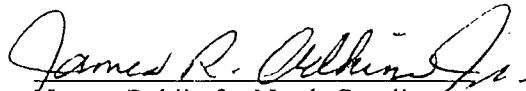
Personally appeared before me, Diane B. Johnson, who, being duly sworn,
 deposes and states as follows:

I am employed by Piedmont Natural Gas Company in Charlotte, North Carolina, in the capacity of Senior Land Agent for the Company. Pursuant to Section 28-2-10, et. seq. Code of Laws of South Carolina, I hereby certify to the Court that either I, or another authorized agent of Piedmont Natural Gas Company, have negotiated with the Landowner(s), or such Landowner's(s') representatives, referred to herein in an effort to come to an agreement on the value of, and the amount of compensation to be paid for, the property which Piedmont Natural Gas Company proposes to condemn for purposes of a natural gas transmission pipeline. Such negotiations have not been successful.


 Diane B. Johnson
 Piedmont Natural Gas Company

SWORN TO before me this

1st day of JUNE, 2012.


 Notary Public for North Carolina

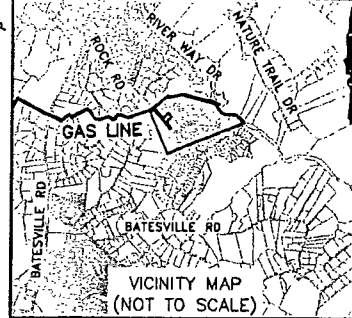
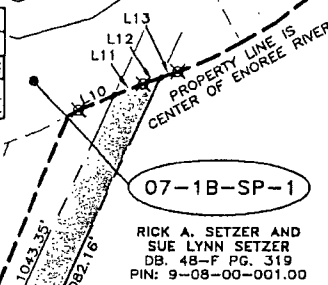
My commission expires: MAY 5, 2014

R046

EXHIBIT A

R047

AREA OF:	SQ. FT.	ACRE
PARCEL PER DEED/GIS	3,214,728	73.80
PROPOSED EASEMENT	109,574	2.52
TEMPORARY WORK SPACE	5,228	0.12



PROJECT LOCALIZED FROM
SCGS MONUMENT "DRUM BEAT"
GRID COORDINATES
N: 1,100,248.84
E: 1,630,781.04

LINE TABLE					
LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
L1	213.15'	N 23°12'11" W	L15	183.34'	N 48°20'43" E
L2	38.60'	N 51°45'21" E	L18	134.17'	N 78°23'46" E
L3	80.82'	N 51°45'21" E	L17	88.59'	S 49°20'43" W
L4	25.03'	N 05°39'34" W	L18	50.00'	S 49°20'43" W
L5	7.11'	N 05°39'34" W	L19	44.73'	S 49°20'43" W
L6	189.21'	N 52°14'05" E	L20	31.23'	S 49°20'43" W
L7	121.98'	S 49°24'05" W	L21	20.10'	S 70°18'25" W
L8	65.20'	S 36°31'48" E	L22	82.23'	S 70°18'25" W
L9	37.06'	S 78°23'46" W	L23	50.00'	S 40°39'17" E
L10	55.38'	S 32°28'17" E	L24	52.24'	S 49°20'43" W
L11	44.32'	S 31°13'14" E	L25	50.00'	N 41°24'34" W
L12	28.82'	S 29°03'51" E	L26	50.07'	S 43°45'10" E
L13	25.53'	N 29°03'51" W	L27	52.71'	S 49°20'43" W
L14	10.39'	N 70°18'35" E	L28	57.19'	N 40°39'17" W

WILLIAM CHERRY
LIVINGSTON
DB. 1616 PG. 204
PIN: 0530060101200

07-1B-GR-2

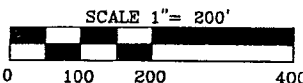
RICHEOUS SMITH ET AL
DB. 86 PG. 299
PIN: 0531010102100

NOTES:

- THIS IS NOT A BOUNDARY SURVEY OF THE LAND SHOWN HEREON. THE PURPOSE OF THIS SURVEY IS FOR RIGHT OF WAY EASEMENT ACQUISITION ONLY.
- THIS PROPERTY MAY BE SUBJECT TO OTHER EASEMENTS EITHER RECORDED OR IMPLIED. A TITLE SEARCH WAS NOT PROVIDED AT THIS TIME.
- FOR SOURCE OF TITLE REFER TO DEEDS AND PLATS REFERENCED HEREON.
- ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES IN INTERNATIONAL FEET UNLESS OTHERWISE NOTED.
- AREA BY COORDINATE COMPUTATION.
- IT IS THE INTENT OF THIS MAP THAT THE EASEMENT SHALL CROSS THE ENTIRE PARCEL.

LEGEND

- COMPUTED POINT
- EASEMENT POINT
- IPF O IRON PIPE FOUND
- IRF O IRON ROD FOUND
- PROPERTY BOUNDARY BY DEED
- PROPOSED EASEMENT
- RIGHT OF WAY
- TEMPORARY WORK SPACE
- ADJOINER PROPERTY



THE STATE PLANE COORDINATES (SPC) FOR THIS PROJECT WERE ESTABLISHED USING THE VIRTUAL REFERENCE NETWORK (VRN) AND TRIMBLE 5700/5800 RECEIVERS.

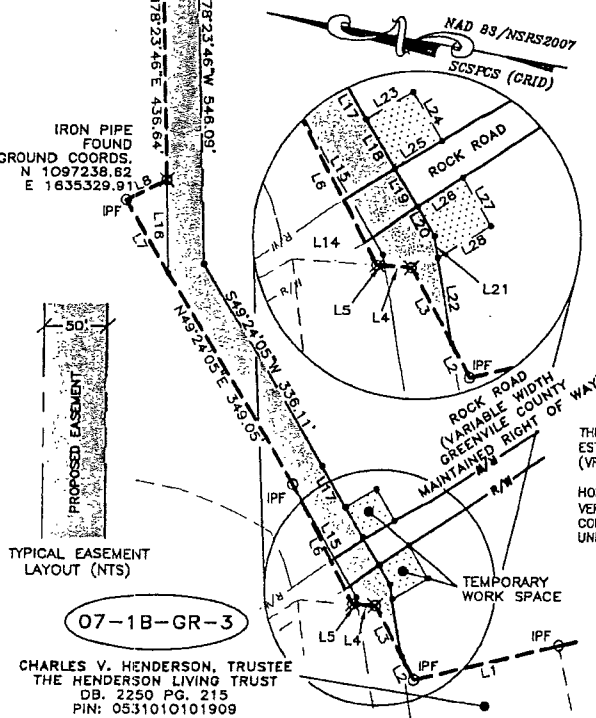
HORIZONTAL POSITIONS ARE REFERENCED TO NAD 83/NSRS (2007) VERTICAL POSITIONS ARE REFERENCED TO NAVD88 USING (GEOID09) COMBINED SCALE FACTOR: 1.0000280539; GEOID MODEL: GEOID09; UNITS: INTERNATIONAL FEET

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN.

PRELIMINARY PLAT
NOT FOR RECORDATION,
CONVEYANCES, OR SALES

DANIEL E. SMITH, PLS

No. 27460



RIGHT OF WAY EASEMENT SURVEY PREPARED FOR
PIEDMONT NATURAL GAS COMPANY

EASEMENT TO BE ACQUIRED FROM OWNER:
RICHEOUS SMITH ET AL
ROCK RD

07-1B-GR-2

BUTLER TOWNSHIP
GREENVILLE COUNTY, SOUTH CAROLINA

MCKIM & CREED

ENGINEERS, PLANNERS, SURVEYORS
8020 TOWER POINT DRIVE
CHARLOTTE, NORTH CAROLINA 28227
PHONE (704) 841-2588
FAX (704) 841-2567

02/07/12

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Piedmont Natural Gas Company,)
)
 Condemnor,)
)
 vs.)
)
 Richeous Smith, Worthly Smith)
 a/k/a, Worley Smith, Pearl Terry,)
 Ethel Butler, Tweety Smith a/k/a)
 Tweety Smith Harris, Doreth Smith,)
 Fletcher Lee Harris, Alma Williams)
 Smith, James R. Smith, Loree Smith,)
 Gene A. Smith, Adolf Smith, Janie)
 Sue Smith, Samuel Paul Smith,)
 Ruby Smith Mansell, Buford)
 Mansell, Ethel Mae Smith, Wilson)
 Smith, Patrick R. Smith, Reginald)
 Lamont Smith, Eric Smith,)
 Christine Smith Dawkins, William)
 G. Dawkins, Alma Renee Smith)
 Murry, Sharai Smith Brock, Robert)
 Lee Smith, Melissa F. Smith,)
 Rosalyn Annette Steven, Edith)
 Smith Foster, George Waymon)
 Foster, Bridgette Smith)
 Blassingame, Tara Smith, Waymon)
 Odell Smith, Martha Miller Smith,)
 Calvin Lee Smith, Reece W. Smith,)
 Raymond Eddie Smith, Michael)
 Smith, Odell Smith, Dorothy Smith)
 Pearson, Gary Pearson, Jerome)
 Smith, Jaygo Terry, Ida Terry,)
 Mack Terry, Zone Terry, Leola)
 Terry Smith, James Smith, J. P.)
 Terry, David Brayvelle Terry, Ettie)
 Pearl Booker, Tecora O. Terry)
 Mason, Odell Mason, Lenora)
 Holley, Dorothy Terry Sheppard,)
 Orangelee Sheppard, Vernon)
 Sheppard, Kasandra Sheppard)
 Jenkins, Karen Sheppard Spates,)
 Theodore Terry, Sr., Gracie Terry,)

IN THE COURT OF COMMON PLEAS
 CA No. 2012-CP-23-4064

AMENDED CONDEMNATION NOTICE
 AND TENDER OF PAYMENT
 (Non-Jury)

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMER
 2014 JAN 31 AM 10 12

Kelvin F. Terry, Theodore Terry, Jr.,)
 Keith Terry, Leola Terry Daniels,)
 Wilford Daniels, Terrance Leslie,)
 Sr., Derrick McGee, Jr., Fred Smith,)
 Jr., Mannell Terry, Patricia Terry,)
 Sheila Terry, Barbara Evans,)
 Leonard Evans, Linda Evans,)
 Thomas Evans, Johnny R. Williams,)
 Connie Evans, Michael Evans, Iola)
 Terry Cox, William Henry Cox,)
 Johnny F. Cox, Joyce A. Smith,)
 Anthony Cox, Alfred Cox, J. Henry)
 Cox, Charlette J. Cox, Charles J.)
 Cox, Michael Cox, Supearl Terry)
 Gilliam a/k/a Supearl Terry Gilliam)
 Miranda, Eugene Gilliam, Terry)
 Gilliam, Jerry Gilliam, Warren)
 Gilliam, Eugene Gilliam, Jr., Melvin)
 Gilliam, Rodney Gilliam, Cindy)
 Gilliam, Shakima Gilliam, Carmella)
 Cottom, Nina Gilliam, Vermell)
 Gilliam Phillips, Shaynise Alston,)
 John Gilliam, Donald Gilliam, Sr.,)
 Leunette Gilliam, Donnette Gilliam)
 Ortchere, Leslie Gilliam Peter,)
 Angela Gilliam, Donald E. Gilliam,)
 Raymond T. Gilliam, Juan Miranda,)
 Carmen Miranda a/k/a Carmen)
 Miranda Glavin, John Glavin, Sr.,)
 John Glavin, Jr., Miranda Glavin,)
 Jeffrey Glavin, Yolanda Glavin,)
 Ezell Terry, Magaline Terry, Leroy)
 Terry, Kenneth Terry, James)
 (Jimmy) Terry, Pearlie Mae Terry,)
 Winnie L. Terry Anderson, Furman)
 Anderson, Tommy Anderson,)
 Abigail Dodd, Angela Reid, Sandra)
 McDowell, Harold Anderson, Mary)
 Ann Davis, Charlene Peaks, Albert)
 Anderson, Paul Terry, Betty Jo)
 Terry, Donald E. Terry, Deloris I.)
 Terry, Paul A. Terry, Mark G. Terry,)
 Terry Sholer, Jamie Terry, James O.)
 C. Smith, Pauline Smith, Gloria)
 Gore, Paul Smith, Ethel Allen,)
 Desiree Golden, Pauline Workman,)

Brenda Moulhem, and if any)
of the aforementioned be deceased,)
then their heirs, successors, devisees,)
distributees, Administrators,)
Executors and Personal)
Representatives, and any party)
claiming by or through them,)
))
Landowners,)
))
and)
))
The United States of America,)
acting by and through its agency, the)
Internal Revenue Service, The)
United States of America, acting by)
and through its agency the United)
States Department of Justice, The)
South Carolina Department of)
Revenue, The South Carolina)
Department of Mental Health, The)
State of South Carolina, Bullhead)
Investments, LLC, Arrow Financial)
Services, LLC, Sharonview Federal)
Credit Union, Discover Bank,)
Zachery Arnold, GE Commercial)
Finance Business Property)
Corporation, Midland Funding,)
LLC, and Greenville County,)
))
Other Condemnees,)
))
and)
))
John Doe and Mary Roe, being)
fictitious names used to represent all)
persons and condemnees whose true)
names are not known, including the)
heirs, successors, devisees,)
distributees, Administrators,)
Executors and Personal)
Representatives of any of the above)
named Landowners and Other)
Condemnees who may be deceased;)
and also all Condemnees whose)
names are not known, including)

heirs, infants, persons under)
disability and persons who may be in)
Military service, who claim, or may)
claim, an interest in the property)
being condemned, and also all other)
persons unknown, claiming any)
right, title, estate, interest in or lien)
upon the real estate described in the)
Condemnation Notice and Tender of)
Payment herein, said property being)
identified as a portion of Greenville)
County Tax Map Numbers)
0531010 102100 and)
0531010102101,)
Unknown Claimants.)
_____)

TO: THE LANDOWNER(S), OTHER CONDEMNNEES AND UNKNOWN
CLAIMANTS ABOVE NAMED:

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

1. Piedmont Natural Gas Company ("PNG") is the Condemnor herein and
seeks to acquire an easement over and upon the real property described herein for a
public purpose, i.e., for construction, maintenance and use of a natural gas pipeline(s).

2. Richeous Smith, Worthly Smith a/k/a Worley Smith, Pearl Terry, Ethel
Butler and Tweety Smith a/k/a Tweety Smith Harris are named as Landowners in this
action by virtue of their claims of title as shown by that certain Deed from Ezell Smith to
Richeous Smith, Worthly Smith, Pearl Terry, Ethel Butler and Tweety Smith, dated July
25, 1928, and recorded on July 26, 1928, in the Register of Deeds for Greenville County,
South Carolina, in Deed Book 86 at page 299, conveying the real property over which the
aforementioned easement is to be acquired. The Condemnor is informed and believes that

Worthly Smith was/is also known as Worley Smith and that Tweety Smith was/is also known as Tweety Smith Harris. The Condemnor is further informed and believes that Richeous Smith, Worthly Smith a/k/a Worley Smith, Pearl Terry, Ethel Butler and Tweety Smith a/k/a Tweety Smith Harris are deceased. The parties set forth below are also named as Landowners herein by virtue of any interest that they may have in the subject property as heirs at law of the aforementioned Grantees. The following parties are the heirs that are known to Condemnor. The following allegations are based upon information and belief, unless specifically stated otherwise.

a. **Richeous Smith** Richeous Smith was married to Doreth Smith. No children were born of the marriage between Richeous Smith and Doreth Smith. Both Richeous Smith and Doreth Smith are deceased, having passed away in Buffalo, New York, on dates that are unknown to Condemnor. There are no recorded probates of estates for Richeous Smith or Doreth Smith in the public records of Greenville County, South Carolina.

b. **Tweety Smith** Tweety Smith was married to Fletcher Lee Harris, and therefore was also known as Tweety Smith Harris. No children were born of the marriage between Tweety Smith Harris and Fletcher Lee Harris. Both Tweety Smith Harris and Fletcher Lee Harris are deceased, having passed away in Buffalo, New York, on dates that are unknown to Condemnor. There are no recorded probates of estates for Tweet Smith Harris or Fletcher Lee Harris in the public records of Greenville County, South Carolina.

c. **Worthly Smith a/k/a Worley Smith** Worthly Smith was/is also known as Worley Smith and was married to Alma Williams Smith. Both Worthly Smith

a/k/a Worley Smith and Alma Williams are deceased. Worthly Smith a/k/a Worley Smith died in 1950, and Alma Williams Smith died in 1955. There are no recorded probates of estates for Worthly Smith a/k/a Worley Smith or Alma Williams Smith in the public records of Greenville County, South Carolina.

Twelve (12) children were born of the marriage between Worthly Smith a/k/a Worley Smith and Alma Williams Smith, said children being James R. Smith, Loree Smith, Gene A. Smith, Adolf Smith, Janie Sue Smith, Samuel Paul Smith, Ruby Smith Mansell, Ethel Mae Smith, Christine Smith Dawkins, Robert Lee Smith, Edith Smith Foster and Waymon Odel Smith. Of these twelve (12) children, only James R. Smith, Loree Smith and Gene A. Smith are surviving.

Adolf Smith died in 1962. Adolf Smith never married and had no children.

Janie Sue Smith died in 1996. Janie Sue Smith never married and had no children.

Samuel Paul Smith died in 1986. Samuel Paul Smith never married and had no children.

Ruby Smith Mansell died in 2005. She was married to Buford Mansell, who predeceased her in 1987. No children were born of the marriage between Ruby Smith Mansell and Buford Mansell.

Ethel Mae Smith died in 2011. She was married to Wilson Smith, who predeceased her in 1989. Three (3) children were born of the marriage of Ethel Mae Smith and Wilson Smith, said children being Patrick R. Smith, Reginald Lamont Smith and Eric Smith, all of whom are surviving.

Christine Smith Dawkins died in 2001. She was married to William G. Dawkins, who survived her, and is surviving. No children were born to the marriage of Christine

Smith Dawkins and William G. Dawkins. Christine Smith Dawkins had two (2) children, said children being Alma Rene Smith Murry and Sharai Smith Brock, both of whom are surviving.

Robert Lee Smith died in 1991. He was married to Melissa F. Smith, who survived him. Condemnor does not know if Melissa F. Smith is still surviving. No children were born to the marriage of Robert Lee Smith and Melissa F. Smith. Robert Lee Smith had one (1) child, said child being Rosalyn Annette Steven, who is surviving.

Edith Smith Foster died in 2007. She was married to George Waymon Foster, who predeceased her in 2000. No children were born to the marriage of Edith Smith Foster and George Waymon Foster. Edith Smith Foster had two (2) children, said children being Bridgette Smith Blassingame and Tara Smith, both of whom are surviving.

Waymon Odell Smith died in 1995. He was married to Martha Miller Smith, who survived him as his third wife, and is surviving. No children were born to the marriage of Waymon Odel Smith and Martha M. Smith. Waymon Odell Smith had six (6) children with a former wife, Geneva Martin Smith. Waymon Odell Smith and Geneva Martin Smith were divorced, and Geneva Martin Smith died in 1987. The said children of this marriage are Calvin Lee Smith, Reece W. Smith, Raymond Eddie Smith, Michael Smith, Odell Smith and Dorothy Smith Pearson, all of whom, except for Dorothy Smith Pearson, are surviving.

Dorothy Smith Pearson died in 2008. She was married to Gary Pearson, who survived her and died in 2011. No children were born to the marriage of Dorothy Smith Pearson and Gary Pearson. Dorothy Smith Pearson had one (1) child, said child being Jerome Smith, who is surviving.

d. **Pearl Terry** Pearl Terry was married to Jaygo Terry. Both Pearl Terry and Jaygo Terry are deceased, having passed away on dates that are unknown to Condemnor. Subsequent to the death of Pearl Terry, Jaygo Terry married Ida Terry, who is also now deceased. There are no recorded probates of estates for Pearl Terry, Jaygo Terry or Ida Terry in the public records of Greenville County, South Carolina.

Eleven (11) children were born of the marriage between Pearl Terry and Jaygo Terry, said children being Mack Terry, Leola Terry Smith, J.P. Terry, David Brayvelle Terry, Tecora O. Terry Mason, Dorothy Terry Sheppard, Theodore Terry, Sr., Mannell Terry, Iola Terry Cox, Supearl Terry Gilliam and Ezell Terry. All of the aforementioned eleven (11) children of Pearl Terry and Jaygo Terry are now deceased.

Mack Terry was married to Zone Terry. Both Mack Terry and Zone Terry are deceased, having passed away on dates that are unknown to Condemnor. No children were born of the marriage between Mack Terry and Zone Terry.

Leola Terry Smith was married to James Smith. Both Leola Terry Smith and James Smith are deceased, having passed away on dates that are unknown to Condemnor. No children were born of the marriage between Leola Terry Smith and James Smith.

J.P. Terry is deceased, having passed away on a date that is unknown to Condemnor. J.P. Terry never married and had no children.

David Brayvelle Terry died in 1984. David Brayvelle Terry never married. David Brayvelle Terry had one (1) child, said child being Ettie Pearl Booker, who is surviving.

Tecora O. Terry Mason died in 1982. Tecora O. Terry Mason was married to Odell Mason, who predeceased her. No children were born of the marriage between

Tecora O. Terry Mason and Odell Mason. Tecora O. Terry Mason had one (1) child, said child being Lenora Holley, who is surviving.

Dorothy Terry Sheppard died in 1994. She was married to Orangelee Sheppard, who survived her, and is surviving. Three (3) children were born of the marriage between Dorothy Terry Sheppard and Orangelee Sheppard, said children being Vernon Sheppard, Kasandra Sheppard Jenkins and Karen Sheppard Spates, all of whom are surviving.

Theodore Terry, Sr., is deceased, having passed away on a date that is unknown to Condemnor. He was married to Gracie Terry, who survived him, and is surviving. Four children were born of the marriage between Theodore Terry, Sr., and Gracie Terry, said children being Kelvin F. Terry, Theodore Terry, Jr., Keith Terry and Leola Terry Daniels. All are surviving except for Leola Terry Daniels, who is deceased.

Leola Terry Daniels died in 2001. She was married to Wilford Daniels, who survived her, and is surviving. Leola Terry Daniels had three (3) children, said children being Terrance Leslie, Sr., Derrick McGee, Jr., and Fred Smith, Jr., all of whom are surviving.

Mannell Terry is deceased, having passed away on a date that is unknown to Condemnor. Mannell Terry was married to Patricia Terry, who survived him, and is surviving. Mannell Terry had two (2) children, said children being Sheila Terry, who is surviving, and Barbara Evans, who is deceased.

Barbara Evans was married to Leonard Evans. Both are deceased, having passed away on dates that are unknown to Condemnor. Four (4) children were born of the marriage between Barbara Evans and Leonard Evans, said children being Linda Evans

and Thomas Evans, who are surviving, and Johnny R. Williams and Connie Evans, who are deceased.

Johnny R. Williams is deceased, having passed away on a date that is unknown to Condemnor. Johnny R. Williams had seven (7) children whose names and identities are unknown to Condemnor.

Connie Evans died in 2012. Connie Evans had one (1) child, said child being Michael Evans, who is surviving.

Iola Terry Cox died in 1981. She was married to William Henry Cox, who is also deceased, having passed away on a date that is unknown to Condemnor. Eight (8) children were born to the marriage between Iola Terry Cox and William Henry Cox, said children being Johnny F. Cox, Joyce A. Smith, Anthony Cox and Alfred Cox, who are surviving, and J. Henry Cox, Charlette J. Cox, Charles J. Cox and Michael Cox, who are deceased.

J. Henry Cox, Charlette J. Cox, Charles J. Cox and Michael Cox, are deceased, having passed away on dates that are unknown to Condemnor. J. Henry Cox, Charlette J. Cox, Charles J. Cox and Michael Cox were never married and had no children.

Supearl Terry Gilliam was married to Eugene Gilliam. Both are deceased, having passed away on dates that are unknown to Condemnor, although it appears that Eugene Gilliam predeceased Supearl Terry Gilliam. Eight (8) children were born of the marriage between Supearl Terry Gilliam and Eugene Gilliam, said children being Terry Gilliam, Jerry Gilliam, Warren Gilliam and Eugene Gilliam, Jr., who are surviving, and Melvin Gilliam, Rodney Gilliam, Vermell Gilliam Phillips and Donald Gilliam, Sr., who are deceased.

Melvin Gilliam is deceased, having passed away on a date that is unknown to Condemnor. Condemnor does not know if Melvin Gilliam was ever married or if Melvin Gilliam ever had any children.

Rodney Gilliam died in 2008. He was married to Cindy Gilliam, who survived him, and is surviving. Three (3) children were born of the marriage between Rodney Gilliam and Cindy Gilliam, said children being Shakima Gilliam, Carmella Cottom and Nina Gilliam, all of whom are surviving.

Vermell Gilliam Phillips is deceased, having passed away on a date that is unknown to Condemnor. Vermell Gilliam Phillips had two (2) children, said children being Shaynise Alston and John Gilliam, both of whom are surviving.

Donald Gilliam, Sr. died in 1998. He was married to Leunette Gilliam, who survived him, and is surviving. Five (5) children were born of the marriage between Donald Gilliam, Sr., and Leunette Gilliam, said children being Donnette Gilliam Ortchere, Leslie Gilliam Peter, Angela Gilliam, Donald E. Gilliam and Raymond T. Gilliam, all of whom are surviving.

Following the death of Eugene Gilliam, Supearl Terry Gilliam married Juan Miranda, and was therefore also known as Supearl Terry Gilliam Miranda. Juan Miranda is deceased, having passed away on a date that is unknown to Condemnor. One (1) child was born of the marriage between Supearl Terry Gilliam Miranda and Juan Miranda, said child being Carmen Miranda, who is deceased.

Carmen Miranda is deceased, having passed away on a date that is unknown to Condemnor. Carmen Miranda was married to John Glavin, Sr., and was therefore also known as Carmen Miranda Glavin. Condemnor does not know if John Glavin, Sr., is

living or dead. Four (4) children were born to the marriage of Carmen Miranda Glavin and John Glavin, Sr., said children being John Glavin, Jr., Miranda Glavin, Jeffrey Glavin and Yolanda Glavin, all of whom are surviving.

Ezell Terry is deceased, having passed away on a date that is unknown to Condemnor. Ezell Terry was married to Magaline Terry, who passed away in 2012. Six (6) children were born to the marriage between Ezell Terry and Magaline Terry, said children being Leroy Terry, Kenneth Terry, James (Jimmy) Terry and Pearlmae Terry, who are surviving, and Winnie L. Terry Anderson and Paul Terry, who are deceased.

Winnie L. Terry Anderson is deceased, having passed away on a date that is unknown to Condemnor. Winnie L. Terry Anderson was married to Furman Anderson, who is also deceased, having passed away on a date that is unknown to Condemnor. Eight (8) children were born to the marriage between Winnie L. Terry Anderson and Furman Anderson, said children being Tommy Anderson, Abigail Dodd, Angela Reid, Sandra McDowell, Harold Anderson, Mary Ann Davis and Charlene Peaks, who are surviving, and Albert Anderson, who is deceased.

Albert Anderson is deceased, having passed away on a date that is unknown to Condemnor. Condemnor does not know if Albert Anderson ever married or if Albert Anderson ever had any children.

Paul Terry is deceased, having passed away on a date that is unknown to Condemnor. Paul Terry was married to Betty Jo Terry, who survived him, and is surviving. Paul Terry had six (6) children, said children being Donald E. Terry, Deloris I. Terry, Paul A. Terry, Mark G. Terry, Terry Sholer and Jamie Terry, all of whom are surviving.

- e. **Ethel Butler** Ethel Butler is deceased, having passed away in 1942.

Ethel Butler had one (1) child, James (O.C.) Smith, who is deceased. There is no recorded probate of an estate for Ethel Butler in the public records of Greenville County, South Carolina.

James (O.C.) Smith died in 2008. James (O.C.) Smith was married to Pauline Smith, who is also deceased, having passed away on a date that is unknown to Condemnor. By his Last Will and Testament, James (O.C.) Smith devised and bequeathed all of his real and personal property to his daughter Gloria Gore, his son Paul Smith, his daughter Ethel Allen, his granddaughter Desiree Golden, his daughter Pauline Workman, and his daughter Brenda Moulhem, all of whom are surviving.

3. The United States of America, acting by and through its agency, The Internal Revenue Service, is named as an Other Condemnee in this action by virtue of the following:

- a. Notice of Federal Tax Lien against Reginald L. Smith and Mary J. Smith, dated August 21, 2003, and recorded on September 15, 2003, in the ROD for Greenville County at File No. 107952, in the original amount of \$35,991.23, Serial Number 130672103;
- b. Notice of Federal Tax Lien against Reginald Smith dated August 31, 2005, and recorded on September 7, 2005, in the ROD for Greenville County at File No. 2005083136, in the original amount of \$2,834.65, Serial Number 246134905;
- c. Notice of Federal Tax Lien against Reginald Smith and Mary Smith, dated August 31, 2005, and recorded on September 7, 2005, in the ROD for

Greenville County at File No. 2005083137, in the original amount of \$2,184.43, Serial Number 246135005.

- d. Notice of Federal Tax Lien against Reginald Smith, dated January 1, 2008, and recorded on January 8, 2008, in the ROD for Greenville County in Book MI-24 at page 634, in the original amount of \$4,799.05, Serial Number 412262808.
- e. Notice of Federal Tax Lien against William Dawkins, dated October 25, 2007, and recorded on November 5, 2007, in the ROD for Greenville County in Book MI-22 at page 1551, in the original amount of \$6,424.24, Serial Number 400233707. Condemnor does not know if the individual referenced in this Notice is the same individual identified as a Landowner, above.

4. The United States of America, acting by and through its agency, the United States Department of Justice, is named as an Other Condemnee in this action by virtue of a Notice of Lien for Fine and/or Restitution against Michael Ellis Evans, dated January 28, 2004, and recorded on February 10, 2004, in the ROD for Greenville County in File No. 11268, in the original amount of \$9,100.00, Serial Number 2004Z00047/001. Condemnor does not know if the individual referenced in this Notice of Lien is the same individual identified as a Landowner, above.

5. The South Carolina Department of Revenue (hereinafter "SCDOR") is named as an Other Condemnee in this action by virtue of the following:

- a. SCDOR Tax Lien against Ettie Booker and Jessie Booker, recorded on February 4, 2013, in the ROD for Greenville County in Book MI-78 at

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page 694, in the original amount of \$3,985.03, File Number 11896654, Tax Lien Number 3-51528190-4.

- b. SCDOR Tax Lien against Charles Cox, recorded on February 17, 2005, in the ROD for Greenville County in File No. 1421-1, in the original amount of \$789.74, File Number 93895651, Tax Lien Number 3-50603205-4. Condemnor does not know if the individual referenced in this Tax Lien is the same individual identified as a Landowner, above.
- c. SCDOR Tax Lien against James Terry, recorded on March 16, 2010, in the ROD for Greenville County in Book MI-48 at page 1020, in the original amount of \$4,523.10, File Number 88005207, Tax Lien Number 3-51131351-9. Condemnor does not know if the individual referenced in this Tax Lien is the same individual identified as a Landowner, above.
- d. SCDOR Tax Lien against Harold Anderson and Linda Anderson, recorded on December 17, 2013, in the ROD for Greenville County in Book MI-86 at page 1708, in the original amount of \$3,388.90, File Number 62821654, Tax Lien Number 3-51645858-5. Condemnor does not know if the individual referenced in this Tax Lien is the same individual identified as a Landowner, above.
- e. SCDOR Tax Lien against Donald Terry and Angela Decosta, recorded on July 31, 2012, in the ROD for Greenville County in Book MI-72 at page 1607, in the original amount of \$1,707.78, File Number 71009660, Tax Lien Number 3-51436603-1.

f. SCDOR Tax Lien against Reginald Smith, recorded on July 24, 2007, in the ROD for Greenville County in Book MI-20 at page 566, in the original amount of \$333.26, File Number 93131418, Tax Lien Number 3-50835017-8. Condemnor does not know if the individual referenced in this Tax Lien is the same individual identified as a Landowner, above.

6. The South Carolina Department of Mental Health is named as an Other Condemnee in this action by virtue of a Notice of Lien against Michael Frederick Smith, dated November 27, 1990, and recorded on November 30, 1990, in the ROD for Greenville County in Book 1 at page 1512, in the original amount of \$4,340.00. Condemnor does not know if the individual referenced in this Notice of Lien is the same individual identified as a Landowner, above.

7. The State of South Carolina is named as an Other Condemnee in this action by virtue of a judgment in its favor against Fredrick Smith, Jr., in the original amount of \$12,500.00, filed on July 30, 2007, in the Office of the Clerk of Court for Greenville County in Judgment Roll Number 2007-CP-23-4923. Condemnor does not know if the individual referenced in this judgment is same individual identified as a Landowner, above.

8. Bullhead Investments, LLC, is named as an Other Condemnee in this action by virtue of a judgment in its favor against Reginald L. Smith in the original amount of \$4,359.32, filed on December 15, 2008, in the Office of the Clerk of Court for Greenville County in Judgment Roll Number 2008-CP-23-6027. Condemnor does not know if the individual referenced in this judgment is the same individual identified as a Landowner, above.

9. Arrow Financial Services, LLC, is named as an Other Condemnee in this action by virtue of a judgment in its favor against Jerome Smith in the original amount of \$3,726.92, filed on August 9, 2010, in the Office of the Clerk of Court for Greenville County in Judgment Roll Number 2009-CP-23-10930. Condemnor does not know if the individual referenced in this judgment is the same individual identified as a Landowner, above.

10. Arrow Financial Services, LLC, is named as an Other Condemnee in this action by virtue of a judgment in its favor against Joyce A. Smith in the original amount of \$2,959.77, filed on March 5, 2008, in the Office of the Clerk of Court for Greenville County in Judgment Roll Number 2007-CP-23-59. Condemnor does not know if the individual referenced in this judgment is the same individual identified as a Landowner, above.

11. Sharonview Federal Credit Union is named as an Other Condemnee in this action by virtue of a judgment in its favor against Joyce Ann Smith in the original amount of \$7,797.26, filed on October 15, 2008, in the Office of the Clerk of Court for Greenville County in Judgment Roll Number 2008-CP-23-3066. Condemnor does not know if the individual referenced in this judgment is the same individual identified as a Landowner, above.

12. Discover Bank is named as an Other Condemnee in this action by virtue of a judgment in its favor against Sandra A. McDowell in the original amount of \$7,795.43, filed on November 28, 2006, in the Office of the Clerk of Court for Greenville County in Judgment Roll 2006-CP-23-2918. Condemnor does not know if the individual referenced in this judgment is the same individual identified as a Landowner, above.

13. Zachery Arnold is named as an Other Condemnee in this action by virtue of a judgment in his favor against New Beginnings Outreach Ministries, Inc., c/o Harold Anthony Anderson in the original amount of \$7,500.00, filed on September 29, 2008, in the Office of the Clerk of Court for Greenville County in Judgment Roll 2008-CP-23-7292. Condemnor does not know if the individual referenced in this judgment is the same individual identified as a Landowner, above.

14. GE Commercial Finance Business Property Corporation is named as an Other Condemnee in this action by virtue of a judgment in its favor against Michael E. Evans, in the original amount of \$4,073,794.09, filed on August 30, 2006, in the Office of the Clerk of Court for Greenville County in Judgment Roll Number 2006-CP-23-5569. Condemnor does not know if the individual referenced in this judgment is the same individual identified as a Landowner, above.

15. Midland Funding, LLC, is named as an Other Condemnee in this action by virtue of a judgment in its favor against Jerry Gilliam, in the original amount of \$21,480.04, filed on October 27, 2010, in the Office of the Clerk of Court for Greenville County in Judgment Roll Number 2010-CP-23-6239. Condemnor does not know if the individual referenced in this judgment is the same individual identified as a Landowner, above.

16. Greenville County is named as an Other Condemnee in this action by virtue of the following:

- a. Easement for the construction and maintenance of slopes in Rocky Creek, from Christine Dawkins, Ethel Mae Smith, Ruby Mansell, James Richeous Smith, Loree Smith, Edith Foster, Gene Allen Smith and Alma Renee

R066

Murry to Greenville County, recorded on February 24, 1997, in the ROD for Greenville County in Deed Book 1673 at page 1.

- b. Easement for the construction and maintenance of slopes in Rocky Creek, from O. C. Smith to Greenville County, recorded on February 19, 1997, in the ROD for Greenville County in Deed Book 1672 at page 386.
- c. Easement for the construction and maintenance of slopes in Rocky Creek, from Supearl Miranda to Greenville County, recorded on March 6, 1997, in the ROD for Greenville County in Deed Book 1675 at page 869
- d. Temporary Easement for Construction of Road Shoulder & Drainage Ditches (Rock Road), from Christine Dawkins, Ethel Mae Smith, Ruby Mansell, James Richeous Smith, Loree Smith, Edith Foster, Gene Allen Smith and Alma Renee Murry to Greenville County, recorded on February 24, 1997, in the ROD for Greenville County in Deed Book 1673 at page 9.
- e. Temporary Easement for Construction of Road Shoulder & Drainage Ditches (Rock Road), from O. C. Smith to Greenville County, recorded on February 19, 1997, in the ROD for Greenville County in Deed Book 1672 at page 390.
- f. Temporary Easement for Construction of Road Shoulder & Drainage Ditches (Rock Road), from Supearl Miranda to Greenville County, recorded on March 6, 1997, in the ROD for Greenville County in Deed Book 1675 at page 871.
- g. Title to Real Estate (Road Improvements on Rock Road), from Christine Dawkins, Ethel Mae Smith, Ruby Mansell, James Richeous Smith, Loree

Smith, Edith Foster, Gene Allen Smith and Alma Renee Murry to Greenville County, recorded on February 24, 1997, in the ROD for Greenville County in Deed Book 1672 at page 999.

- h. Title to Real Estate (Road Improvements on Rock Road), from O. C. Smith to Greenville County, recorded on February 19, 1997, in the ROD for Greenville County in Deed Book 1672 at page 374.
- i. Title to Real Estate (Road Improvements on Rock Road), from Supearl Miranda to Greenville County, recorded on March 6, 1997, in the ROD for Greenville County in Deed Book 1675 at page 829.

17. John Doe and Mary Roe, being fictitious names used to represent all persons and condemnees whose true names are not known, including the heirs, successors, devisees, distributees, Administrators, Executors and Personal Representatives of any of the above named Landowners and Other Condemnees who may be deceased, and any parties claiming by or through them; and also all Condemnees whose names are not known, including heirs, infants, persons under disability and persons who may be in the Military service, who claim, or may claim, an interest in the property being condemned, and also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the Condemnation Notice and Tender of Payment herein, are made parties to this action as "Unknown Claimants" by reason of the fact that there may be persons whose names are unknown to the Condemnor who may claim some interest in the property being condemned.

18. The following is a description of the real property subject to the action and description of the interest sought to be acquired in and to the property by the Condemnor:

a. The property which is subject to this action is described as follows:

All the piece, parcel or tract of land in Butler Township, Greenville County, S.C., Containing 75 acres, more or less, and bounded, now or formerly, by lands of the Estate of J. W. Baker, Brooks Mahaffey, and of Arch Burnett, lying on the Enoree River, about 18 miles from the Greenville Court House.

The above described property being the same property conveyed to Richeous Smith, Worthly Smith, Pearl Terry, Ethel Butler and Tweety Smith by Deed of Ezell Smith, dated July 25, 1928, and recorded on July 26, 1928, in the ROD for Greenville County in Deed Book 86 at page 299.

TMS Numbers 0531010102100 and 0531010102101

b. The interest sought to be acquired by the Condemnor in and to the above described property is described as follows:

A permanent easement, approximately 50 feet in width, upon, over, through and crossing the above described real property, encumbering approximately 2.52 acres, or 109,574 square feet, and a "Temporary Work Space", covering 0.12 acre, or 5,228 square feet, being more particularly shown and described on a survey plat dated February 7, 2012, prepared by McKim & Creed for Piedmont Natural Gas Company, attached hereto as Exhibit A and incorporated herein by reference.

Portion of TMS Numbers 0531010102100 and 0531010102101

The above interest also includes access to the easement and right of way over the above described property and land and other rights, referenced below:

A right of way and easement rights for the purpose of laying, constructing, maintaining, operating, repairing, altering, replacing, removing, and protecting one or more pipelines for the transportation of natural gas under, upon, over, through, and across the above described land and real property of Landowner(s) (or in which Landowner(s) has/have an interest) situated in Greenville County, South Carolina, as described in deed(s) recorded in the Register of Deeds for Greenville County in Deed Book at page .

Condemnor shall have all rights necessary or convenient for the full use and enjoyment of the rights herein granted, including without limitation: (1) free and full right of access to and from said right of way over and across the aforesaid

land; (2) to keep said right of way cleared of trees, buildings, and other obstructions; and (3) to construct, install, operate, utilize, rebuild, remove, protect and maintain pipes, valves, markers, cathodic protection equipment, anode beds and other appurtenant devices in conjunction with said gas facilities.

Landowner(s) reserves the right to use the land over which said right of way and easement rights are hereby granted for all purposes not inconsistent with said easement rights, the South Carolina Utilities Commission, Condemnor's current encroachment specifications, and any federal, state, or local law, rule, or regulation, provided that Landowner(s) and Condemnor agree that: (1) notwithstanding anything to the contrary herein, Landowner(s) shall give written notification to Condemnor and Condemnor shall obtain written approval from Landowner(s) prior to any activity as defined in items (2)–(7) of this paragraph; (2) the depth of said gas facilities below the surface of the ground shall not be reduced nor increased by grading or any other work and any slopes allowed within said right of way shall be no greater than a four to one (4:1) ratio; (3) if streets, roads, equipment crossings, fences or utility lines are constructed across said right of way, they shall cross as nearly as possible at right angles to gas line(s) and in no event shall they be constructed laterally along and over the easement; (4) fences shall have minimum twelve (12) foot wide gate(s) (5) Removable pavers shall be installed along the entire length and width of the pipeline easement in paved parking areas; (6) improvements shall not adversely affect, in Condemnor's sole discretion, the access to, safety, construction, reconstruction, operation, or maintenance of Condemnor's facilities and Condemnor shall not be liable for damages to said future improvements installed within said right of way; (7) landscaping on the right of way shall be limited to lawn grasses and shrubs which have a maximum mature height of four (4) feet, (8) buildings, storage sheds, mobile homes, wells, septic tanks, and/or related drain fields, absorption pits, detention ponds, irrigation systems (except crossing), sprinkler heads, swimming pools, ponds, lakes, erosion control sediment traps, underground vaults, burial grounds, explosives or flammable materials, fires of any type, fire hydrants, catch basins, air strips, electrical transformers or enclosures, utility poles, dumpsters, trash, uprooted stumps, boulders, rubble, building materials, junk or inoperable vehicles, satellite signal receiver systems, or other obstructions are prohibited within said right of way; (9) Landowner(s) shall not: (a) interfere with Condemnor's access or maintenance to its facilities, or (b) endanger the safety of Landowner(s), Condemnor, or the general public; (10) Condemnor reserves the right to construct future pipelines within said right of way and Landowner(s) shall not interfere with or object to the construction of said future pipelines; and (11) all facilities installed by Condemnor shall be and remain the property of Condemnor and may be removed by it at any time and from time to time.

Condemnor agrees that it shall be responsible for actual damages to improvements that existed prior to this EASEMENT and annual crops of Landowner(s) both inside and outside said right of way on the above-referenced

land caused by the construction, installation, operation, utilization, inspection, rebuilding, removal, and maintenance of said facilities, and in going to and from said right of way, and shall be responsible for the breakage caused to any bridge and any extraordinary damage to any road due to heavy hauling to and from said right of way, if claim is made within sixty (60) days after such damages are sustained.

Landowner(s) expressly give(s) Condemnor, its successors and assigns, the right to assign, license, lease, or otherwise transfer, in whole or part, this GRANT OF EASEMENT or any rights given herein, to any person or entity, including but not limited to, any affiliated parent or subsidiary entity of Condemnor, for the uses and purposes expressly stated herein.

12. PNG is vested with the power of Eminent Domain pursuant to Section 28-2-10, *et. seq.*, Section 58-7-10 and Section 58-9-2030, Code of Laws of South Carolina.

19. The property sought herein is to be acquired for public purposes, more particularly for the construction, installation, maintenance and use of an underground natural gas transmission pipeline(s).

20. This action is brought pursuant to Section 28-2-240, Code of Laws of South Carolina.

21. PNG has complied with the requirements set forth in Section 28-2-70(a), Code of Laws of South Carolina, by having the subject property interests appraised and making the appraisal available to the Landowner(s) where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the commencement of this action.

22. Attached as Exhibit A to this Condemnation Notice is a sketch, map or diagram of the property and, if less than all of a whole parcel, the location of the interest taken upon or within the whole parcel.

23. Project plans may be inspected at the Office of John P. Bishop, Operations Manager, Piedmont Natural Gas Company, Greenville SC Resource Center, 100

Woodruff Industrial Lane, Greenville, S.C. 29601, (864) 286-7850, during regular business hours.

24. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, TO BE THE SUM OF ONE HUNDRED SEVENTY-TWO THOUSAND TWO HUNDRED AND NO/100 (\$172,200.00) DOLLARS, AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER(S).

25. Payment of this amount will be made to the Landowner(s) if, within thirty (30) days of service of this Condemnation Notice, the Landowner(s) in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent by first class certified mail with return receipt requested or delivered in person to Condemnor's Attorney, Michael S. Chambers, 121 Manly Street, Suite B, Greenville, S.C. 29601. If no Agreement and Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected.

26. 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(s) and Other Condemnee(s) 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.

27. AN ACTION CHALLENGING THE CONDEMNORS RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE

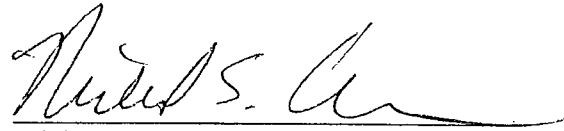
COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY (30) DAYS OF THE SERVICE OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER(S) WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

28. 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(s). That Notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury, The Landowner(s) 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(s) written notice by mail of the call of the case for trial.

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

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

R073

A handwritten signature in black ink, appearing to read "Michael S. Chambers", written over a horizontal line.

Michael S. Chambers
Attorney for the Condemnor
121 Manly Street, Suite B
Greenville, S.C. 29601
(864) 242-9245
S.C. Bar I.D. No. 001178

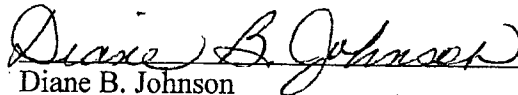
Date: January 31, 2018

Greenville, South Carolina

STATE OF NORTH CAROLINA)
) CERTIFICATE AND AFFIDAVIT
COUNTY OF MECKLENBURG)

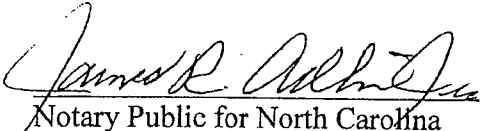
Personally appeared before me, Diane B. Johnson, who, being duly sworn,
deposes and states as follows:

I am employed by Piedmont Natural Gas Company in Charlotte, North Carolina,
in the capacity of Senior Land Agent for the Company. Pursuant to Section 28-2-10, et
seq. Code of Laws of South Carolina, I hereby certify to the Court that either I, or another
authorized agent of Piedmont Natural Gas Company, have negotiated with the
Landowner(s), or such Landowner's(s') representatives, referred to herein in an effort to
come to an agreement on the value of, and the amount of compensation to be paid for, the
property which Piedmont Natural Gas Company proposes to condemn for purposes of a
natural gas transmission pipeline. Such negotiations have not been successful.


Diane B. Johnson
Piedmont Natural Gas Company

SWORN TO before me this

24TH day of JULY, 2012.


Notary Public for North Carolina

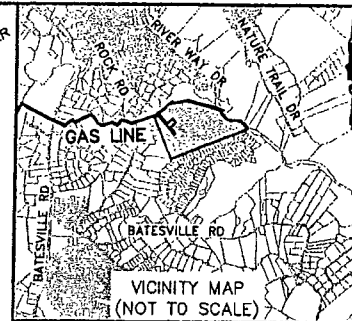
My commission expires: MAY 5, 2014

R075

EXHIBIT A

AREA OF:	SQ. FT.	ACRE
PARCEL PER DEED/GIS	3,214,728	73.80
PROPOSED EASEMENT	109,574	2.52
TEMPORARY WORK SPACE	5,228	0.12

07-1B-SP-1
 RICK A. SETZER AND
 SUE LYNN SETZER
 DB. 48-F PG. 319
 PIN: 9-08-00-001.00



PROJECT LOCALIZED FROM
 SCGS MONUMENT "DRUM BEAT"
 GRID COORDINATES
 N: 1,100,245.84
 E: 1,630,761.04

LINE TABLE					
LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
L1	213.15'	N 23°12'11" W	L15	183.34'	N 49°20'43" E
L2	38.80'	N 51°45'21" E	L16	134.17'	N 78°23'48" E
L3	80.82'	N 51°45'21" E	L17	68.59'	S 49°20'43" W
L4	25.03'	N 05°39'34" W	L18	50.00'	S 49°20'43" W
L5	7.11'	N 05°39'34" W	L19	44.73'	S 49°20'43" W
L6	189.21'	N 52°14'05" E	L20	31.23'	S 49°20'43" W
L7	121.98'	S 49°24'05" W	L21	20.10'	S 70°18'25" W
L8	65.20'	S 36°31'48" E	L22	82.23'	S 70°18'25" W
L9	37.08'	S 78°23'46" W	L23	50.00'	S 40°39'17" E
L10	55.38'	S 32°28'17" E	L24	52.24'	S 49°20'43" W
L11	44.32'	S 31°13'14" E	L25	50.00'	N 41°24'34" W
L12	28.82'	S 29°03'51" E	L26	50.07'	S 43°45'10" E
L13	25.53'	N 29°03'51" W	L27	52.71'	S 49°20'43" W
L14	10.39'	N 70°18'35" E	L28	37.19'	N 40°39'17" W

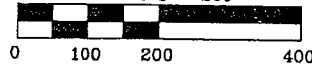
NOTES:

- THIS IS NOT A BOUNDARY SURVEY OF THE LAND SHOWN HEREON. THE PURPOSE OF THIS SURVEY IS FOR RIGHT OF WAY EASEMENT ACQUISITION ONLY.
- THIS PROPERTY MAY BE SUBJECT TO OTHER EASEMENTS EITHER RECORDED OR IMPLIED. A TITLE SEARCH WAS NOT PROVIDED AT THIS TIME.
- FOR SOURCE OF TITLE REFER TO DEEDS AND PLATS REFERENCED HEREON.
- ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES IN INTERNATIONAL FEET UNLESS OTHERWISE NOTED.
- AREA BY COORDINATE COMPUTATION.
- IT IS THE INTENT OF THIS MAP THAT THE EASEMENT SHALL CROSS THE ENTIRE PARCEL.

LEGEND

- COMPUTED POINT
- EASEMENT POINT
- IPF O IRON PIPE FOUND
- IRF O IRON ROD FOUND
- PROPERTY BOUNDARY BY DEED
- PROPOSED EASEMENT
- RIGHT OF WAY
- TEMPORARY WORK SPACE
- ADJOINER PROPERTY

SCALE 1" = 200'



THE STATE PLANE COORDINATES (SPC) FOR THIS PROJECT WERE ESTABLISHED USING THE VIRTUAL REFERENCE NETWORK (VRN) AND TRIMBLE 5700/5800 RECEIVERS.

HORIZONTAL POSITIONS ARE REFERENCED TO NAD 83/NSRS (2007) VERTICAL POSITIONS ARE REFERENCED TO NAVD88 USING (GEOID09) COMBINED SCALE FACTOR: 1.0000280539; GEOID MODEL: GEOID09; UNITS: INTERNATIONAL FEET

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN.

PRELIMINARY PLAT:
 NOT FOR RECORDATION,
 CONVEYANCES, OR SALES

DANIEL E. SMITH, PLS

No. 27480

MFKIM & CREED

ENGINEERS, PLANNERS, SURVEYORS
 8020 TOWER POINT DRIVE
 CHARLOTTE, NORTH CAROLINA 28227
 PHONE (704) 841-2588
 FAX (704) 841-2567

02/07/12

WILLIAM CHERRY
 LIVINGSTON
 DB. 1816 PG. 204
 PIN: 0530060101200

07-1B-GR-2

RICHEOUS SMITH ET AL
 DB. 86 PG. 299
 PIN: 0531010102100

IRON PIPE FOUND
 GROUND COORDS.
 N 1097238.62
 E 1635328.91

IPF

50'

TYPICAL EASEMENT LAYOUT (NTS)

07-1B-GR-3

CHARLES V. HENDERSON, TRUSTEE
 THE HENDERSON LIVING TRUST
 DB. 2250 PG. 215
 PIN: 0531010101909

RIGHT OF WAY EASEMENT SURVEY PREPARED FOR
 PIEDMONT NATURAL GAS COMPANY

EASEMENT TO BE ACQUIRED FROM OWNER:
 RICHEOUS SMITH ET AL
 ROCK RD

07-1B-GR-2

BUTLER TOWNSHIP
 GREENVILLE COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	
	)	CA No. 2012-CP-23-4064	
COUNTY OF GREENVILLE	)		
	)		
Piedmont Natural Gas Company,	)		
	)		
Condemnor,	)	CONDEMNOR'S MOTION	
	)	IN LIMINE	
vs.	)		
	)		
Richeous Smith, et.al.,	)		
	)		
Landowners, Other	)		
Condemnees and	)		
Unknown Claimants.	)		
	)		

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. MOLENSCHER
2015 MAY 20 AM 10 18

Condemnor herein respectfully moves this Court, *in limine*, to exclude portions of the testimony and Real Estate Appraisal Report of Landowners'¹ expert witness, R. Bruce Owen, MAI, insofar as that testimony and Report involve opinions of diminution of value to the remainder of the property due to any claimed negative conception in the marketplace caused by fear or "stigma" associated with proximity to a natural gas pipeline. Condemnor further moves for exclusion of any evidence of any perceived safety hazards, accidents, explosions, etc, allegedly involving natural gas pipelines. The grounds for this Motion are that the substance of the aforementioned opinions and anticipated expert testimony are not reliable, pursuant to Rule 702, SCRE, and that any probative value of such opinions and evidence are outweighed by its prejudicial effect, pursuant to Rule 403, SCRE. More specifically, Mr. Owen's opinion(s) involving fear, stigma and diminution of value are not properly supported by underlying market evidence and data, and are based upon improper appraisal methodology and speculation.

¹ Most, but not all, of the many Landowners involved herein are represented by David Ward, Esquire, and Erin Culbertson, Esquire, who are proffering Mr. Owen as their expert appraisal witness. For ease of reference herein, the undersigned will refer to these represented Landowners as "Landowners", even though some of the named Landowners herein are not so represented.

The purpose of this action is solely to determine the amount of just compensation due for the condemnation of an easement for a natural gas pipeline. The pipeline at issue in this matter is a twelve (12) inch wide natural gas pipeline, which will be contained within a fifty (50) foot wide permanent easement. The “parent tract” (i.e., the parcel owned by the Landowners herein, the subject of this particular condemnation action) that is subject to and burdened by the easement contains 73.68 total acres. Of this total acreage, the easement itself will contain and encompass 2.515 acres. The easement is located generally along the northern boundary of the parent tract, as shown by the plat attached hereto as Exhibit A.

Section 28-2-370, Code of Laws of South Carolina, provides that in determining just compensation, only the value of the property to be taken, any diminution in the value of the landowner’s remaining property, and any benefits as provided in Section 28-2-360 may be considered.

The burden is upon the landowner to show that the value of his remaining land will be diminished by the taking. Such damage will not be presumed....The burden of proof is upon the owner to show that the taking of part of his property will cause damage to the remainder, and unless he show such damage by affirmative evidence, furnishing a basis from which a reasonable and proper estimate of the amount thereof can be made, his compensation will be limited to the value of the land taken; and it is of course competent for the condemning party to rebut such evidence. S.C. Power Co. v Baker, 212 S.C. 358, 46 S.E.2d 278 (S.C. 1948)

Condemnor and Landowners have each utilized real estate appraisers to estimate and support the amounts claimed as just compensation for the taking. Both appraisers

have estimated the value of the property taken for the easement. Both appraisers have also estimated damages for diminution of value, or "severance damages", for 0.747 acres of property lying between the easement and the northern boundary of the parent tract, as shown on the attached plat. Landowners appraiser, however, has included in his opinion damages for diminution in value to the remaining property due to a "negative conception in the market" based upon fear or stigma associated with proximity to a natural gas pipeline. As will be shown below, this opinion lacks any supporting market data and is based on speculation.

In his appraisal report and opinion, Landowners' appraiser has included a one hundred (100) foot wide "buffer zone" adjacent to and running parallel to the fifty (50) foot easement. This "buffer zone" contains 5.03 acres (This is in addition to, and does not include, the area included within the easement itself). Mr. Owens has assigned a damage estimate of 85% to the buffer zone, yielding, in his opinion, an estimate of damage to the remainder of \$239, 428.00, making his opinion of just compensation the amount of \$414,752.00, rounded down to \$414,750.

Mr. Owen's justification for his novel "buffer zone" theory are found on page 82 of his appraisal report, which reads as follows:

Finally, I have considered an area adjoining and paralleling the right of way to the south. It is my opinion that this area, up to a depth of 100 feet, will most likely be used as buffer zone between developing residential lots and the gas line right of way itself. Without such, I am of the opinion that the lots which would back up to the right of way would be unmarketable or have limited marketability due to the negative conception in the market. This 100 foot wooded buffer should lessen any fears of proximity to the 12 inch gas line and it could also be used as a "green" area. A damage estimate of 85% was applied to the area due to its limited use also. I have evaluated the area within the buffer zone to be approximately 219,100 SF (2191' x 100') or 5.03 acres.

In his deposition, Mr. Owen testified that his aforementioned opinion was not based upon market evidence or other relevant data, but rather was based upon his experience and professional judgment. Mr. Owen further testified that he just felt like the “buffer zone” would be a reasonable assumption, and would give a level of confidence to someone building a house that would back up on the easement. (Exhibit B; Deposition of R. Bruce Owen, Transcript, pp. 24-25, 26-33, 44-56, 64-65, 67-80, 92-94) To support his conclusion that a negative perception exists as to proximity to a natural gas pipeline, Mr. Owen included in an addenda to his appraisal report, on page 93, a fifteen (15) page printout from Wikipedia titled “List of pipeline accidents in the United States in the 21st century” (Exhibit B; Deposition of R. Bruce Owen, Transcript pp. 75-77)

In South Carolina, all expert testimony must meet the requirements of Rule 702, regardless of whether it is scientific, technical or otherwise....In determining whether to admit expert testimony, the court must make three inquiries. First, the court must determine whether the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury. Second, the expert must have acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter, although he need not be a specialist in the particular branch of the field. Finally, the substance of the testimony must be reliable. It is this final requirement of reliability which is the central feature of the inquiry². Graves v CAS Medical Systems, Inc., 401 S.C. 63, 735 S.E.2d 650 (S.C. 2012) The trial court must examine the substance of the testimony to determine if it is reliable, regardless of whether the expert evidence is

² Condemnor’s objection is based only on the third factor of reliability. Condemnor does not challenge Mr. Owen’s qualifications as a real estate appraiser generally.

scientific, technical, or other specialized knowledge. Watson v Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (S.C. 2010)

If the proffered testimony is scientific in nature, then the circuit court must determine its reliability per the factors set forth in *Council* [State v Council, 335 S.C. 1, 515 S.E.2d 508 (S.C. 1999)]....However, these factors serve no useful analytical purpose for nonscientific evidence. In those cases, we [the South Carolina Supreme Court] have declined to offer any specific factors for the circuit court to consider due to the myriad of Rule 702 qualification and reliability challenges that could arise with respect to nonscientific expert evidence. Thus, while a challenge to an opinion's reliability generally goes to weight and not admissibility, this "familiar evidentiary mantra" may not be invoked until the circuit court has vetted its reliability in the first instance and deemed the testimony admissible. Graves v CAS Medical Systems, Inc., *supra*.

Additionally, evidence admissible under Rule 702 should be evaluated under Rule 403, SCRE, to determine if its probative value is outweighed by its prejudicial effect. Once the evidence is admitted under these standards, the jury may give it such weight as it deems appropriate. In Re Robert R., 340 S.C. 242, 531 S.E.2d 301 (S.C. App. 2000); State v Council, *supra*.

South Carolina appellate courts have not addressed the issue of the admissibility of evidence relating to perceived safety hazards and diminution of value in the context of eminent domain proceedings and just compensation. As referenced above, the South Carolina Supreme Court has declined to adopt a formulaic approach that will apply in the generality of cases concerning the foundational reliability requirement for admissibility of nonscientific expert testimony. (See State v White, 382 S.C. 265, 676 S.E.2d 684 (S.C.

2009) Instead, the South Carolina Supreme Court evaluates the foundational reliability requirements for nonscientific expert testimony on a case-by-case basis, as the need arises. In so doing, the Court may look to the decisions of other courts and jurisdictions for guidance in creating or adopting a test concerning reliability and admissibility.³ (*See Graves v CAS Medical Systems, Inc., supra*. “As previously mentioned, we have declined to set a general test for nonscientific testimony due to the multitude of challenges which may arise. Thus, the evidence must be evaluated on an ad hoc basis. Although this is our first opportunity to assess the reliability of an opinion rendered using the reasoning to the best inference methodology, other courts have already done so.”)

There appear to be three distinct views as to the compensability in eminent domain of a diminution in the value of property due to the fears entertained by prospective buyers of the presence of an electric transmission line or a gas or oil pipeline. Vitauts M. Guldis, J.D., Annotation, *Fear of Powerline, Gas or Oil Pipeline, or Related Structure as Element of Damages in Easement Condemnation Proceeding*, 23 ALR4th 631, Section 2[a].

Some courts have adopted the view that the fears of prospective purchasers are generally compensable without proof that the fears of danger are reasonable. In such jurisdictions, it has been held that compensation may be awarded for damage attributable to fears of the presence of an electric transmission line or a gas or oil pipeline where the evidence supports the conclusion that the property sustained a diminution in value.

³ Many of the other jurisdictions that have addressed this issue have done so under the standard set by the U.S. Supreme Court in *Daubert v Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786 (1993). “Although our supreme court in *Council* declined to adopt the *Daubert* standard, instead selecting an approach based on both the South Carolina Rules of Evidence and prior South Carolina case law, at least one observer has noted that the two standards are “very similar.” *See* G. Ross Anderson, Jr., *Evidence Eggshells – A New Walk for Experts*, *The Bulletin*, Fall 1999, at 7, 9”. *In Re Robert R.*, 340 S.C. 242, 531 S.E.2d 301 (S.C. App. 2000)

However, where there was insufficient evidence that prospective purchasers generally entertained fears of an electric transmission line or a gas pipeline, or it was not shown that such fears had an adverse effect upon property values, the courts adopting this view have denied compensation. 23 ALR4th 631, Section 2[a], *id.*

Other authorities, generally recognizing that a diminution in value due to the fears of prospective buyers is compensable in eminent domain, have adopted the view that such fears, in order to be compensable, must be shown to be reasonable. Adopting this view, some courts have stated that the fear of danger contended to diminish the value of the property must be shown to be grounded in scientific observation or experience and that the presence of the transmission line must be shown to circumscribe the activities which might otherwise be conducted on the property. Other authorities have stated that compensation requires proof of a basis in reason or experience for the fear of danger. Where the fears were not shown to be reasonable, or where there was insufficient evidence that the fears entertained by prospective buyers adversely affected market value, compensation has been denied. 23 ALR4th 631, Section 2[a], *id.*

Some authorities, apparently concluding that the fears concerning electric transmission lines are generally unjustified and founded upon ignorance and superstition, have adopted the view that there may be no compensation for alleged diminution in value of a property due to the fears of prospective purchasers. And in at least one jurisdiction which has adopted this view, compensation was denied for alleged diminution in value attributable to the fears of prospective purchasers concerning an easement for a gas transmission line. 23 ALR4th 631, Section 2[a], *id.*

Compensation for the diminution in value of the property due to the public fear of utility easements requires proof on the part of the landowner that the fair market value of the property was in fact diminished because of the utility easement. 23 ALR4th 631, Section 2[b], *id.*

The common requirement of each of the views referenced above is that a proponent of such evidence must prove that the proffered safety hazard actually affects market value, i.e., there must be evidence that the market is fearful of the proffered safety hazards, and that the market values property less because of it. "Under the minority rule, the parties' evidence and arguments are limited to the existence of fear, its prevalence, and its effect on market value, if any. Under either the "intermediate reasonable fear" approach or the "minority perceived fear" rule" neither the owner nor anyone else may base an opinion of value on personal fear . . . admissible evidence is an opinion of value of a qualified witness based on the existence of fear in the buying public in general which affects market value. Western Farmers Electric Coop. v Ennis, 1999 OK Civ. App. 111, 993 P.2d 787 (Ok. 1999) (Case involving high voltage power line and fear of electro-magnetic fields ["EMFs"])

Numerous jurisdictions throughout the country have admitted evidence regarding fear and safety concerns of natural gas transmission pipelines, electrical transmission lines and oil and gasoline pipelines in partial takings cases such as the one here. The primary guiding principle in these cases in determining the admissibility of this evidence is whether the evidence is relevant; in other words, has a qualified expert, such as a person involved in the buying or selling of real estate (real estate agent or broker, or a real estate appraiser), successfully drawn the pertinent nexus in the calculation of

damages between evidence of that fear and the fair market value of the property being condemned following the taking. Arents v ANR Pipeline Co., 281 Wis.2d 173, 696 N.W.2d 194 (WI App. 2005) (Case involving natural gas pipeline; “Accordingly, we conclude that where the requisite nexus has been established by a qualified expert between the evidence of fear regarding the presence of a natural gas transmission pipeline on condemned property and the fair market value of that property following the taking and the evidence is relevant and not speculative, remote or a waste of time, such evidence may be admissible in a condemnation proceeding to determine the diminution value of that property”)

Some credible, tangible evidence that a fear is prevalent must be presented to prove the adverse market value impact. Claimants should have to connect the market value diminution of the property to the particular fear in much the same manner that any other adverse market effects are shown, e.g., by proffering evidence that the market value of property across which power lines have been built has been negatively affected in relation to comparable properties across which no power lines have been built (*see generally*, 4 Nichols, Eminent Domain Sec. 12.02 [Sackman 3d ed. 1993])

Crusciola v Pasny, 81 N.Y.2d 649, 621 N.E.2d 1195 (N.Y. 1993) (Case involving high voltage power line and fear of EMFs)

Faced with a similar situation concerning a challenge to the evidentiary support for an expert opinion as to the diminution in value to the remainder based upon a perceived danger associated with a natural gas pipeline, the Virginia Supreme Court affirmed the trial court’s exclusion of landowner’s appraisal witness. In Kipps v Virginia

Natural Gas, 247 Va. 162, 441 S.E.2d 4 (Va. 1994), the Supreme Court of Virginia

opined as follows:

The dispositive issue in this appeal of a judgment in a condemnation proceeding is whether the trial court erred in ruling that the landowner's expert was not qualified to testify whether the fair market value of the residue can be affected by a perceived danger associated with the use of the land.

Virginia Natural Gas, Inc. (VNG) filed a petition seeking to condemn an easement for a natural gas pipeline through property owned by Mary D. Kipps, Trustee (Kipps). At trial, Kipps sought to present evidence that the value of her remaining land was diminished because of a prospective purchaser's fear or apprehension of a perceived danger of a pipeline explosion. Upon objection by VNG, Kipps proffered the testimony of her expert real estate appraiser.

Although the trial court ruled that the appraiser was qualified as an expert in real estate evaluation, the court concluded that the appraiser did not possess the expertise to testify about any perceived danger of explosion and its effect on the value of the residue. The trial court explained its ruling as follows:

The witness did not possess the expertise to address even the fears or perceived hazards and the impact of such fears on the value of the landowner's remaining lands in this case. He acknowledged that he had done no research and had no education or training in such matters, had never been involved with real estate affected by a gas pipeline, and had done no analysis of the pipeline's effect on value of adjoining lands in the area. Rather, he formed his opinion (a 20% diminution in value of surrounding lands) based on conversations with developers in the Charlottesville area, a newspaper article about a pipeline explosion, and his "assessment", unsupported by any analysis or study, of the "perceived risk" to a developer "to invest in" the property.

The record contains only the trial court's summary of the proffer of evidence. As the trial court observed, the witness had not researched the subject, had performed no analysis of the pipeline's effect on the residue's value, and had no education or training in the subject. Moreover, his personal assessment of the matter was unsupported by any study or analysis by him, and his opinion was based only upon conversations he had had with developers in the Charlottesville area and a newspaper article about a pipeline explosion.

An opinion on value is inadmissible when there is no evidence to support the opinion....In the present case, based upon the summary of the proffer of evidence, we cannot say that the trial court abused its discretion in concluding that the witness did not have the necessary expertise to render an opinion on diminution in the value of the residue of the property. Accordingly, we will affirm the trial court's judgment

Kipps v Virginia Natural Gas, id.

Similarly, the United States District Court for the Northern District of Mississippi, Delta Division, rejected expert appraisal testimony concerning diminution of value based upon fear or stigma associated with a natural gas pipeline. In Texas Gas Trans. v Bd. of Levee Commissioners for the Yazoo- Mississippi Delta, Civil Action No. 2:08CV240-B-V (U.S.D.C., N.D. Miss. 12-6-2012), the landowner's appraiser proffered a "hazard zone" theory of damage to the remainder, similar to the "buffer zone" theory advanced in this case by Mr. Owen. In rejecting this approach, the District Court held as follows:

Courts have held that fear of a perceived danger caused by a taking may be admissible when an appraiser uses, among other criteria, comparable sales (or "paired sales analysis") of property both with and without the perceived danger to show the impact on market value. *See, e.g., United States v. 14.38 Acres of Land*, 80 F.3d 1074, 1079 (5th Cir. 1996). Mr. Crook, however, failed to show through market studies or a paired sales analysis that any alleged fear of pipelines affects market value....

Rather than basing his opinion on market studies and paired sales analysis, Mr. Crook testified that he used an "implied analysis." He relied on a so-called "hazard zone" of 1700 feet across the levee....

Mr. Crook had no market data to quantify the hazard zone's effect on the market value of the levee. Instead, he testified that since the 1700 foot wide hazard zone in the after condition was roughly 36% of the Levee, and applying a 36% factor to that 36% resulted in a roughly 13% diminution in value, then the pipeline caused a 13% diminution in the value of the levee. He articulated no support for the 36% factor, other than he had used a 10% factor in valuing the levee in the before condition where the hazard zone from the existing twelve inch pipelines was 500 feet wide, or 10% of the Levee, and he opined that the affected value grows at a constant ratio. This approach to valuation is simply unsupportable under appraisal principles and the law.

He admitted that using a hazard zone and the proportional increases in the acreage and factors in appraising property was not an appraisal principle of any kind, had not been subject to any peer review, had not been taught by any instructor in appraisal techniques, and was unique to this appraisal. *See Miss. Transp. Comm'n v. McLemore*, 863 So.2d 31, 41, 42 (Miss. 2003) (holding that appraiser's method of using a 750 foot wide buffer zone from the acquired highway right of way to

ascertain remainder damages was not printed in textbooks, not taught in seminars, not a principle of any kind, and unique to this appraisal, and should not have been allowed into evidence at trial)....

The court notes the interesting and imaginative approach employed by the Levee Board to arrive at its proposal for just compensation but concludes that the appraisal methodology utilized lacks supporting precedent, is unsubstantiated, and is based upon the occurrence of highly unlikely speculative events, and the potential of these events occurring is so remote that it cannot be considered in arriving at a proper measure of just compensation or damages. The court instead finds that the direct sales comparison approach, as employed by the plaintiff, provides the more reasonable measure of just compensation under the facts of this case.

Texas Gas Trans. v Bd. of Levee Commissioners for the Yazoo- Mississippi Delta, *id.*

Mr. Owens' opinion as to damages to the remainder due to a "negative conception in the market" lacks adequate evidentiary or market data support to be admissible even under the least restrictive view of "proximity damages" due to fear or stigma, referenced above. There is no evidence of a general public or market fear of natural gas pipelines in this area, nor is there any evidence of any diminution in market value due to such fear. Without such evidence, Mr. Owen's opinion lacks the foundational reliability requirement necessary for admissibility of nonscientific expert testimony, referenced in the cases cited above. His opinion on this issue is based upon his personal views and speculation on his part, and is therefore inadmissible.

To support his conclusion that a negative public perception exists as to proximity to a natural gas pipeline, Mr. Owen included in an addenda to his appraisal report, on page 93, a fifteen (15) page printout from Wikipedia titled "List of pipeline accidents in the United States in the 21st century" (Exhibit B; Deposition of R. Bruce Owen, Transcript pp. 75-77). Condemnor objects to the admission of the Wikipedia list on the grounds that the list itself is unreliable, and the foundation for the list, if any, lacks

reliability. Condemnor further objects on the grounds that the Wikipedia list contains, and is almost entirely made up of, inadmissible hearsay. Condemnor further objects on the grounds that this evidence is irrelevant, immaterial, confusing and misleading. Condemnor further objects on the grounds that any probative value of this evidence is substantially outweighed by the danger of unfair prejudice. To the extent that the Wikipedia list may be considered a summary of voluminous writings, pursuant to Rule 1006, SCRE, Condemnor objects to its admission on the grounds that the underlying data is not admissible into evidence and has not been made available for examination or copying.

A cursory review of the Wikipedia list reveals that it is not limited to natural gas pipelines. There is no way of investigating the incidents listed therein to assure the accuracy of the references, or to determine whether or not there are similarities to the natural gas pipeline involved in this case. There is no way to determine or verify the cause of the incidents, or any contributing factors thereof. The Wikipedia list is not limited to the relevant local geographical area, but rather purports to reference pipeline accidents in the entire United States. There is no evidence that any of the incidents referenced in the Wikipedia lists cause or contribute to a public fear of natural gas pipelines in the local area, such as would cause a reduction in market value of real estate in proximity to same.

The accuracy and reliability of "Wikipedia" entries themselves are subject to serious question and doubt, especially in the context of being considered as admissible evidence in a legal proceeding such as this. The Fourth Circuit Court of Appeals reversed a South Carolina Federal Court criminal conviction due to a juror's research on

Wikipedia for a definition of the term “sponsor”, due in large part to Wikipedia’s lack of reliability. In U.S. v Lawson, 677 F.3d 629 (4th Cir. 2012) the Fourth Circuit Court of Appeals examined and reviewed the structure and organization of Wikipedia and its lack of reliability as follows:

We observe here another aspect of Wikipedia, namely, its reliability. According to the "Wikipedia:About" entry, at least in its form as of April 16, 2012, Wikipedia describes itself as "a multilingual, web-based, free-content encyclopedia project based on an openly editable model." <http://en.wikipedia.org/wiki/Wikipedia:About> (the "About Wikipedia" entry). Indeed, the "About Wikipedia" entry notes that: Wikipedia is written collaboratively by largely anonymous Internet volunteers who write without pay. Anyone with Internet access can write and make changes to Wikipedia articles (except in certain cases where editing is restricted to prevent disruption or vandalism). Users can contribute anonymously, under a pseudonym, or with their real identity, if they choose. *Id.* The "About Wikipedia" entry further notes that "[a]nyone with Web access can edit Wikipedia. . . . About 91,000 editors — from expert scholars to casual readers — regularly edit Wikipedia." *Id.*

Given the open-access nature of Wikipedia, the danger in relying on a Wikipedia entry is obvious and real. As the "About Wikipedia" material aptly observes, "[a]llowing anyone to edit Wikipedia means that it is more easily vandalized or susceptible to unchecked information." *Id.* Further, Wikipedia aptly recognizes that it "is written largely by amateurs." *Id.*

We observe that we are not the first federal court to be troubled by Wikipedia's lack of reliability. See *Bing Shun Li v. Holder*, 400 Fed.Appx. 854, 857-58 (5th Cir.2010) (expressing "disapproval of the [immigration judge's] reliance on Wikipedia and [warning] against any improper reliance on it or similarly unreliable internet sources in the future"); *Badasa v. Mukasey*, 540 F.3d 909, 910-11 (8th Cir.2008) (criticizing immigration judge's use of Wikipedia and observing that an entry "could be in the middle of a large edit or it could have been recently vandalized"); *Crispin v. Christian Audigier, Inc.*, 717 F.Supp.2d 965, 977 (C.D.Cal.2010) (criticizing parties' reliance on Wikipedia); *Kole v. Astrue*, No. CV 080411, 2010 WL 1338092, at *7 n. 3 (D.Idaho Mar. 31, 2010) (admonishing counsel from using Wikipedia as an authority, observing that "Wikipedia is not a reliable source at this level of discourse"); *Baldanzi v. WFC Holdings Corp.*, No. 07CIV9551, 2010 WL 125999, at *3 n. 1 (S.D.N.Y. Jan. 13, 2010) (observing that Wikipedia "touts its own unreliability"); *Campbell ex rel. Campbell v. Secretary of Health and Human Servs.*, 69 Fed.Cl. 775, 781 (Fed.Cl.2006) (observing dangers inherent in relying on Wikipedia entry).

U.S. v Lawson, *id.* It is obvious from the foregoing that the Wikipedia list cannot be considered a reliable source in this context. For this reason, and the other reasons set forth above, the Wikipedia list should be excluded and not admitted into evidence in this case.

The familiar tenet of evidence law that a continuing challenge to evidence goes to “weight, not admissibility” has never been intended to supplant the gatekeeping role of the trial court in the first instance in assessing the admissibility of expert testimony, including the threshold determination of reliability. Nonscientific expert witness testimony must satisfy Rule 702, both in terms of expert qualifications and reliability of the subject matter.... In the discharge of its gatekeeping role, a trial court must assess the threshold foundational requirements of qualifications and reliability and further find that the proposed evidence will assist the trier of fact, The familiar evidentiary mantra that a challenge to evidence goes to “weight, not admissibility” may be invoked only after the trial court has vetted the matters of qualifications and reliability and admitted the evidence. State v White, 382 S.C. 265, 676 S.E.2d 684 (S.C. 2009)

Condemnor therefore respectfully moves that the aforementioned evidence be excluded, as set forth above.



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Greenville, S.C. 29601
(864) 242-9245
S.C. Bar I.D. No. 001178

Date: May 20, 2015

Greenville, South Carolina

R092

EXHIBIT A

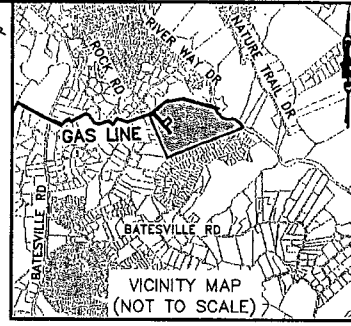
R093

AREA OF:	SQ. FT.	ACRE
PARCEL PER DEED/GIS	3,214,728	73.80
PROPOSED EASEMENT	109,574	2.52
TEMPORARY WORK SPACE	5,228	0.12

L13
L12
L11
L10
PROPERTY LINE IS CENTER OF ENOREE RIVER

07-1B-SP-1

RICK A. SETZER AND
SUE LYNN SETZER
DB. 48-F PG. 319
PIN: 9-08-00-001.00



PROJECT LOCALIZED FROM
SCGS MONUMENT "DRUM BEAT"
GRID COORDINATES
N: 1,100,248.64
E: 1,630,761.04

LINE TABLE					
LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
L1	213.15'	N 23°12'11" W	L15	183.34'	N 49°20'43" E
L2	36.80'	N 51°45'21" E	L16	134.17'	N 78°23'46" E
L3	80.82'	N 51°45'21" E	L17	66.59'	S 49°20'43" W
L4	25.03'	N 05°39'34" W	L18	50.00'	S 49°20'43" W
L5	7.11'	N 05°39'34" W	L19	44.73'	S 49°20'43" W
L6	188.21'	N 52°14'05" E	L20	31.23'	S 49°20'43" W
L7	121.98'	S 49°24'05" W	L21	20.10'	S 70°18'25" W
L8	65.20'	S 36°31'48" E	L22	82.23'	S 70°18'25" W
L9	37.06'	S 78°23'46" W	L23	50.00'	S 40°39'17" E
L10	55.38'	S 32°28'17" E	L24	52.24'	S 49°20'43" W
L11	44.32'	S 31°13'14" E	L25	50.00'	N 41°24'34" W
L12	26.82'	S 29°03'51" E	L26	50.07'	S 43°45'10" E
L13	25.53'	N 29°03'51" W	L27	52.71'	S 49°20'43" W
L14	10.39'	N 70°18'35" E	L28	57.19'	N 40°39'17" W

WILLIAM CHERRY
LIVINGSTON
DB. 1818 PG. 204
PIN: 0530060101200

07-1B-GR-2

RICHEOUS SMITH ET AL
DB. 86 PG. 299
PIN: 0531010102100

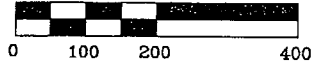
NOTES:

- THIS IS NOT A BOUNDARY SURVEY OF THE LAND SHOWN HEREON. THE PURPOSE OF THIS SURVEY IS FOR RIGHT OF WAY EASEMENT ACQUISITION ONLY.
- THIS PROPERTY MAY BE SUBJECT TO OTHER EASEMENTS EITHER RECORDED OR IMPLIED. A TITLE SEARCH WAS NOT PROVIDED AT THIS TIME.
- FOR SOURCE OF TITLE REFER TO DEEDS AND PLATS REFERENCED HEREON.
- ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES IN INTERNATIONAL FEET UNLESS OTHERWISE NOTED.
- AREA BY COORDINATE COMPUTATION.
- IT IS THE INTENT OF THIS MAP THAT THE EASEMENT SHALL CROSS THE ENTIRE PARCEL.

LEGEND

- COMPUTED POINT
- EASEMENT POINT
- IPF O IRON PIPE FOUND
- IRF O IRON ROD FOUND
- PROPERTY BOUNDARY BY DEED
- PROPOSED EASEMENT
- R/W RIGHT OF WAY
- TEMPORARY WORK SPACE
- ADJOINER PROPERTY

SCALE 1" = 200'



THE STATE PLANE COORDINATES (SPC) FOR THIS PROJECT WERE ESTABLISHED USING THE VIRTUAL REFERENCE NETWORK (VRN) AND TRIMBLE 5700/5800 RECEIVERS.

HORIZONTAL POSITIONS ARE REFERENCED TO NAD 83/NSRS (2007) VERTICAL POSITIONS ARE REFERENCED TO NAVD88 USING (GEOID09) COMBINED SCALE FACTOR: 1.0000280539; GEOID MODEL: GEOID09; UNITS: INTERNATIONAL FEET

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN.

PRELIMINARY PLAT:
NOT FOR RECORDATION,
CONVEYANCES, OR SALES

DANIEL E. SMITH, PLS

No. 27480

TYPICAL EASEMENT LAYOUT (NTS)

07-1B-GR-3

CHARLES V. HENDERSON, TRUSTEE
THE HENDERSON LIVING TRUST
DB. 2250 PG. 215
PIN: 0531010101909

RIGHT OF WAY EASEMENT SURVEY PREPARED FOR
PIEDMONT NATURAL GAS COMPANY

EASEMENT TO BE ACQUIRED FROM OWNER:
RICHEOUS SMITH ET AL
ROCK RD

07-1B-GR-2

BUTLER TOWNSHIP
GREENVILLE COUNTY, SOUTH CAROLINA

MCKIM & CREED

ENGINEERS, PLANNERS, SURVEYORS
8020 TOWER POINT DRIVE
CHARLOTTE, NORTH CAROLINA 28227
PHONE (704) 841-2588
FAX (704) 841-2567

02/07/12

R094

EXHIBIT B

1 STATE OF SOUTH CAROLINA
2 COUNTY OF GREENVILLE COURT OF COMMON PLEAS
3
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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
PIEDMONT NATURAL GAS COMPANY,
Plaintiff,
vs. CASE NO. 2012-CP-23-4064
RICHEOUS SMITH, ET AL.,
Defendants.

DEPOSITION OF: R. BRUCE OWEN

DATE: March 5, 2015

TIME: 10:06 a.m.

LOCATION: HORTON, DRAWDY, WARD, MULLINAX & FARRY, PA
307 Pettigru Street
Greenville, SC

TAKEN BY: Counsel for Plaintiff

REPORTED BY: KATHY P. TAYLOR
Registered Professional Reporter

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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(803) 731-5224	(864) 234-7030	(704) 573-3919

Page 22 1 A. Since -- well, basically since I started in 2 the business pretty much. 3 Q. And can you tell us what types of 4 condemnation cases you may have been involved in? 5 A. The first large one I was ever involved in 6 was the -- they called it the Golden Strip Freeway, 7 which is now 385. 8 Q. Yes, sir. 9 A. That was back in the '70s. We had -- you 10 know, there were three firms in town. I was with 11 Robinson Company at the time. And we did a third of 12 it, and one of the other firms in town did a third of 13 it, and another one did a third of it. And that's 14 the first one. 15 We also worked on the Oconee Nuclear Plant 16 main power line when they built the nuclear plant. 17 And various and sundry others. 18 Q. Okay. 19 A. Widenings and what have you. 20 Q. So you've done -- 21 A. Highway. 22 Q. -- condemnations for highways? 23 A. For highways. For Duke Power. 24 Q. Okay. You've been involved in Duke Power 25 condemnations.	Page 24 1 A. The -- the power line easement from the 2 nuclear plant. We also did a -- the widening of 3 Poinsett Highway. So, you know, those are a few of 4 them. 5 Q. Okay. So you've -- you've given your 6 appraisal opinions in support of Duke Energy and the 7 South Carolina Highway Department? 8 A. Yes, sir. And -- and Greenville -- 9 Greenville Water. 10 Q. Is that the Greenville Water System? 11 A. Yes, sir. 12 Q. Okay. And what has your experience been in 13 giving your opinion in connection with pipeline 14 condemnation cases? 15 A. As in gas pipeline? 16 Q. Well, first off, I guess Greenville Water 17 System would be pipelines. 18 A. Yes. It is. 19 Q. Would that be correct? 20 A. Yes. It is. 21 Q. Well, other than gas pipelines and the 22 water pipelines, are there any other pipelines you've 23 dealt with? 24 A. No, sir. Not that I can think of. 25 Q. Okay. And what experience have you had
Page 23 1 A. Right. 2 Q. So you've dealt with utilities, right? 3 A. Waterworks. 4 Q. And waterworks? 5 Any other types of condemnations you can 6 think of other than those? 7 A. Pretty much -- that's pretty much it. 8 Q. Okay. And have you... 9 A. Obviously, a gas line now. 10 Q. Yes, sir. Yes, sir. And then have you 11 ever given -- in these type of condemnation cases, 12 have you ever been involved in giving your opinion 13 on the side of the condemnor? 14 A. Yes. Worked -- I've worked both -- both 15 sides. 16 Q. And so you've worked -- you've done work 17 for the condemnor, and you've done work for the 18 landowners, correct? 19 A. Yes. That's correct. 20 Q. And if you can recall, what particular 21 cases have you ever worked for the condemnor, what 22 companies? 23 A. Like I said, the -- the highway department, 24 the 385 deal. 25 Q. Yes, sir.	Page 25 1 specifically with condemnation of natural gas 2 pipelines? 3 A. The only other one I can think of, I think, 4 probably had to do with this particular line again, 5 which was another site out on Batesville Road. 6 Q. That was the David Taylor case? 7 A. I believe so. 8 Q. Okay. And so other than the David Taylor 9 case and this -- this particular case, those are the 10 two natural gas pipelines you've been involved in in 11 your career? 12 A. I think. I can't remember completely. 13 Don't hold me to it, but those are the two I 14 obviously recall. 15 Q. Yes, sir. Okay. I understand. 16 And I believe you previously testified as 17 to your experience in testifying in court concerning 18 condemnation cases, but is it fair to say you've been 19 accepted by the courts of this state to express your 20 professional opinion as an appraiser concerning the 21 value? 22 A. Yes, sir. 23 Q. And also to give your opinion as to the 24 just compensation in eminent domain proceedings? 25 A. Yes, sir.

Page 26 1 Q. Can you recall whether there was ever a 2 case where you were not accepted by the Court to give 3 such an opinion? 4 A. Not that I recall. 5 Q. Now, kind of turning to this particular 6 case, the 413 Rock Road, what was your assignment in 7 this case? 8 A. As is typical, I received the information 9 regarding the case from Mr. Ward. He asked me to go 10 out and take a look at the property, see what I 11 thought. I probably turn down as many cases as I 12 take, because a lot of times I think there's no 13 reason to proceed any further. For instance, I think 14 this particular report was done by the Robinson 15 Company, and I had access to that report. And had I 16 felt like there was no other problem, I would have 17 said, hey, go ahead with that. And that's typically 18 what happens. If I think there is additional damage 19 or something of that nature involved, then I proceed 20 on, and we talk about what we need to do. And that's 21 what we did in this particular case. 22 Q. Okay. And then just kind of examining 23 that, so in a case where you would turn down a case, 24 would it be fair to say that when you turn them down, 25 you're saying that the value that the utility or what	Page 28 1 be able to form some kind of -- obviously, there's 2 going to be a value before and a value after. So you 3 want to try to establish the value before based on 4 land sales in the market. So I attempted to find 5 land sales. At that particular time, there just -- 6 there weren't that many because we were coming right 7 out of the recession, and subdivisions were very 8 scarce. We did find some that we thought would 9 compare well. We took that, found out a value or 10 figured a value, which was a before value; and then I 11 tried to assess what I felt like were damages caused 12 by the existence of the pipeline. 13 Q. Okay. And right now I'm trying to focus on 14 your -- kind of your initial actions -- 15 A. Okay. 16 Q. -- in this. 17 A. Went out and looked at the property. 18 Q. Yes. 19 A. Obviously. Yes. I walked -- I walked the 20 entire right-of-way down to the -- to the river down 21 there, and then walked back. Then I walked most all 22 of the perimeter of the entire property. Met with -- 23 there are a couple of residences of no contributing 24 value located on the property where some of the heirs 25 live. I met with those folks to let them know what I
Page 27 1 have you has set on the taking appears to be pretty 2 fair? 3 A. Yes, sir. 4 Q. So you would be saying there's no need to 5 take me on because it looks like you're getting 6 fair -- 7 A. That's exactly... 8 Q. -- compensation? 9 A. That's exactly right. 10 Q. So your initial assignment, then, was to 11 assess the situation and see if there was anything 12 further to be done? 13 A. That's correct. 14 Q. And so what did you conclude? 15 A. In this particular case? 16 Q. Yes. 17 A. I felt -- I felt there was probably 18 additional damage. 19 Q. Okay. Well, what did you do, then, after 20 you got the initial assignment? What steps did you 21 take, and what did you examine to reach your 22 conclusion? 23 A. Well, obviously, when you're doing a land 24 appraisal, you want to get the -- the best land sales 25 that you can find in the market of similar nature to	Page 29 1 was doing and get their permission to be on the 2 property, which -- which I did. And after I did 3 that, photographed some of the stuff, then I went 4 to -- back to the office to start my appraisal 5 process. 6 Q. Okay. And at this point, when you went 7 back to your office, had you determined, in your 8 opinion, that there was -- there was an additional 9 element of compensation here that... 10 A. Yes, sir. 11 Q. Okay. And what led you to believe that 12 there were additional elements of compensation here? 13 A. After viewing what was there -- because, 14 obviously, I was there after the pipeline had already 15 been installed. So -- which you can see in the 16 report, I ended up having to utilize parts of -- of 17 the previous report done by -- or done for the -- the 18 gas people on, for instance, the trees, because I 19 didn't know what trees were there and what was taken. 20 Q. Uh-huh. 21 A. So I used -- used theirs, and I assumed it 22 to be correct. Then just by viewing what had been 23 done, as you come into this property, you go -- 24 there's only one way in, and you go across a little 25 small bridge there to get to the main body of the

Page 30 1 property across the creek. And you're looking in 2 both directions, and all you see are, you know, the 3 big warning signs and this sort of thing. So that 4 was something that I considered. The fact that it -- 5 you know, that it was a gas line, I think, had some 6 negative connotations within itself as to whether 7 people would want to have a house that maybe backed 8 up to one of these particular lines. So those were 9 the things that I considered. 10 Q. And was it your opinion at that time that 11 those issues that you just testified to, those were 12 not taken into account by the -- the gas company's 13 opinion of just compensation? 14 A. They may have been taken into 15 consideration. Maybe they thought they didn't have 16 any value. But I didn't see whether they were -- 17 whether they addressed those issues. 18 Q. And you mentioned warning signs on the -- 19 on the right-of-way. 20 A. Yes, sir. 21 Q. And what -- what weight did you give to 22 those as to any kind of an effect on the value? 23 A. Well, I think considering the strategic 24 location of them right at the entrance of the 25 property, the only entrance, I think that could	Page 32 1 those lots which ended up backing up to it. 2 Now, it may have no -- no effect on some up 3 at the top of the hill or on the backside. 4 Q. Well, again, where did you draw your 5 conclusion for your opinion that there would be a 6 perceived negative perception in the marketplace 7 because of the presence of a natural gas pipeline? 8 A. Well, I just feel like most developers 9 would -- would consider it a -- an issue. And 10 especially when you're dealing with single-family 11 homes and development of single-family homes, because 12 those become extremely emotional. And if you've ever 13 been involved in -- in selling or buying 14 single-family homes, you found that out very quickly. 15 And I think most developers would -- would certainly 16 note that. 17 Q. Well, is that opinion, is that -- was that 18 opinion based on any market data, or is that based 19 more on your experience and professional judgment? 20 A. It's based more on experience, yes. 21 Q. So would you classify that as being based 22 on your experience and professional judgment? 23 A. Yes, sir. 24 Q. Okay. So after you -- you reached that 25 conclusion, what did you do next?
Page 31 1 certainly have some -- some detrimental effect on 2 developing the property. 3 Q. And then aside from the signs, I believe 4 you testified that just the fact that it was a 5 natural gas pipeline itself had some detrimental 6 effect? 7 A. I would think so. 8 Q. Is that correct? 9 Would there be a detrimental effect if the 10 signs weren't in place? 11 A. I think probably some people would -- would 12 consider it, but I think that maybe the fact that 13 they are there exacerbates the problem. 14 Q. You mean the signs -- 15 A. Yes, sir. 16 Q. -- exacerbate the problem? 17 A. Yes, sir. 18 Q. From where did you draw your conclusion 19 that it's -- the presence of a natural gas pipeline 20 in and of itself has a detrimental effect? 21 A. I think it's just a -- probably a perceived 22 notion in the market when somebody were buying -- if 23 somebody were buying this property and trying to 24 develop it for residential homes, that there would 25 certainly be some -- some adverse effects on at least	Page 33 1 A. Well, as I said, we developed the 2 comparable sales we used in establishing the value on 3 a before basis, and then we applied that to the 4 valuation of the actual take; and we damaged that 5 take approximately, I think, 95 percent. 6 Q. Okay. Well, let me just back up a little 7 bit. So at -- after you made your -- you kind of did 8 your initial assessment -- 9 A. Right. 10 Q. -- then was it your opinion that there was 11 possibly more elements of damage here that was not 12 accounted for by the condemnor? 13 A. Yes, sir. 14 Q. And at that point, then, did you become 15 actually engaged as an appraiser in this case? 16 A. Yes. 17 Q. And then after that point where you became 18 engaged, that's when you actually began your 19 compiling everything you need to do to make this 20 appraisal report? 21 A. Well, actually, we probably did some 22 compiling of data prior to. 23 Q. I understand. Okay. 24 And getting kind of back to what your 25 assignment is in this case, then, what -- after you

Page 42 1 of the take was. 2 Q. Okay. And in arriving, I guess -- I 3 apologize if I'm jumping back and forth through the 4 stages. 5 A. That's okay. 6 Q. But your initial assessment arriving at 7 your before value, did you say you looked at -- what 8 did you look at in the way of market data? Did 9 you -- courthouse records or what? What did you look 10 at? 11 A. You're talking about in reference to the 12 sales and what have you? 13 Q. Yes. 14 A. Yeah. We looked at courthouse records. We 15 pulled the deeds on -- on these. We also -- 16 generally, as I mentioned earlier, we utilize CoStar, 17 which is a starting point. You can go in and ask for 18 land sales. 19 Q. Uh-huh. 20 A. It will print them out. We've found it 21 will be highly suspect as far as the data they 22 provide sometimes. 23 Q. Yes, sir. 24 A. So we go back and double check and check 25 the deeds and check with brokers and what have you in	Page 44 1 amount there that was considered severed. 2 A. That's right. 3 Q. Meaning it's kind of set off on the other 4 side of the easement. 5 A. With no access and what have you. Yes, 6 sir. 7 Q. Between the easement and the boundary line? 8 A. That's correct. 9 Q. And I believe you gave that a 95 percent, 10 too, right? 11 A. That's correct. 12 Q. And what other issues do you consider in -- 13 in coming to the after figure? 14 A. Then what I considered was any damages 15 there might be to the remainder. 16 Q. And if you could, kind of explain what you 17 mean by damages to the remainder, in a general sense. 18 A. This is what would be caused by the 19 pipeline, the signage, the whole process, what would 20 be a reduction in value -- result in a reduction in 21 value of the land in a before -- in a before manner. 22 In this case, as I said, I think that probably 23 proximity damage would be what was considered. 24 Q. And what do you mean by proximity damage? 25 A. The -- the lots that would back up to this
Page 43 1 some cases, and then go view the properties. 2 Q. And then... 3 A. And then -- and then we put together a sale 4 sheet on each particular sale, along with a location 5 map so that you can see where they are. 6 Q. Okay. And at this stage you stated you 7 physically inspected this property? 8 A. Yes, sir. 9 Q. When you say viewed the property, do you 10 mean viewed the comparables? 11 A. Yes, sir. 12 Q. Okay. And did you meet or consult with 13 anyone at this stage? 14 A. No. 15 Q. And did you discuss any of these issues 16 with anyone at this stage? 17 A. No. 18 Q. Okay. Okay. Now, if we can kind of go to 19 the -- how you start to arrive at your -- your after 20 thing. I believe you testified you look at the -- 21 the actual property within the easement itself. 22 A. That's correct. 23 Q. And you assigned it a 95 percent? 24 A. That's correct. 25 Q. And then I believe you had some -- some	Page 45 1 pipeline, in my opinion, would be damaged. 2 Q. And how would they be damaged? 3 A. I have estimated that it would require some 4 sort of buffer between the actual right-of-way and 5 these lots to entice somebody to go ahead and 6 purchase these lots. And I think a developer would 7 certainly consider that to be a reasonable solution 8 to the problem. 9 Q. And from where did you draw that 10 conclusion? 11 A. From my past experience, from talking with 12 various and sundry developers, that sort of thing. 13 Q. Did you talk to any developers specifically 14 in connection with this appraisal concerning that? 15 A. No. 16 Q. And what developers have you talked to 17 concerning the proximity damage or buffer zone issue? 18 A. I have spoken with one gentleman, Mr. Ken 19 Clifton. He is Clifton Land & Timber. I spoke with 20 him about the -- how they treat buying land when 21 there are some issues. And he -- he was in agreement 22 that there would be a reduction in price, if not even 23 attempting to not pay -- pay for the land that -- 24 that might be involved in these situations. 25 Q. And when did...

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1 A. I've...

2 **Q. I'm sorry. Go ahead.**

3 A. I've seen it also happen, from numerous

4 other appraisal reports that we've done, a developer

5 will typically go in and, for instance, if maybe

6 there's some flood plain issues, not want to pay

7 for -- not want to pay for the adverse -- which it's

8 an adverse situation -- the flood plain property, or

9 either pay a vastly reduced price.

10 And I think in this case, the -- the strip

11 along the right-of-way would be an adverse type of

12 situation, where a typical developer would say, hey,

13 I'm not going to be able to use this; it's going to

14 be taken really out of the equation as far as how

15 many lots I can get out of this tract of land. So...

16 **Q. And when you say a developer might say, I**

17 **can't use this, you're referring to property that's**

18 **outside of the easement itself, right?**

19 A. That's right. That's right.

20 **Q. And that would tie in with your --**

21 A. That's right.

22 **Q. -- 100-foot buffer zone?**

23 A. That's right.

24 **Q. Now, when you -- I think you referenced**

25 **you've seen that issue come up with your past**

Page 47

1 appraisals regarding flood zone issues; is that

2 correct?

3 A. That's right.

4 **Q. Have you seen that come up with any other**

5 **issues besides flood zones?**

6 A. Any time there's an adverse situation, if

7 it backs up to -- for instance, maybe it backs up to

8 a commercial property, which is not normally

9 considered a -- a good thing for residential, they

10 will typically have a -- they will typically have a

11 buffer zone. Even the County itself goes in when

12 they do these PUDs, which are planned urban

13 developments, and they make you have a buffer zone in

14 between the commercial development and the

15 residential. Because it's a good thing. The people

16 want it that way. They don't want it to back up to

17 any adverse situation, especially when you're talking

18 about a residence and children playing in the

19 backyard and that sort of thing.

20 **Q. And the example that you just gave -- just**

21 **to make sure that I understand it, so correct me if**

22 **I'm wrong. The example you just gave, the adverse**

23 **consequence that requires a buffer zone would be**

24 **commercial property, correct?**

25 A. Well, yeah. In some cases, yes.

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1 **Q. I'm just trying to make sure I understand.**

2 **So you say the County has a requirement for a buffer**

3 **zone and that -- is what you're referring to as a**

4 **buffer zone between residential and commercial**

5 **properties?**

6 A. Yes, sir.

7 **Q. Are you aware of any Greenville County**

8 **requirement for a buffer zone between residential**

9 **lots and a natural gas --**

10 A. Oh, no, sir.

11 **Q. -- pipeline easement?**

12 A. No, sir.

13 **Q. Okay. So you're not aware of any County**

14 **requirement for this buffer zone that you've set**

15 **forth --**

16 A. No, sir.

17 **Q. -- in your report.**

18 A. No, sir.

19 **Q. Okay. And, again, that's -- the adverse**

20 **consequences you've now referenced, the commercial**

21 **property/residential property issue, and the flood**

22 **zone issue, are there any other times where, in your**

23 **experience, you've had to deal with an adverse**

24 **consequence?**

25 A. Those are the two that come to mind.

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1 **Q. Okay. Have you ever dealt with the**

2 **pipeline -- a pipeline as being an adverse**

3 **consequence?**

4 A. No. I've not.

5 **Q. Okay. And then when did you talk to**

6 **Mr. Clifton?**

7 A. I've spoken with him on several occasions.

8 As a matter of fact, I talked with him two days ago.

9 **Q. Okay. And was that in connection with this**

10 **case?**

11 A. No. Just general.

12 **Q. Just to make sure I understand, you're**

13 **not -- I believe you testified that you did not speak**

14 **with Mr. Clifton concerning a reduction in price**

15 **concerning this particular case.**

16 A. Not this particular case.

17 **Q. And were you speaking then, when you spoke**

18 **with him, concerning adverse consequences in general?**

19 A. Yes, sir.

20 **Q. Did you ever speak with Mr. Clifton**

21 **concerning a pipeline or a natural gas pipeline being**

22 **the adverse consequence?**

23 A. Did not say anything about a pipeline. No,

24 sir.

25 **Q. What was he talking about in those**

Page 50

1 discussions as an adverse consequence?
2 A. What I just mentioned.
3 Q. Okay.
4 A. Flood plains and commercial properties,
5 that sort of thing.
6 Q. Okay. So you don't really know what his
7 opinion would be as to a pipeline as being an adverse
8 consequence?
9 A. No, sir.
10 Q. Okay. Is there anybody else you've talked
11 to, any other developers or anyone, concerning the
12 issue of the pipeline as an adverse consequence?
13 A. No, sir.
14 Q. All right. And I believe we were -- we
15 were at the stage of what you were doing to come to
16 your after value of the property.
17 A. Yes, sir.
18 Q. So other than the things you've talked
19 about, I believe the property and the easement
20 itself, the -- what we call the severance issues --
21 A. Yes, sir.
22 Q. -- and is it -- is it fair to characterize
23 the other issue as -- you'd call it damage to the
24 remainder?
25 A. Yes, sir.

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1 Q. And that's what you would more or less say,
2 your buffer zone -- your buffer zone idea is --
3 that's -- that's trying to assign a damage to the
4 remainder?
5 A. Yes, sir.
6 Q. And, again, to make sure that I understand
7 it, in your opinion, that damage comes from the
8 proximity of the property or potential lots to the
9 actual natural gas pipeline and easement itself.
10 A. That's correct. In addition to the visual
11 of, like I say, the signage and that sort of thing.
12 Q. All right. And other than the signage, is
13 there any other visual elements associated with the
14 proximity damage?
15 A. No, sir.
16 Q. Are there any guidelines in USPAP
17 concerning proximity damages?
18 A. Not that I know of.
19 Q. Are there any guidelines or recommended
20 methodology for proximity damages in the -- the
21 Appraisal of Real Estate textbook?
22 A. I can't recall if there are any specific or
23 not. I just don't know.
24 Q. Okay. And did you consult the Appraisal of
25 Real Estate textbook in connection with your

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1 appraisal here and proximity damages?
2 A. No.
3 Q. To make sure I understand, did you -- did
4 you do anything else or review anything at all in
5 connection with your formulation of your opinion as
6 to your -- the proximity damages in this case?
7 A. No.
8 Q. And have you ever used the concept of
9 proximity damages in any other appraisal --
10 appraisals that you've ever done?
11 A. Yes.
12 Q. And what would those have been?
13 A. Some of the highway department appraisals,
14 especially down on Poinsett Highway. The widening of
15 Poinsett Highway, there were lots of proximity damage
16 because they put the highway right up to some
17 people's front door.
18 Q. So would the proximity damage in that case,
19 would that be the -- kind of the obvious; people's
20 houses are now closer to the traffic than they were?
21 A. That's correct.
22 Q. And that makes it less desirable in the
23 marketplace?
24 A. That's correct.
25 Q. And how do you go about trying to determine

Page 53

1 or quantify those proximity damages in a case like
2 that?
3 A. Probably depends upon what it is exactly.
4 I mean, did we take -- did we take all of his front
5 yard; did we take half of his front yard? You know,
6 just depends on the individual situation.
7 Q. So is there any -- in a highway proximity
8 case, is there any kind of an accepted methodology or
9 technique for trying to arrive at those damages?
10 A. They probably are not -- you either get to
11 a point where if -- if you get too close to it,
12 you've rendered the improvements unusable; then, you
13 know, that might -- that might be a way. Otherwise,
14 I don't know. I'm not exactly sure what you're
15 asking me.
16 Q. I guess I'm trying to get at -- and, again,
17 in the context of, say, the highway proximity
18 damages -- and I understand what you're saying about
19 it depends on how actually close it is to the
20 improvement, but I'm just trying to find out how you
21 come down to quantify that in dollars and cents in
22 that kind of a case. And, I mean, is there a
23 methodology that's used commonly in the appraisal
24 practice or...
25 A. Well, there -- you know, there conceivably

Page 54 1 could be a cost to cure involved. For instance, if 2 you took all the parking from in front of a retail 3 store, well, if there was room in the back, some 4 vacant land back there where you could put the 5 parking spaces back there, well, then, it would be, 6 you know, cost to cure the situation. So that could 7 be one method. 8 Q. Uh-huh. Other than the highway -- highway 9 proximity damage cases and this case, are there any 10 other cases that you can think of that you've had 11 where you've -- you've applied proximity damages? 12 A. Not off the top of my head. 13 Q. Okay. Then going to the actual appraisal 14 itself then, and I'm going to refer to Exhibit 15 Number 1, which is your revised appraisal. And I'm 16 going to go the second page of your -- I refer to it 17 as a part of your cover letter, but it's part of the 18 appraisal, the body of your appraisal. 19 A. Okay. 20 Q. It just doesn't have a numbered page. 21 A. Yes, sir. 22 Q. Down here around the third-from-the-last 23 paragraph, it states that: This appraisal was 24 performed within the guidelines as set forth by the 25 2014-2015 Edition of the Uniform Standards of	Page 56 1 A. Right. 2 Q. Is that the sign you were referring to 3 earlier? 4 A. Yes, sir. 5 Q. And when you viewed the property, where is 6 that sign located? 7 A. Basically, if I remember correctly, it's 8 just past the bridge. 9 Q. Okay. And is it your testimony, then, that 10 that sign or the -- the presence of that sign 11 contributes to the proximity damages? 12 A. Yes, sir. 13 Q. And on Page 12, it's got a -- your 14 certifications here, and there's a list of several 15 things here. And it states that your analysis, 16 opinions, et cetera, again, states that the -- were 17 developed -- this report has been prepared in 18 conformity with the Uniform Standards of Professional 19 Appraisal Practice. 20 A. Yes, sir. 21 Q. And that's the one you were referring to 22 earlier, correct? 23 A. Yes, sir. 24 Q. Then over on Page 16, I believe, is part of 25 your assumptions and limiting conditions. Number 20,
Page 55 1 Professional Appraisal Practices, USPAP, as outlined, 2 et cetera, et cetera. 3 And those -- are those the guidelines that 4 you were referring to earlier? 5 A. Yes, sir. 6 Q. Okay. And, again, this, I believe, bol- -- 7 bolsters what you testified to earlier, that you 8 performed this appraisal in conformance with those 9 standards, correct? 10 A. Yes, sir. 11 Q. And it also states in here that additional 12 supporting data is retained in your files. 13 A. Yes, sir. 14 Q. Right? 15 And you brought your file today? 16 A. That's it. Yes, sir. 17 Q. So everything you brought here today is the 18 supporting data. 19 A. That's correct. 20 Q. Okay. All right. And then over on Page 9, 21 I believe that is subject photographs, and there's 22 some three photographs on there. And the one on the 23 bottom is -- it says: Caution. It's a picture of a 24 sign. Caution, high pressure, natural gas, no 25 smoking or trespassing.	Page 57 1 it states that: All information provided by the 2 property owners and developer is deemed to be 3 correct, et cetera, et cetera. 4 Did you consult with any of the property 5 owners or get any information from them in connection 6 with this appraisal? 7 A. The property owner? 8 Q. Yes. 9 A. I basically met with one of the property 10 owners, and she basically told me kind of where the 11 perimeters of the property were. But, I mean, 12 nothing necessarily germane to any kind of valuation 13 or anything. 14 Q. And the... 15 A. Just more physical. 16 Q. And is that the only discussion you can 17 recall with a property owner? 18 A. Yes. 19 Q. You also reference in there information 20 provided by the developer. Was -- was there a 21 developer that you consulted in connection with this 22 appraisal? 23 A. I think that's probably left in as a -- 24 that should have been removed. 25 Q. Is that kind of like a boilerplate-type

Page 62 1 Robinson Company came to as the highest and best use? 2 A. I don't remember. I think so. 3 Q. Then on Page 53, you've got the sales 4 comparison approach land valuation before. I just 5 have a question here, or a clarification. 6 The first sentence there says: In the land 7 valuation analysis, an attempt is made to gather 8 information on other properties in the area which 9 have sold recently in order to compare them to the 10 property subject. 11 A. That's obviously a... 12 Q. Extra lot. 13 A. That's obviously a typo there. 14 Q. Okay. That's what I was wondering. 15 A. Absolutely. 16 Q. I'm trying to -- it could be something I 17 don't understand. 18 A. I doubt that, but... 19 Q. Okay. What would be the correct thing 20 there? 21 A. It was sold recently in order to compare 22 them to the subject property. 23 Q. Properties, period -- 24 A. Yeah. 25 Q. -- and extra lots? That's just a typo, and	Page 64 1 A. There's a front and back. There we go. 2 Q. Okay. So you've changed that to 56,000. 3 A. That's correct. 4 Q. Okay. That clears that up. All right. Is 5 that the source of the typo we had in the first page? 6 A. Yes, sir. 7 Q. Okay. And then on Page 78, you've got the 8 highest and best use after. And there, I believe you 9 talk about highest and best use of the improved 10 property will remain the same after the taking. And 11 you state: Its desirability in the marketplace will 12 be diminished, however, due to the proximity of the 13 right of way to the partially develop- -- developable 14 land. Therefore, fewer lots will be possible, and 15 the development more restricted. 16 Now, is that basically stating that your 17 opinion as to the marketplace perception that we 18 were -- 19 A. Yes. 20 Q. -- discussing earlier? 21 A. Yes, sir. 22 Q. Now, the next sentence says: The negative 23 impact of the visual image of the lines, as when it 24 crosses the bridge on the subject, will certainly be 25 felt, also.
Page 63 1 that's extraneous -- 2 A. That's right. 3 Q. -- and doesn't need to be there? 4 A. That's correct. 5 Q. Okay. 6 A. I thought I had gotten all those out with 7 the revision, but obviously, I didn't. 8 Q. It happens to all of us. Don't worry about 9 it. I was just afraid that might be some technical 10 term that I don't get. 11 A. I doubt that. 12 Q. And then on Page 77, I believe Page 77 is 13 where you come to your land value before. 14 A. Yes, sir. 15 Q. You've got on here -- you've got an 16 indicated estimated value of -- it says here \$58,000 17 an acre. 18 A. That's in the original. 19 Q. Okay. 20 A. That's where part of the typo was. 21 Q. Okay. Let me just double check, then, to 22 see if -- again, I am referring to the original. 23 A. Yeah. 24 Q. So let me get to Page 77 here. If you can 25 get to it. My fingers are...	Page 65 1 And I'm not quite sure what you mean by the 2 lines there. 3 A. Well, the gas lines themselves and/or 4 signs. Probably should have been better served to 5 put "signs". 6 Q. Okay. So do you think it's possible that 7 that may have been intended to be "signs"? 8 A. I think it probably was. 9 Q. Okay. Because the -- the gas pipelines are 10 buried. 11 A. You can't see anything. 12 Q. Right. 13 A. That's right. 14 Q. All right. Okay. So it's -- as far as you 15 can tell, then, you think that -- 16 A. Signs. 17 Q. -- that should have been "signs"? 18 A. Yes, sir. 19 Q. Okay. And, again, other than what you've 20 already testified to -- other than what you've 21 already testified to, is there any other evidence or 22 data that you can point me to to support your opinion 23 about the diminished desirability in the marketplace? 24 A. No, sir. 25 Q. Okay. And then on Page 81, you've got the

Page 66 1 description of the remainder. And then on the page 2 preceding that, you've got survey of the take. And 3 on Page 80, the survey of the take... 4 A. And I apologize for those. There again, 5 those came from Robinson's report. I didn't -- I 6 didn't have a very clear or good lay of what that 7 was. 8 Q. All right. And then on the survey on 9 Page 80 appears to have the -- the actual easement 10 area itself appears to be shaded in, correct? 11 A. That's correct. 12 Q. And the -- did that come from -- the shaded 13 area, did that come from the Robinson report? 14 A. It did indeed. 15 Q. Okay. And then on Page 81, there's some 16 other handwritten notes, and looks like another area 17 that's kind of shaded in next to the easement area. 18 A. That's right. 19 Q. Where did that -- where did those notes and 20 that extra shaded-in area come from? 21 A. Those also came from the Robinson report. 22 Q. Okay. Bear with me one minute. 23 A. All right. 24 Q. Okay. And then on Page 82, we've got the 25 effect of the taking. And the first paragraph,	Page 68 1 the -- you've considered an area adjoining and 2 paralleling the right of way to the south. It is my 3 opinion that this area, up to a depth of 100 feet, 4 will most likely be used as a buffer zone between 5 developing residential lots in the gas line right of 6 way itself. Without such, I am of the opinion that 7 the lots which would back up to the right of way 8 would be unmarketable or have limited marketability 9 due to the negative perception of the marketplace. 10 The market. Excuse me. This 100-foot wooded buffer 11 should lessen any fears of proximity to the 12-inch 12 gas line, and it could also be used as a green area. 13 A damage estimate of 85 percent was applied to the 14 area due to its limited use, also. I have evaluated 15 the area within the buffer zone to be approximately 16 219,100 square feet or 5.03 acres. 17 Did I correctly read that off? 18 A. Yes, sir. 19 Q. Okay. And, again, is this -- again, does 20 that go back to the, more or less, proximity damages 21 that we were discussing -- 22 A. Yes, sir. 23 Q. -- earlier? 24 A. It does. 25 Q. Okay.
Page 67 1 you've got the -- I believe that paragraph, that 2 concerns the actual property that is within the 3 easement itself, correct? 4 A. That's correct. 5 Q. And then, again, as you testified to 6 earlier, you estimated a 95 percent reduction in 7 value, right? 8 A. Right. 9 Q. And then you've got a second area there, 10 which is the 0.747 acres which are more or less 11 severed; is that correct? 12 A. That's correct. 13 Q. And I believe we discussed that a little 14 earlier, but that's property that's between the 15 easement and the property line. 16 A. That's what's shown on that plat we were 17 discussing a minute ago. 18 Q. Yes, sir. 19 A. It's that and that. And I'm assuming that 20 to be correct. 21 Q. Okay. And you've assigned that to be a 22 95 percent value -- 23 A. Right. 24 Q. -- loss of value. 25 And then your third paragraph goes to	Page 69 1 A. And those are my estimates based on what I 2 could tell from the plat as far as the 2191 square 3 feet. 4 Q. Yes, sir. 5 A. I mean, length and what have you. 6 Q. Have you ever done an appraisal before 7 where you have dealt with proximity damages by 8 putting in a buffer zone such as this? 9 A. I can't recall specifically. 10 Q. Have you ever -- are you aware of any other 11 appraisals, not ones that you've done, but other 12 appraisals that have approached proximity damages 13 with a buffer zone such as this? 14 A. Not specifically. No. 15 Q. Okay. And how did you arrive at the 16 solution or idea of a 100 -- 100-foot buffer zone? 17 A. I just felt like that that would be a -- a 18 reasonable assumption, considering what you have down 19 there, and it would, you know, give a level of 20 confidence in somebody who was trying to get ready to 21 build a house that would back up to this thing. 22 Q. And, again, is that based on or relying 23 upon your experience and professional judgment? 24 A. Yes, sir. 25 Q. And other than that, though, was there

Page 70 1 anything else that you consulted or -- or did to 2 arrive at that solution or that -- that manner of 3 dealing with the proximity damages? 4 A. No, sir. 5 Q. I believe you've already testified that 6 there -- you're not aware of any Greenville County 7 ordinance or requirement for a buffer zone of this 8 type. 9 A. No, sir. 10 Q. And you're not aware of any state or 11 federal requirement for a buffer zone of this type, 12 correct? 13 A. No, sir. 14 Q. As far as you know, based on your 15 experience and your -- your training and your 16 knowledge, there's no legal -- legal impediment to 17 the owners of a property developing lots next to the 18 easement or building next to the easement. 19 A. No, sir. 20 Q. And other than this, this paragraph we've 21 just discussed on Page 82, are there any other 22 elements or amounts that you consider or can think of 23 that would make up anymore proximity damages for this 24 property? 25 A. No, sir.	Page 72 1 assigning a percentage to the entire property? 2 A. I think so. 3 Q. Okay. Why would you think so? 4 A. Because I think that's the way a developer 5 would look at it, how much -- how much utility have I 6 lost. 7 Q. Uh-huh. Have you ever done an appraisal 8 where you attempt to quantify proximity damages as a 9 percentage of the entire property? 10 A. No. 11 Q. Are you aware of any USPAP guidelines that 12 allow for quantifying proximity -- 13 A. No, sir. 14 Q. -- damages in that manner? 15 A. No, sir. 16 Q. And, again, going back to the textbook, The 17 Appraisal of Real Estate, does it have any guidelines 18 or techniques for that? 19 A. Not that I know of. It's a mighty thick 20 book, but not that I know of. 21 Q. All right. Okay. And, again, you 22 reference the negative perception in the market. And 23 in this paragraph, what are you referring to as the 24 negative perception in the market? 25 A. Well, one, you're looking at the signs.
Page 71 1 Q. And have you been asked to consider the 2 broader questions of proximity damages to the entire 3 property? 4 A. Yes. 5 Q. And did Mr. Ward ask you to do that? 6 A. He -- he asked me if I had an opinion on 7 that, which I really didn't respond to. 8 Q. Do you have an opinion on that? 9 A. I think you could look at it -- that was 10 just another way of looking at it. This is -- this 11 is a way of quantifying what I considered the 12 damages, and a way that could be understood rather 13 than just saying, okay, here's the whole property, 14 and I think it's damaged 15 percent. 15 Q. Okay. 16 A. I mean, it -- I guess you could have done 17 it that way. 18 Q. Okay. Why did you choose to do it this way 19 other than the other way? 20 A. Because I felt like this is more typical of 21 what is done for a before and after situation. 22 Q. Okay. And you mentioned -- you used the 23 term, you know, "quantify" the proximity damages. Is 24 it your opinion that the way you did it is -- is a 25 more accurate way of quantifying it than just	Page 73 1 When you walk -- when you come into the subdivision, 2 if you're going to develop a high-end subdivision, 3 you know, you like to have a really nice entrance, 4 and certainly don't want to see these warning signs 5 up there when you're going through the only entrance 6 into the thing. 7 Also, as I mentioned before, I think 8 there's an element of danger associated with the -- 9 be it founded or non-founded, there is -- there is 10 perceived as being an element of danger. And 11 perception, in the marketplace, unfortunately, has a 12 lot to do with -- with what people will pay for 13 property. 14 Q. Okay. And leaving the sign side out of it, 15 just dealing with the issue of the negative 16 perception of the marketplace, what people think -- 17 A. Right. 18 Q. -- other than your discussions with, say, 19 Mr. Clifton, do you base that -- your opinion of the 20 negative perception on anything further than your 21 discussion with Mr. Clifton? 22 A. Not particularly, no. 23 Q. Okay. There's nothing else right now that 24 you can think of, any other textbooks or articles or 25 data you can think of that you base that on?

Page 74 1 A. No, sir. 2 Q. And, again, right then -- now, are you -- 3 based upon your letter from -- the letter from David 4 Ward, are you considering going back and revisiting 5 your opinion of just compensation based on the 6 broader question of proximity damages? 7 A. No, sir. 8 Q. And then I want to get over to Page 83, 9 which is distribution of values. And, again, I'm 10 just making sure that... 11 A. This one -- this one is the corrected one. 12 Q. Okay. So that's got -- right. Again, 13 you've got the damage to the adjoining 5.83 acres as 14 being the \$239,428, correct. 239,428? 15 A. Yes. 16 Q. Okay. Again, I think this is a typo here. 17 We've got underneath it, that -- it says: Sewer 18 damage. 19 A. That should be severance. 20 Q. Severance? 21 A. Dadgum if she didn't get it wrong again. 22 Q. And I'm sorry. I'm not bringing that up to 23 try to do anything other than make sure I'm 24 understanding correctly. 25 A. No. You're right.	Page 76 1 A. I just wanted to show that there have been 2 some -- some issues with these pipelines; and despite 3 the fact that they may -- may or may not be 4 dangerous, there is a perception out there based on 5 the fact that there have been a number of accidents. 6 And unfortunately, you folks get awful bad PR when 7 one does happen. 8 Q. And where did you obtain this printout of 9 the Wikipedia list of incidents? 10 A. It's off the internet. 11 Q. Okay. Did you get it yourself off the 12 internet? 13 A. My wife did. 14 Q. So you had your wife get this off the 15 internet -- 16 A. Right. 17 Q. -- in connection with this appraisal? 18 A. Right. 19 Q. And did anyone suggest to you that you go 20 onto Wikipedia and get this list? 21 A. No. 22 Q. And then did you actually try to follow up 23 or do any further investigation on any of the 24 individual incidents on here? 25 A. No, sir.
Page 75 1 Q. Okay. All right. I can tell you some 2 stories about dictation given by attorneys and what 3 comes out on the things that go in a court that would 4 curl your toes. 5 A. I bet. 6 Q. Now, on -- and just to stay then, for a 7 second, on distribution of values, then, it's your -- 8 it's your opinion, then, with a reasonable degree of 9 certainty, that the damage to the remainder for 10 proximity damages is \$239,428; is that correct? 11 A. Yes, sir. 12 Q. And that's based on all of the issues 13 and -- and things that you considered that we 14 discussed previously, correct? 15 A. Yes, sir. 16 Q. Okay. Now, on Page 93 of your appraisal 17 report that's in the addenda, you've got a list from 18 a Wikipedia -- 19 A. Right. 20 Q. -- printout of -- it says: List of 21 pipeline accidents in the United States in the 21st 22 Century. 23 A. That's right. 24 Q. And why is that attached to your appraisal 25 report?	Page 77 1 Q. So you don't know any of the -- say the 2 background or -- or any of the causative factors of 3 any of these that are listed? 4 A. No, sir. 5 Q. Basically, all you did was have your wife 6 pull this off, and you attached it. 7 A. That's correct. 8 Q. Okay. And is this also what you would 9 consider data in support of your -- your opinion of 10 the proximity damages? 11 A. Negative perception. Yes. 12 Q. Okay. Other than this, then, this 13 Wikipedia printout, and what you've already testified 14 to, can you think of any other evidence or data that 15 you relied on to support your proximity or negative 16 perception? 17 A. No, sir. 18 Q. Negative perception damages, I meant. 19 Okay. 20 MR. CHAMBERS: Can we go off the record for 21 just a short while? 22 (A recess transpired.) 23 BY MR. CHAMBERS: 24 Q. Mr. Owen, we're back on the record after 25 that break, and I just want to go back to one issue

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1 we had at the beginning. I was asking you questions
2 about basically your assignment in this case and how
3 you got involved. I think you were testifying about
4 how you get involved in cases in general, and you say
5 you've turned down a fair number of cases when you
6 feel like there's really no more just compensation
7 than what's been offered by the condemnor. Is that
8 correct?
9 A. That is correct.
10 Q. So if you don't -- in other words, if you
11 don't see -- if you don't see some more damages that
12 have not been -- already been accounted for, you
13 won't see the need to get involved.
14 A. That's correct.
15 Q. And in this particular case, you testified,
16 I believe, you did see some further damages that did
17 not seem to be accounted for.
18 A. In my opinion. Yes, sir.
19 Q. Okay. And in your opinion, were those
20 damages the proximity damages or negative perception
21 damages we already discussed?
22 A. Yes, sir.
23 Q. So it's your opinion those weren't
24 accounted for in the Robinson appraisal?
25 A. That's correct.

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1 Q. And other than those proximity or negative
2 perception damages, were there any other damages you
3 can think of that weren't accounted for in the
4 Robinson appraisal?
5 A. No, sir.
6 Q. Okay. And, again, I may have already asked
7 you this, but at that stage of the -- of your
8 involvement in this case, what -- what was it that --
9 that made you recognize or -- or made you feel that
10 there -- those damages should have been taken into
11 account?
12 A. When you first view the property and you
13 go, like I say, in one entrance right there and you
14 look out across and you see the signs and then, you
15 know, you -- you consider the -- the size of the line
16 and that sort of thing, I just felt like that there
17 should be some additional damages, because a typical
18 developer would consider that to be a negative impact
19 feature.
20 Q. Okay. And that's based upon the things
21 you've already testified to, the --
22 A. Yes, sir.
23 Q. -- the other types of things that you --
24 your experience and knowledge; is that correct?
25 A. Yes, sir.

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1 Q. Okay. And are there any other issues or
2 elements making up your opinion that we've not
3 covered here today?
4 A. No, sir.
5 Q. Okay. Thank you. And is there anything
6 else that you -- you would add or you -- you would
7 bring to my attention concerning your opinion of
8 value concerning this?
9 A. No, sir.
10 Q. All right. And so there's not any other
11 opinions as to value that you will be offering other
12 than what we've testified to here today and what's in
13 your report?
14 A. No, sir.
15 Q. All right. And then if you would, would
16 you please hand me your -- your file that you brought
17 over with you today pursuant to the subpoena.
18 A. (The witness complied.)
19 Q. Okay. Thank you. Okay. We've got here at
20 the very front, looks like a Post-it pad. It says:
21 Bill \$3,200 to David Ward.
22 A. Yes, sir.
23 Q. Okay. Is that what your compensation --
24 A. Yes, sir.
25 Q. -- your initial compensation is for doing

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1 this appraisal and the appraisal report?
2 A. Yes, sir.
3 Q. Okay. Is that a Post-it pad that you put
4 in every pad for David Ward? I'm kidding. Strike
5 that, please. Strike that.
6 So that is compensation for your work in
7 preparing the appraisal report and coming up with
8 your opinion.
9 A. That's correct.
10 Q. And we've also got in here, the -- looks
11 like the -- this must be part of your initial
12 appraisal that's in here. It's got Page 93, and it's
13 got the list of pipeline accidents --
14 A. Right.
15 Q. -- in the United States from Wikipedia.
16 A. Yes, sir.
17 Q. And that's, again, another copy of --
18 A. That's correct.
19 Q. -- that.
20 A. That's correct.
21 Q. And then it looks like we've got -- again,
22 this looks -- does this appear to be the actual
23 printout of the list of pipeline accidents from
24 Wikipedia?
25 A. That's correct.

Page 90 R. BRUCE OWEN - EX. BY MS. CULBERTSON 1 A. That's right. 2 Q. -- seeing the terminology in there. 3 A. That's right. 4 Q. Are you aware if either of those... 5 A. There's probably something under 6 definitions. Okay? 7 Q. Okay. 8 A. As far as how you treat it, I don't know if 9 there's anything in there. 10 Q. Is there anything in either of those 11 manuals specifically prohibiting the use of proximity 12 damages? 13 A. Not that I know of. 14 Q. Is there anything in those manuals 15 prohibiting the appraiser's personal knowledge being 16 used as a factor in determining damages? For 17 example, you testified you used your personal 18 knowledge -- your personal experience and past 19 knowledge to establish the fact that a developer 20 might shy away from building right up next to the 21 pipeline. 22 A. Yes, ma'am. 23 Q. Is there anything in -- in those manuals 24 that prohibits your personal experience being brought 25 to bear --	Page 92 1 There was a house. And so there was no house here, 2 so we had to look at it in a slightly different 3 value. 4 Q. Okay. Would there have been anything 5 improper, under whatever ethical guidelines or -- or 6 other regulatory guidelines or under your manuals, in 7 your consulting with Ken Clifton or any other 8 developer, in assessing your damages valuation in 9 this manner? 10 A. I would not have discussed a specific, 11 because I don't think that would be ethical, but I 12 would discuss generalities. Yes. 13 MR. WARD: I think that's all I wanted to 14 clarify. 15 EXAMINATION 16 BY MR. CHAMBERS: 17 Q. Just one -- or maybe more than one, but -- 18 followup question on that. I believe you were asked 19 by Ms. Culbertson about whether you're prohibited 20 from using your own personal experience in relation 21 to forming an opinion on proximity damages. And did 22 you, in fact, in this case, rely on your personal 23 experiences in coming to your opinion on proximity 24 damages? 25 A. Yeah. And my basic opinion, yes.
Page 91 R. BRUCE OWEN - EX. BY MS. CULBERTSON 1 A. No, sir. 2 Q. -- in assessing the damages? 3 A. No, ma'am. 4 Q. Were proximity damages a factor in the 5 prior appraisal you did involving Piedmont Natural 6 Gas? I think it was the David Taylor case -- 7 A. Yes. 8 Q. -- that we've been throwing around. 9 A. Yes. 10 Q. Were proximity damages a factor in that, as 11 well? 12 A. As far as I remember, yes. 13 Q. Okay. And did you assess it in the same 14 way, which is to say, by means of a zone or in the -- 15 in the sort of general percentage damage to the 16 remainder of the property? 17 A. I think it was a general percentage damage, 18 but I am not sure. 19 Q. Can you give us any -- any understanding of 20 why you would choose one or -- or the other or what 21 made -- I guess -- more clearly, because I think 22 you've already answered that question, but what made 23 Mr. Taylor's situation different than this, that you 24 might have used... 25 A. There were improvements in the Taylor case.	Page 93 1 Q. And what personal experiences did you rely 2 on? 3 A. The fact that I've seen some appraisal -- 4 excuse me -- some purchase contracts, like I said, 5 where the acreage might have been deducted as far as 6 a purchase price when -- when purchasing a tract if 7 there were some adverse parcels, and I've seen some 8 contracts that were written in that fashion. 9 Q. And I believe we -- we covered that. I 10 believe you testified that that personal experience 11 had to do with flood plains. 12 A. Yes, sir. 13 Q. Okay. So do you have any personal 14 experiences with contracts or any other matter that 15 deals with the, again, pipeline as a -- as an adverse 16 consequence? 17 A. No, sir. 18 Q. Okay. So you don't have any personal 19 experiences, then, involving natural gas pipelines 20 and their effect on value as an -- 21 A. No, sir. 22 Q. -- adverse consequence. 23 And, again, I believe we've been -- today 24 you've been testifying as to your recollection of 25 things from the USPAP and the Appraisal of Real

Piedmont Natural Gas Company, et al v
Smith, Richeous, et al

R Bruce Owen
March 05, 2015

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1 Estate textbook, correct?
2 A. Yes, sir.
3 Q. And you don't have any of those materials
4 here with you today, correct?
5 A. No, sir.
6 Q. So what those materials -- well, if what
7 they say differs in any way from what you remembered
8 today, then the actual what's written in those
9 materials would control, correct?
10 A. Yes, sir. We applied them to the best of
11 our judgment and knowledge.
12 MR. WARD: All right. I don't have any
13 further questions. Thank you.
14 (The witness, after having been advised of
15 his right to read and sign this transcript, reserves
16 that right.)
17 (The deposition concluded at 12:21 p.m.)
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Page 95

1 SIGNATURE OF DEPONENT
2 DEPONENT: R. BRUCE OWEN
3 DEPOSITION DATE: March 5, 2015
4 REPORTER: KATHY P. TAYLOR, RPR
5 CASE CAPTION: PIEDMONT NATURAL GAS COMPANY vs.
6 RICHOUS SMITH, ET AL.
7 (Please return both Signature-of-Deponent pages)
8 I, the undersigned, R. BRUCE OWEN, hereby
9 certify that I have read the foregoing deposition and
10 find it to be a true and accurate transcription of my
11 testimony, with the following corrections, if any:
12 PAGE LINE CHANGE REASON
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Page 96

1 SIGNATURE OF DEPONENT (CONTINUED)
2 DEPOSITION DATE: March 5, 2015
3 REPORTER: KATHY P. TAYLOR, RPR
4 CASE CAPTION: PIEDMONT NATURAL GAS COMPANY vs. RICHOUS
5 SMITH, ET AL.
6
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11
12 R. BRUCE OWEN DATE
13 I, Kathy P. Taylor, Notary Public for the State
14 of South Carolina at Large, do hereby certify that the
15 deponent was advised of his or her right to read and
16 sign said deposition both verbally and in writing. If
17 the deponent fails to execute and return foregoing
18 signature of Deponent page within the thirty (30) days
19 allowed pursuant to the Rules of Civil Procedure, the
20 original transcript may be filed with the court.
21
22
23
24
25


Kathy P. Taylor, RPR
My Commission expires
June 13, 2017

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1 CERTIFICATE OF REPORTER
2 I, Kathy P. Taylor, Registered
3 Professional Reporter and Notary Public for the State of
4 South Carolina at large, do hereby certify that the
5 foregoing transcript is a true, accurate and complete
6 record.
7 I further certify that I am neither
8 related to nor counsel for any party to the cause
9 pending or interested in the events thereof.
10 WITNESS MY HAND, I have hereunto affixed
11 my official seal this 13th day of March, 2015, at
12 Greenville County, South Carolina.
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Kathy P. Taylor
REGISTERED PROFESSIONAL REPORTER
MY COMMISSION EXPIRES
JUNE 13, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
C.A. NO.: 2012-CP-23-4064

Piedmont Natural Gas Company,)
Condemnor,)

Vs.) RETURN TO CONDEMNOR'S
MOTION IN LIMINE

Richeous Smith, Harold)
Anderson, et al.,)
Landowners,)

Firstly, PNG concedes that Mr. Owen is an expert real estate appraiser. In addition to his many years' experience as an expert real estate appraiser involved in enumerable condemnation actions of various kinds, Mr. Owen has been actively involved in real estate management and construction, having constructed more than 50 houses himself.¹ Mr. Owen's record of many years' experience clearly indicates that he has interfaced with developers and contractors in various aspects of his experience and training, as well as constructing houses himself.

The major transmission line in question crosses the front of the subject property at a bridge providing the only access. At the time of the installation of the pipeline a warning sign was placed on placed on a gate installed by PNG. There is apparently some controversy concerning the removal of that sign subsequently. In any event, it is part of the take.

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Ward, Mullinax
& Farry, P.A.
Greenville, S.C.

¹ PNG only attaches a portion of Mr. Owen's deposition and none of his qualifications. Attached are pages 3-21 of his deposition and qualifications as attached to his appraisal report.

Mr. Owen concluded there was substantial damage to the remainder, and computed a buffer zone as one method of ameliorating damages to the remainder. Upon deposition inquiry by PNG, Mr. Owen alternatively estimated the damage to the remainder would be about 15%. No questions were asked of him at how he arrived at that estimate.²

South Carolina has always been deferential and liberal in allowing testimony of damages in eminent domain actions.

The recent adoption of S.C.R.C.P. Rule 703 allowing experts to rely upon inadmissible evidence, actually confirms a long standing practice in this state.

In State Highway Commission v. E. R. Conrad and Sally D. Conrad, 263 N.C. 394, 139 S.E.2d 553, the expert relied upon a drawing prepared by a non-civil engineer in arriving at his estimate of damages. The condemnor objected as the drawing was not prepared by a civil engineer and did not comply with good engineering practices. The court held:

"A witness who has knowledge of value gained from experience, information and observation may give his opinion of the value of specific real property * * *"
 Stansbury: North Carolina Evidence, 2d Ed., s. 128, p. 300. "The fact that certain elements are not independently admissible in evidence * * * does not bar their consideration by an expert witness in reaching an opinion. Thus, it has been said: 'An integral part of an expert's work is to obtain all possible information, data, detail and material which will aid him in arriving at an opinion. Much of the source material will be in and of itself inadmissible evidence but this fact does not preclude him from using it in arriving at an opinion. All of the factors he has gained are weighed and given the sanction of his experience in his expressing an opinion. It is proper for the expert when called as a witness to detail the facts upon which is

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conclusion or opinion is based and this is true even though his opinion is based entirely on knowledge gained from inadmissible sources.'

Conrad, at 557

Cartee v. Lesley, 286 S.C. 249, 333 S.E.2d 341 (S.C.App. 1985) involved a dispute over assets of an estate. The trustees argued that the expert witness was never properly qualified as an expert, and was allowed to testify from hearsay sources, answer improper hypothetical questions and was allowed to testify to irrelevant comparable rentals. The court held that opinion testimony by an expert witness regarding rental value of the property was not improperly based on what would otherwise be inadmissible hearsay, where the witness derived much of his knowledge from a publication listing market values and from talking with renters in the area. Cartee, at 346

Contrary to the argument of PNG, Mr. Owen based his decision on his vast experience in dealing with land development in every aspect, including dealing with developers. The central question is whether or not a developer would be inhibited to some degree in an offering price to purchase the property given the right of way in the particular location.

In Western Farmers Electric Coop. v. Enis, 1999 OK CIV APP 111, 993 P.2d 787 (1999), the appellate court allowed an expert appraiser's opinion about the impact on value of perceived fear of EMFS (electrical) based on public disseminated information as a relevant factor in determining fair market value. The court went on to observe that the generally accepted definition of fair market value is the amount at which property would change hands between a willing

buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.

The court went on to observe:

Unfortunately, the effect of fear on the willingness of a buyer to purchase a piece of land is not easily assessed or measured, but the same is true of other intangible factors such as aesthetic qualities of land. The difficulty in quantifying or valuing fear should not prevent both parties from offering available evidence to show that certain fears either do nor do not have an effect on the value of property. Western Farmers Electric Coop., at ¶16.

The court also stated:

The "considerations" that go into fair market value include "any factors which a reasonably prudent buyer would consider before purchasing property," State by and through Alabama State Docks Dept. v. Atkins, 439 So. 2d 128, 131 (Ala. 1983), and "all elements reasonably affecting value." Wright v. Metropolitan Atlanta Rapid Transit Authority, 293 S.E.2d 466, 469 (Ga. 1981). Fair market value should also reflect "all favorable and unfavorable circumstances." Bellingham Community Hotel Co. v. Whatcom County, 70 P.2d 301, 304 (Wash. 1937); and, "any competent evidence of matters which would be considered by prospective vendor or purchaser or which tend to enhance or diminish value of property." Douglas County Bank & Trust Co. v. Stamper, 505 N.W.2d 693, 696 (Neb. 1993). Western, at ¶13.

The Court in Western found no error in admitting expert testimony which took into account the depreciating value of land near the transmission line occasioned by perception on the part of the general public. Obviously, that perforce would apply to a major natural gas transmission line.

Perhaps more telling is the case of Arents v. ANR Pipeline Co., 2005 WI App 61, 696 N.W.2d 194, 281 Wis. 2d 173, cited by PNG. There the court allowed expert appraisal testimony as to fear or stigma damages to the remainder excluding only the testimony of pollsters (conducting "man on the street interviews"), as not being scientific. The trial court did allow the landowner's appraiser to testify about fear and stigma and to how is purportedly decreased the property values.

The greater weight of authority and modern trend is to allow testimony of fear of stigma damages. In fact, even the notion that the fear may be unreasonable does not preclude evidence of such fear in considering damages.

PNG asserts that comparable sales analysis is the only methodology for arriving at damages to the remainder. Indeed, that argument has been refuted by authorities cited by PNG. Arents, *supra*, provides in part:

Our view of eminent domain case law in Wisconsin does not support ANR's conclusion that evidence of comparable sales is the only relevant and therefore admissible evidence in determining fair market value where such evidence is available. -- we conclude ANR's argument is without merit. Arents at 195.

Joseph Criscuola, et al. v. Power Authority of The State of New York, et al., 81 N.Y.2d 649, 621 N.E.2d 1195, 602 N.Y.S.2d 588 (1993) cited by PNG clearly established that the modern view is to allow such damage claims even if the fear may be unreasonable. This case the issue was whether or not "cancer phobia", even though it might be an unreasonable fear, could be considered as a public perception in assessing damages.

The court there pointed out that there were four older opinions prior to 1981 disallowing such damages, but that the Sixth Circuit and eleven states had previously allowed such fear of damages without regard to reasonableness. The court further pointed out that more recently an additional three states had reaffirmed that reasonableness is not a factor in determining whether consequential damages may be awarded for diminution of market value due to fear of health risks from exposure to power lines.

PNG attempts to perform an analysis as to the relative price of various lots sold in various locations which is not the proper inquiry. Here we have a large tract of land that was available for high end residential development. The question is not whether a particular lot will sell for more or less, but what a fully informed real estate developer would conclude as to whether the right of way in question would have a diminution in value of the remainder. There are numerous elements that come into play with regard such analysis.

Indeed, PNG cites no case in South Carolina (or any other jurisdiction) where a tract of land suitable for such development was sold before and after installation of a major transmission line across the front of such property.

Given the circumstances, great latitude should be given in allowing all evidence that may be reasonably deduced to be introduced and considered by the trier of fact.

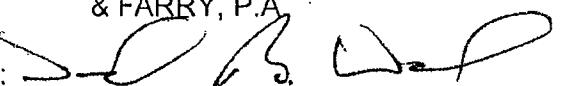
Based on PNG's argument, there would be no basis ever for finding damages to the remainder when selling an undeveloped tract of land suitable for

residential or such development. The testimony will indicate that the tract of land does have some diminution in value, there will be complications in its development, and it overall will be less desirable and its value discounted by any reasonable developer. That can only be confirmed by a person knowledgeable in the field such as an expert in appraisals such as Mr. Owen.

No testimony should be excluded that has any reasonable bearing on the issues at hand. The purpose of the court's inquiry is to insure that landowners are fully and fairly compensated for the taking. The court should not adopt stringent and rigid limitations on estimate of damages that do not fairly reflect reality of the market place. Further, all such testimony and offerings of damages are subject to cross examination and contrary analysis by the condemnor.

Respectfully submitted,

HORTON, DRAWDY, WARD, MULLINAX
& FARRY, P.A.

By: 

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May 21, 2015

Law Offices
Horton, Drawdy,
Ward, Mullinax
& Farry, P.A.
Greenville, S.C.

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Page 2 1 APPEARANCES OF COUNSEL: 2 ATTORNEYS FOR PLAINTIFF 3 PIEDMONT NATURAL GAS COMPANY: 4 5 LAW OFFICES OF MICHAEL S. CHAMBERS 6 BY: MICHAEL S. CHAMBERS 7 121 Manly Street, Suite B 8 Greenville, SC 29601 9 (864) 242-9245 10 Mchambersatty@earthlink.net 11 and 12 PIEDMONT NATURAL GAS 13 BY: AMANDA A. JOHNSON 14 4720 Piedmont Row Drive 15 Charlotte, NC 28210 16 (704) 731-4688 17 Amanda.johnson@piedmontng.com 18 19 ATTORNEYS FOR DEFENDANT 20 RICHOUS SMITH, ET AL.: 21 HORTON, DRAWDY, WARD, MULLINAX & 22 FARRY, PA 23 BY: DAVID B. WARD 24 307 Pettigru Street 25 Greenville, SC 29601 (864) 233-4351 Dward@hortonlaw.net and KEHL, COLBERTSON, ANDRIGHETTI, KORNFELD BY: ERIN B. COLBERTSON 114 Manly Street Greenville, SC 29601 (864) 370-8222 Erin@palmettolawfirm.com Also Present: Diane B. Johnson (Index at rear of transcript)	Page 4 1 reviewed those and handed the file back to you, 2 correct? 3 A. Yes, sir. 4 Q. Okay. And have you ever given a deposition 5 before? 6 A. Yes, sir. 7 Q. And approximately how many depositions have 8 you been involved in? 9 A. That's -- 100. 10 Q. All right. Is that a fairly common 11 occurrence in your profession, in your job? 12 A. From time to time, yes. 13 Q. Okay. And even though I know that you've 14 given quite a number of depositions, I am required by 15 the South Carolina Rules of Civil Procedure to inform 16 you at the beginning of a deposition, just as I would 17 any witness, about certain ground rules for the 18 deposition. And one of these is that if you have any 19 questions or need any clarifications or definitions 20 or any explanations about any questions that I've 21 asked you, you are required to direct any such 22 inquiry to me and not to your counsel. 23 A. Yes, sir. 24 Q. And you understand that? 25 A. Yes, sir.
Page 3 1 R. BRUCE OWEN, 2 being first duly sworn, testified as follows: 3 EXAMINATION 4 BY MR. CHAMBERS: 5 Q. Thank you, Mr. Owen. I'm Mike Chambers. I 6 represent Piedmont Natural Gas Company -- 7 A. Yes, sir. 8 Q. -- In this condemnation action that's 9 pending in Greenville County, this property on -- I 10 think it's 413 Rock Road, in Greenville County; and 11 the landowners are -- listed as Richeous Smith and 12 quite a large number of other people. 13 A. That's correct. 14 Q. It's a title issue. And so basically, 15 today, we're here for a discovery deposition, to find 16 out about your testimony and what your -- what your 17 professional opinions are and the work that you did 18 on the appraisal in this case. And I'll note that I 19 had also served you with a subpoena for -- one for 20 your presence here at the deposition, and also for 21 the documents -- various documents in your file, and 22 they're identified in the subpoena. And you did 23 bring these documents with you here today, correct? 24 A. Yes, sir. 25 Q. And just before we went on the record, I	Page 5 1 Q. And, of course, if at any time during this 2 deposition you or anyone would like to take a break, 3 feel free to ask to do so. 4 MR. CHAMBERS: David, absolutely, if you 5 feel you need to take a break, just any time, pop up, 6 and we'll... 7 MR. WARD: I'll go lay down on my couch in 8 my office. 9 MR. CHAMBERS: We'll accommodate anyone 10 here without question. 11 BY MR. CHAMBERS: 12 Q. Of course, during the deposition, if we're 13 on a break and off the record, you're not allowed to 14 discuss the subject of your deposition testimony with 15 anyone. And that's your counsel or anyone else. 16 A. Yes, sir. 17 Q. And, of course, that's only during the 18 deposition. After the deposition is over, of course, 19 you can discuss your testimony with anybody. 20 You understand the things I just explained 21 to you? 22 A. I understand. 23 Q. Now, at the -- before going on the record 24 in this deposition, you handed me a -- what's labeled 25 a revised copy, and it appears to be a revised copy

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Page 6 1 of the appraisal you've done for this property; is 2 that correct? 3 A. Yes, sir. 4 Q. And could you just tell me what it is 5 that's changed in this revised copy from the previous 6 copy that I had? 7 A. Basically, the only change was a slight 8 increase in the before value due to some scrivener 9 errors that weren't -- weren't amended as they should 10 have been. 11 Q. Okay. And would that be on -- I'll turn it 12 around so you can see it. Would that be on the -- I 13 guess it's at the beginning of the appraisal? 14 A. That's correct. 15 Q. And it's in the form of a letter from you? 16 A. Yes, sir. 17 Q. And you -- go ahead and tell us what the 18 changes were, please. 19 A. Basically, the before value, I think, 20 went -- went up from -- 21 Q. I have a copy here of the previous one. 22 A. -- went up from 4 million-124-4 to four 23 million-126. 24 Q. Uh-huh. 25 A. And the -- the -- the value of the take	Page 8 1 any of the properties or comparables changed -- 2 A. No. 3 Q. -- did they? 4 A. No. 5 Q. And just to make sure I understand, it was 6 just a mathematical -- 7 A. That's correct. 8 Q. -- calculation. 9 A. Yes, sir. 10 Q. Okay. And then -- and I'm looking now at 11 the -- at my copy of the previous appraisal report. 12 And it says that your estimate of just compensation 13 is \$414,752. And now I'm looking at the revised 14 appraisal report, and it says the just compensation 15 is \$414,750. 16 A. Which I rounded the \$2. 17 Q. Okay. All right. 18 MR. CHAMBERS: Can we go ahead and make 19 this -- this revised copy, could we make that a -- 20 a -- an exhibit to the deposition? 21 MR. WARD: It's your deposition. 22 BY MR. CHAMBERS: 23 Q. All right. And this is a copy you've 24 brought for me today, correct? 25 A. Yes, sir.
Page 7 1 basically stayed the same, except for I rounded two 2 dollars. So it stayed at 414,750. And that's really 3 the only -- the only change. 4 Q. Okay. When you say the value of the take, 5 is that what you consider the just compensation? 6 A. Just compensation. Yes, sir. 7 Q. The take. 8 A. Yes, sir. 9 Q. Okay. And did the -- what was the reason 10 for that change? 11 A. I looked back and just found the error, the 12 scrivener's error. 13 Q. Like a mathematical error? 14 A. Yeah. 15 Q. Computations? 16 A. That's right. 17 Q. None of the values or anything that you 18 placed on things changed? 19 A. No. Other than this went up just very 20 slightly. 21 Q. And when you say "this", you're talking 22 about the before? 23 A. The value before. Yes, sir. 24 Q. Okay. I guess what I meant by none of the 25 values changed, none of the -- the base values for	Page 9 1 Q. Okay. And I'd like to go ahead and make 2 this an exhibit. Is it possible maybe you could send 3 me a PDF of this? It doesn't have to be done in the 4 near future or anything, but -- 5 A. I'll do that, sir. 6 Q. -- so I can have another copy. Okay. 7 Thank you. 8 MR. CHAMBERS: We'd like to go ahead and 9 make that an exhibit. 10 (PLF. EXH. 1, Revised Report, was marked 11 for identification.) 12 MR. CHAMBERS: Thank you. 13 BY MR. CHAMBERS: 14 Q. And I did bring my copy of the -- the 15 previous appraisal report before you revised it. And 16 if I feel that I need to -- to refer to that or make 17 it an exhibit, we'll deal with that when we come to 18 it, but I'm hoping we can just stick with the one 19 revised copy. 20 A. Yes, sir. 21 Q. I don't want to pad out the deposition with 22 too many lengthy documents. 23 And I'm referring to the revised appraisal 24 report, which has now been entered as Plaintiff's 25 Exhibit 1. And on Page 84 and 80- -- well, Page 84



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Page 10 1 and subsequent pages, it's got what's listed as your 2 appraiser's qualifications. 3 A. Yes, sir. 4 Q. And is that more or less like a resumé of 5 your experience and education -- 6 A. Yes, sir. 7 Q. -- concerning this? 8 A. Yes, sir. 9 Q. Okay. And is this, then, an accurate 10 reflection of your background and experience in the 11 appraisal profession? 12 A. Yes, sir. 13 Q. Other than what's listed on your appraiser 14 qualifications, are there any other significant 15 matters concerning your qualifications? 16 A. Well, it's not really, I don't think, 17 specified in -- in these, but I have been involved in 18 construction of single-family residences in my 19 career, which I -- I think would probably lend some 20 credibility to this particular case. I've 21 probably -- my company and/or a couple of other 22 partners, we have probably built 50 houses or so back 23 in the 1990s. So I've been involved in that sort of 24 thing. 25 I've also been involved, if you will look,	Page 12 1 referenced -- you said you were involved in the 2 construction of, were these spec houses? 3 A. Some were. Some were custom. 4 Q. All right. And did that company have a 5 name that's not listed on your qualifications? 6 A. I'm not sure whether it's -- it's Crestmont 7 Company. It's on Page 86. It's 1989 through 1993. 8 One part of our company did residential construction, 9 and one part did appraisals. 10 Q. Okay. And when did -- when was your last 11 involvement with that kind of -- that kind of work? 12 A. The late '90s. 13 Q. Okay. And since the late '90s, would you 14 characterize your fulltime employment as being 15 exclusively real estate appraisals? 16 A. Yes. 17 Q. And would you characterize that as your 18 full-time employment? 19 A. Yes. 20 Q. Okay. And in the appraisal profession, is 21 there any sort of accepted definition or 22 characterization of an appraiser, what an appraiser 23 does? 24 A. I don't know if there's any particular said 25 definition.
Page 11 1 as a leasing director at the Furman Company in the 2 mid-80s to early '90s. And as a result, I've been 3 involved -- been involved in the leasing and sales of 4 commercial properties, also. 5 So I've had some practical experience other 6 than just simply appraising property. If you will 7 look in the back of -- of my file, I think, as you 8 did, that was maybe the last page, there was a 9 listing of the last 20 or so subdivisions that we've 10 appraised in the office. So it kind of gives you an 11 idea of the experience on -- in that particular 12 field, also. 13 Q. Okay. And so that list was -- was a list 14 of appraisals that you or your office has done of 15 subdivisions? 16 A. That's correct. Residential subdivisions. 17 Q. Okay. That's where you would have 18 appraised an entire subdivision itself? 19 A. That's correct. Or a number of the lots in 20 the subdivision. 21 Q. Okay. Would these appraisals be doing an 22 appraisal of each individual lot or trying to look at 23 a mass value? 24 A. Mass value. 25 Q. All right. And these houses that you	Page 13 1 Q. Is there any definition or -- or way that 2 you would characterize it? 3 A. It's someone who goes out and -- and 4 inspects property, and with an attempt to do a 5 valuation of the property based on existing 6 conditions. 7 Q. Okay. And is there any system or 8 methodology that's -- that's common in that 9 profession that you use? 10 A. Any system, as in... 11 Q. Methodology. 12 A. Yeah. There are -- there are a number of 13 methods for -- for looking at specific properties. 14 It depends upon the property. 15 Q. Okay. And is it -- is there any board 16 or -- or organization or anything that -- that tries 17 to define or set those -- that methodology? 18 A. We have what we call USPAP, which is the 19 Standards for Professional Practices. The Appraisal 20 Foundation, which is a federal organization, comes 21 out with rules and regulations that need to be 22 followed whenever you are providing an appraisal 23 report. It's also included under the Appraisal 24 Institute. They have their own set of standards. 25 And the two are very, very similar.

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Page 14 1 Q. Okay. And what does USPAP stand for? 2 A. It stands for Use Standards of Professional 3 Practice, United Standards of Profession Practice. 4 Professional Appraisal Practice. Excuse me. 5 Q. All right. And you referenced the 6 Appraisal Institute. What is that? 7 A. The Appraisal Institute is a -- an 8 organization, probably the largest in the country, of 9 professional appraisers who have attained a certain 10 level of competency through coursework, experience, 11 and this sort of thing, and have been awarded a 12 designation to -- to determine that they are at a 13 particular level of competency. 14 Q. Okay. And have you been awarded such a 15 designation? 16 A. Yes, sir. 17 Q. And what's that -- what's that designation? 18 A. It's MAI. 19 Q. What does MAI stand for? 20 A. Well, it doesn't really stand for anything 21 anymore. It used to stand for member of the 22 Appraisal Institute. 23 Q. Yes, sir. 24 A. Now it's simply the designation given to 25 the commercial appraisers. Versus the SRA, which is	Page 16 1 postpone the deposition. Of course, Erin is here and 2 is a very able attorney, and the parties have agreed 3 to go forward with the deposition? 4 THE WITNESS: Yes, sir. 5 BY MR. CHAMBERS: 6 Q. Now, getting back to -- I believe the 7 substance of our testimony so far, going back to 8 USPAP, I believe you said, was the -- one of the 9 standards -- 10 A. Yeah. 11 Q. -- that's used; is that correct? 12 A. Yes, sir. 13 Q. Is that a pretty fair characterization -- 14 A. Yes, sir. 15 Q. -- that's a standard for appraisal? 16 A. Uniform Standards for Professional 17 Appraisal Practice. 18 Q. And does that give kind of a broad 19 framework for the methodology that would be used -- 20 A. Yes, sir. 21 Q. -- in an appraisal? 22 A. Yes, sir. 23 Q. And would the type of appraisal cause the 24 methodology to vary from time to time? 25 A. No. One should follow USPAP unless there's
Page 15 1 the one given to residential specialists. 2 Q. Uh-huh. And is the MAI the highest 3 designation the appraisal Institute gives out? 4 A. Yes, sir. 5 Q. All right. And what was the other board 6 that you mentioned besides the Appraisal Institute, 7 the other organization? 8 A. The Appraisal Foundation? 9 Q. Yes. 10 A. Yes. 11 Q. And then what is that? 12 A. That's something that the federal 13 government set up basically after the 14 savings-and-loan crash. And its -- well, its 15 intention was to attempt to -- to regulate appraisal 16 practice. Prior to that, which was in the mid-'80s 17 or so... 18 MR. WARD: Can I stop you for a moment? 19 MR. CHAMBERS: Yes. 20 (Off-the-record conference. Mr. Ward 21 exited the deposition.) 22 MR. CHAMBERS: I guess I'll just reflect 23 for the record that Mr. Ward has left the deposition. 24 He's feeling under the weather. And it's my 25 understanding that we've given him the opportunity to	Page 17 1 a jurisdictional exception. 2 Q. Okay. So do you use that -- the USPAP 3 methodology in all appraisals that you do? 4 A. Yes, sir. We intend to do that. 5 Q. Okay. And did you use the USPAP 6 methodology in this appraisal that we're here for 7 today on Rock Road? 8 A. Yes, sir. 9 Q. And other than this methodology we were 10 just discussing, is there anything else that you rely 11 on in preparing an appraisal opinion? 12 A. Well, once again, depending upon what it is 13 an appraisal of, we certainly rely on market 14 information regarding sales and/or leases or -- or 15 whatever the case may be, depending upon the type of 16 appraisal we're doing or the type of property that 17 we're considering. 18 Q. And would the -- the type of market data 19 that might be relied on in a particular appraisal, is 20 that in any way defined or -- or set forth in the 21 USPAP regulations? 22 A. The type -- 23 Q. Yes. 24 A. -- of data utilized? 25 Q. Type of market of data. Yes.

A W R

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Page 18 1 A. Not necessarily defined as to what type. I 2 think that is a matter, there again, of what type of 3 property it is. I mean, I don't think USPAP defines 4 what market data you use for every specific 5 appraisal, if that answers your question. 6 Q. Okay. And does USPAP require market data 7 be used in an appraisal? 8 A. Yes, sir. 9 Q. And I believe you stated in your appraiser 10 qualifications, you set forth some court experience 11 in there. 12 A. Yes, sir. 13 Q. And is there any way you can give a general 14 number of about how many court cases you may have 15 testified in? 16 A. A lot of them anymore don't get any further 17 than where we are today and end up getting settled, 18 so the number that we actually go to court has 19 dwindled significantly over the years. But I don't 20 know. Maybe 50 times, 60, 70 times, something like 21 that. 22 Q. Those are the times you've actually 23 testified in a case? 24 A. Yes, sir. 25 Q. And do you have any kind of a general	Page 20 1 Q. Okay. And are there any textbooks or 2 anything of that nature that are commonly accepted as 3 source material in the appraisal profession? 4 A. Yes, sir. 5 Q. What would those be? 6 A. Well, as we refer to it, the Bible, the 7 Appraisal Institute has put out The Appraisal of Real 8 Estate. And I'm not sure what edition they're in. 9 They're in probably about the 15th now, so it keeps 10 getting more and more -- bigger and bigger. And so 11 that's probably one of the most referred to sources 12 that I know of. 13 Q. And in a general way, can you describe what 14 is set out in that -- that publication? 15 A. It probably takes you from A to Z in the 16 appraisal of real estate, from how you do it, what it 17 is, all about the various and sundry interests that 18 you can appraise. It's -- it's what we go through 19 when we are becoming designated with an MAI 20 designation. 21 Q. And what was the name of that book again, 22 please? 23 A. The Appraisal of Real Estate. It's 24 referred to, for instance, on Page 53 of this report. 25 I refer to the 12th Edition. I'm not sure that's the
Page 19 1 number for the number of cases you've been involved 2 in that did not go to court? 3 A. Not -- not really. 4 Q. Okay. All right. And back up a little bit 5 again to the appraisal profession. Is there any 6 appraisal journals or periodicals that you subscribe 7 to? 8 A. Well, the Appraisal Institute provides you 9 with a magazine that they call The Appraiser. 10 Q. Okay. 11 A. And that's generally written by -- articles 12 written by practicing appraisers and/or teachers or 13 what have you. And it comes out, and it's provided 14 free with part of your, you know, Appraisal Institute 15 dues. There are a number of other particular things 16 you can subscribe to, one being CoStar, which is 17 local information on sales. And we utilize that a 18 lot. 19 We also consider -- we have a cost manual 20 provided by Marshall Valuation Service that it helps 21 us with the cost information. We also have a -- a 22 publication that our company subscribes to, which 23 provides information regarding yields and -- and this 24 sort of thing on various and sundry type properties, 25 so -- on a national level.	Page 21 1 latest, but it may be. On Page 52, also, it's 2 footnoted, and several other places. 3 Q. So would it be fair to say that that book, 4 The Appraisal of Real Estate, sets forth appraisal 5 principles and things of that nature? 6 A. Yes. That would be a fair statement. 7 Q. Okay. Does it set -- try to -- attempt to 8 set forth the standards of appraisal practice? 9 A. That's included to some degree in it, yes. 10 Although there is a separate publication for that. 11 Q. What would that separate publications be? 12 A. It's USPAP. 13 Q. Okay. 14 A. Just... 15 Q. And would that publication, The Appraisal 16 of Real Estate, also contain what might be called the 17 appraisal theory? 18 A. Yes, sir. 19 Q. And you have a previous -- you have 20 previous experience in condemnation or eminent domain 21 cases? 22 A. Yes, sir. 23 Q. And approximately how long have you been 24 involved in those type of cases? How long have you 25 been giving your opinions in those?

Owen Appraisal & Consulting

**APPRAISER'S QUALIFICATIONS
R. BRUCE OWEN, MAI**

DATE OF BIRTH:

December 27, 1952

FORMAL EDUCATION:

Graduated Greenville High School, Greenville,
South Carolina, - 1971

Graduated Wofford College, B.A. Economics -
1975

PROFESSIONAL EDUCATION:

**Courses Sponsored by Appraisal Institute
(Formerly A.I.R.E.A.):**

- Course 1-A, Basic Principles of Real Estate
Appraisal, University of North Carolina

- Course 1-B, Capitalization Theory and
Techniques, University of Georgia

- Course 2-1, Case Studies in Real Estate
Valuation, Memphis State University

- Course 2-2, Case Studies in Real Estate
Valuation, Memphis State University

- Course 2-3, Standards of Professional
Practice, Columbia, South Carolina

- Course 4, Litigation Valuation University of
Houston

**Courses sponsored by Commercial -
Investment Real Estate Council:**

- CI101, Fundamentals of Real Estate
Investment and Taxation

- CI301, Decision Analysis for Commercial
Real Estate

Other Courses:

- Commercial Real Estate Leasing - The Wharton
School of Business, University of Pennsylvania

Owen Appraisal & Consulting

- Office Leasing - Northwest Center For Professional Education

- Leasing Commercial Real Estate - Northwest Center For Professional Education

PROFESSIONAL AFFILIATIONS:

Licensed South Carolina Real Estate Commission - Permanent Salesman

Member of Greenville County Board of Realtors

MAI Designation - Appraisal Institute (Formerly A.I.R.E.A.)

State Certified Real Estate Appraiser in the State of South Carolina - License Number CG00516

State Certified Real Estate Appraiser in the State of North Carolina - License Number A5629

State Certified Real Estate Appraiser in the State of Georgia - License Number 5089

Local Chapter Offices Held:
Chairman By-Laws Committee
Chairman Candidates Guidance Committee
Member Admissions Committee
Experience Review Committee

COURT EXPERIENCE:

- Master in Equity Court
- Greenville County Court
- U.S. District Court

APPRAISAL EXPERIENCE:

R. Bruce Owen has been engaged in the practice of real estate appraisal since 1975. Experience includes residential, commercial and industrial field experience. Mr. Owen was in charge of all residential appraisal work with the Robinson Co. from 1976 to 1980. This included mortgage loan appraisals, relocation and MGIC default reports. Since 1980, the major concentration has been on the appraisal and market analysis of commercial and industrial properties. In 1986, after serving as Leasing Director for The Furman Co.'s Leasing Department, Mr. Owen was asked to create a new

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division. This division being the Appraisal Division, specializing in fee appraisal and market analysis of commercial properties and most recently the appraisal of single-family residential properties. In 1989, Mr. Owen and two partners formed their own appraisal, construction, and real estate partnership known as the Crestmont Company. The partnership was dissolved after four years. In 1993 Mr. Owen formed a partnership with Mr. James D. Faulkner to form Owen-Faulkner and Associates specializing in real estate appraisals, consulting and tax appeals as well as general real estate brokerage. This partnership was dissolved as of December 31, 2000. Mr. Owen formed Owen Consulting & Appraisal Services where he continues to specialize in all types of real estate appraisal including industrial, commercial, multi-family, and single family residential.

EMPLOYMENT HISTORY:

2001 to Present - Owner, Owen Appraisal & Consulting Services, Inc., Greenville, SC

1993 to 2001 - General Partner, Owen-Faulkner and Associates, Greenville, SC

1989 to 1993 - General Partner, Owen-Faulkner & Associates, (formerly Crestmont Co.), Greenville, SC

1989 to October, 1993 - Managing Partner of the appraisal group, The Crestmont Company, Greenville, SC

1986 to 1989 - Vice President, Appraisal Division, The Furman Co., Greenville, SC

1983 to 1986 - Senior Appraiser and Director of Leasing, The Furman Co., Greenville, SC

1975 to 1983 - Independent Fee Appraiser, James H. Robinson and Associates, Greenville, SC

1971 to 1975 - Student

Owen Appraisal & Consulting

PARTIAL LIST OF CLIENTS:

Wells Fargo
Comerica
Regions Bank
SouthTrust Bank
TD Bank
First Citizens of SC
BB & T Bank
Palmetto Bank of South Carolina
National Bank of South Carolina
Greenville National Bank
Insignia Financial
Professional Mortgage
Fluor-Daniel
W.W. Grainger
Emery Chemicals
Fountain Industries
Norfolk-Southern Railway
Alcoa Fujikura
Greenville Transit Authority
Guardian Life of New York
St. Francis Hospital
Greenville Technical College
Ballenger Group, Inc.
U.S. Postal Service
Milliken & Company
Michelin, N.A.
Bausch & Lomb
Roadway Services, Inc.
Selox, Inc.
FIMSA, Inc.
National Property Advisors
Easlan Capital
Habersham Federal Reserve & Trust
Merovan Corporation
Greenville Co. Recreation Comm.
Lighthouse Commercial Bank
Furman University
TNS Mills
Exxon
British Petroleum/Gulf
Henkel Corporation
Kent Manufacturing
BP Corporation

Owen Appraisal & Consulting

City of Greenville
Greenville County
Greenville Water Service
AT & T
Morris Bean & Company Bell/Atlantic - Metro Mobil
BF Goodrich
Greenwood Development
The Cliffs
GE Financial Assurance
West Coast Life Insurance Company
American United Life Insurance Company
West Deutsche Immobilien Bank
Bank of Travelers Rest
Greer State Bank
First Citizens Bank
Boyette Capital
JSI Realty Group
Avtex
Protective Life Company
United Farm Family Life Insurance Company

Owen Appraisal & Consulting

State of South Carolina BCD1028345
 Department of Labor, Licensing and Regulation
 Real Estate Appraisers Board

ROGER B OWEN

Is hereby entitled in practice as a:

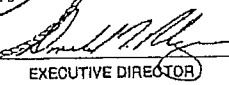
Certified General Appraiser

License Number: 516

Expiration Date: 06/30/2014

OFFICE COPY


 Administrator

NORTH CAROLINA APPRAISAL BOARD	
APPRAISER QUALIFICATION CARD	
Expires June 30, 2014	
REGISTRATION / LICENSE / CERTIFICATE HOLDER	
13	14
ROGER B OWEN	
A5829	
APPRAISER NUMBER	NATIONAL REGISTRY
 APPRAISER'S SIGNATURE	 EXECUTIVE DIRECTOR

ROGER BRUCE OWEN, SR

5089

Status ACTIVE

CERTIFIED GENERAL REAL PROPERTY
APPRAISER

ORIGINALLY LICENSED

09/22/1994

END OF RENEWAL
12/31/2014THIS LICENSE EXPIRES IF YOU FAIL TO PAY
RENEWAL FEES OR IF YOU FAIL TO COMPLETE ANY
REQUIRED EDUCATION IN A TIMELY MANNER.
 State of Georgia
 Real Estate Commission
 Suite 1000 - International Tower
 229 Peachtree Street, N.E.
 Atlanta, GA 30303-1805

 WILLIAM L. ROGERS, JR.
 Real Estate Commissioner

62124012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CA No. 2012-CP-23-4064
COUNTY OF GREENVILLE	)	
	)	
Piedmont Natural Gas Company,	)	
	)	
Condemnor,	)	
	)	MOTION TO RECONSIDER, ALTER
vs.	)	OR AMEND JUDGMENT
	)	
Richeous Smith, et.al.,	)	
	)	
Landowners, Other	)	
Condemnees and	)	
Unknown Claimants.	)	
	)	

Condemnor herein respectfully moves that the Honorable Charles B. Simmons, Jr., Master in Equity for Greenville County, reconsider, alter or amend his Order in the above matter dated June 23, 2015, and filed on June 25, 2015. Condemnor received written notice of the entry of this Order on June 25, 2015. Condemnor makes this Motion pursuant to Rules 52, 59 and 60, SCRCPP. The grounds for this Motion are as follows:

1. Condemnor respectfully submits that the Court erred by admitting and considering the expert testimony and opinion of Landowners' appraisal witness, R. Bruce Owen, on the issue of "proximity" damages without first properly examining the substance of that testimony to determine its reliability.

All expert testimony must meet a reliability threshold under Rule 702, SCRE, which imposes an affirmative and meaningful gatekeeper function on the trial judge. Jamison v Morris, 385 S.C. 215, 684 S.E.2d 168 (2009). Pursuant to Rule 702, SCRE, the reliability of non-scientific expert testimony is also part of the gatekeeping function of a trial court and should be determined prior to its admission into evidence. All expert testimony, not just scientific expert testimony, must be vetted for its reliability prior to its

admission at trial. State v Tapp, 398 S.C. 376, 728 S.E.2d 468 (2012) (“We believe the record supports that the circuit judge admitted Prodan’s testimony based merely on a finding he was qualified as an expert, and left the reliability determination for the jury. Therefore, the admission of Prodan’s testimony was error”). Expert evidence is required where a factual issue must be resolved with scientific, technical, or any other specialized knowledge. Watson v Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010). Expert witness testimony is intended to assist the trier of fact with specialized knowledge and the trial court may *only* admit expert testimony after it finds that: (1) the expert testimony is necessary to assist the trier of fact in resolving factual questions; (2) the expert is qualified in the particular area; and (3) and the testimony is reliable. Id. at 446-47, 699 S.E.2d at 175. As described herein, Mr. Owen’s testimony as to the diminution of value of the remainder on the basis of fear and stigma is inadmissible under all three prongs of the test in Watson.

Condemnor respectfully submits that the Court should reconsider this issue and that the Order should be altered or amended so as to set forth the appropriate salient findings of facts and conclusions of law concerning the admissibility of the expert testimony and opinion of Landowners’ appraisal witness, R. Bruce Owen, on the issue of proximity damages.

2. As to the first prong requiring that the proffered expert testimony be necessary to assist the trier of fact in resolving factual questions, Condemnor respectfully submits that the proffered testimony is inadmissible because fear or stigma are not proper elements to be considered as an element of damage to the remainder and as an element of just compensation. Condemnor respectfully submits that the Court should reconsider the

issue of whether fear or stigma (proximity damages) associated with the particular pipe line right of way and accompanying caution sign and markers in question are proper elements to be considered as an element of damage to the remainder and as an element of just compensation, and find and conclude that they are not. Condemnor further submits that the Order should be altered or amended accordingly to find and conclude that the aforementioned are not proper elements of damage or just compensation, and to find and Order an amount of just compensation that does not include these proximity damages.

South Carolina courts have refused to award damages for alleged diminution in property value caused by damage to the “reputation” of property. Gray v Southern Facilities, Inc., 256 S.C. 558, 569, 183 S.E.2d 438, 443 (1971). In Gray, the Court refused to consider the plaintiff’s contention that market value and sales potential had been reduced and diminished by “psychological factors” or the “bad name” and “bad reputation.” Id. at 568-69, 183 S.E.2d at 443. It decided, however, that it need not rule on the recovery of such injury given the speculative nature of damages and causation (among several possible sources) in that case. Id. at 568, 183 S.E.2d at 443.

Specifically, the Court stated that:

[w]hile proof, with mathematical certainty, of the amount of loss or damage is not required, in order for damages to be recoverable the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy. Neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation. See Piggy Park Enterprises, Inc. v Schofield, 251 S.C. 385, 162 S.E.2d 705, and cases therein cited.

Id. at 569, 183 S.E.2d at 444.

Thus, the Court in Gray concluded that stigma damages were inappropriate and the Gray decision should be viewed as a stern warning against extending South Carolina

law to include stigma damages. *See also Clark v Greenville County*, 313 S.C. 205, 208, 437 S.E.2d 117, 118 (1993) (South Carolina Supreme Court affirmed the trial court's granting of summary judgment against plaintiff property owners adjacent to a landfill based on a "stigma" argument); Jennifer L. Young, Stigma Damages: Defining the Appropriate Balance Between Full Compensation and Reasonable Certainty, 52 S.C. L. Rev. 409, 422 (2001) (no stigma damage claim exists under South Carolina law).

Condemnor submits that the Order should be altered or amended accordingly to find and conclude that fear and stigma are not proper elements of damage or just compensation, and to find and Order an amount of just compensation that does not include these proximity damages.

3. As to the second prong, requiring that the expert be qualified in the particular area of the proffered opinion, Mr. Owen flatly admitted at trial that he lacks any training or specialized knowledge in the area of estimating diminution of value as a result of alleged fear and stigma arising from a natural gas transmission pipeline right-of-way and associated signage. *See State v Norton*, No. 2011-UP-586, 2011 WL 11736357, at *1 (Ct. App. Dec. 21, 2011) (finding that the trial court erred in admitting proffered testimony that was beyond the scope of the witness's expertise). Mr. Owen admitted that he had not attended any seminars that taught the approach or technique that he utilized in relation to the proximity damage issue, nor had he seen such an approach referenced in any appraisal literature. Mr. Owen, by his own admission, lacks the requisite knowledge and skill to qualify as an expert in the area of his proffered testimony on diminution of value to the remainder.

Neither should the testimony of Mr. Owen be admissible as lay witness testimony.

Under Rule 701, SCRE, lay witnesses may not provide testimony in the form of an opinion that is based on scientific, technical or other specialized knowledge.

Undoubtedly, the diminution of value from alleged fear and stigma undoubtedly requires knowledge beyond the ordinary experience and knowledge of the normal fact finder.

Therefore, the proffered testimony of Mr. Owen in this area, in which he is not qualified to testify as an expert, should have been excluded. Condemnor requests that the Court reconsider the admissibility of the proffered testimony of Mr. Owen as to diminution of value on the basis of fear and stigma and find that the testimony is inadmissible on the basis that the proffered testimony was beyond the scope of his expertise.

4. As to the third prong of the Watson admissibility test requiring that expert testimony is reliable, Condemnor requests that this Court reconsider the opinions proffered by Mr. Owen on the issue of proximity damages and find that those opinions are not reliable, pursuant to Rule 702, SCRE, and any probative value of such opinions and evidence are outweighed by its prejudicial effect, pursuant to Rule 403, SCRE. More specifically, Mr. Owen's opinions regarding fear, stigma and diminution of value are not properly supported by underlying market evidence and data, and are based upon improper appraisal methodology and speculation. The aforementioned evidence and opinion and should therefore have been excluded and not considered by the Court.

The burden is upon the landowner to show that the value of his remaining land will be diminished by the taking. Such damage will not be presumed. The burden of proof is upon the owner to show that the taking of part of his property will cause damage to the remainder, and unless he show such damage by affirmative evidence, furnishing a

basis from which a reasonable and proper estimate of the amount thereof can be made, his compensation will be limited to the value of the land taken; and it is of course competent for the condemning party to rebut such evidence. S.C. Power Co. v Baker, 212 S.C. 358, 46 S.E.2d 278 (1948)

Mr. Owen admitted at trial that he had not done any studies to support his theory of proximity damages. He admitted that he did not have any comparable sales to support his theory, and that he did not utilize any paired sales analysis in his approach. He did not produce any sales, studies or other market evidence to show any public fear of a natural gas pipeline or an adverse market impact caused by the presence of, or proximity to, a natural gas pipeline. He testified that, to his knowledge, there is no law or regulation that requires a “buffer zone” adjacent to a natural gas pipeline easement. Similarly, he testified that the aforementioned was also true as to his opinion concerning the “Caution” sign (since removed) and its impact upon proximity damages, i.e., he had no market evidence or data to support his opinion on this issue. Mr. Owen did not set forth any, evidence, objective criteria, reasoning, or reliable methodology as to why a buffer zone would be necessary adjacent to the easement, or to justify the size of any such buffer zone. Likewise, Mr. Owen did not set forth any evidence, objective criteria, reasoning or reliable methodology to support his opinion of a 6% “general damage” to the remainder based upon his proximity damage theory.

In land condemnation cases, mere conjecture, speculation, or surmise is not allowed by the law to be a basis of proof in respect of damages or compensation. The testimony offered should tend to prove the fact in question with reasonable certainty. Department of Transportation v Haywood County, 260 N.C. 349, 626 S.E.2d 645 (N.C.

2006) (“Although each expert had experience in appraising real estate, none articulated any method used to arrive at his figures, even when closely questioned. To the contrary, these experts testimony about feelings and personal opinions, unsupported by objective criteria, explains and justifies the trial court’s concern that their opinions were based upon hunches and speculation. Because the trial court’s threshold determination that the experts’ method of proof lacked sufficient reliability was neither arbitrary nor the result of an unreasoned decision, we hold that the trial court’s grant of plaintiff’s motion for a directed verdict was not an abuse of discretion.”). *See also* Kipps v Virginia Natural Gas, 247 Va. 162, 441 S.E.2d 4 (Va. 1994); Texas Gas Trans. v Bd. of Levee Commissioners for the Yazoo- Mississippi Delta, Civil Action No. 2:08CV240-B-V (U.S.D.C., N.D. Miss. 12-6-2012); Crusciola v Pasny, 81 N.Y.2d 649, 621 N.E.2d 1195 (N.Y. 1993); Western Farmers Electric Coop. v Ennis, 1999 OK Civ. App. 111, 993 P.2d 787 (Ok. 1999); Arents v ANR Pipeline Co., 281 Wis.2d 173, 696 N.W.2d 194 (WI App. 2005); Vitauts M. Guldis, J.D., Annotation, *Fear of Powerline, Gas or Oil Pipeline, or Related Structure as Element of Damages in Easement Condemnation Proceeding*, 23 ALR4th 631.

The common requirement in the condemnation cases involving consideration of proximity damages as an element of just compensation is that a proponent of such evidence must prove that the proffered safety hazard actually affects market value, i.e., there must be evidence that the market is fearful of the proffered safety hazards, and that the market values property less because of it. Mr. Owens’ opinion as to damages to the remainder due to a “negative conception in the market” (proximity damages) lacks adequate evidentiary or market data support to be admissible even under the least

restrictive view of “proximity damages” due to fear or stigma. Mr. Owen proffered no evidence of a general public or market fear of natural gas pipelines in this area, nor did he produce any evidence of any diminution in market value due to such fear. Similarly, Mr. Owen offered no evidence of any effect of a “Caution” sign on public or market fear, or any corresponding diminution of value. Without such evidence, Mr. Owen’s opinion lacks the foundational reliability requirement necessary for admissibility of nonscientific expert testimony. His opinion on this issue is based upon his personal views and speculation on his part, and therefore should not have been admitted or considered by the Court. Condemnor was prejudiced by the admission of Mr. Owen’s expert testimony on the issue of proximity damages, because this was the only evidence presented by Landowners to support their theory and claim for proximity damages.

Condemnor respectfully submits that the Court should reconsider this issue and that the Order should be altered or amended so as to exclude the expert testimony and opinion of Landowners’ appraisal witness R. Bruce Owen on the issue of “proximity” damages, due to the lack of reliability of this testimony and opinion, and to find and Order an amount of just compensation that does not include these proximity damages.

5. At trial, this Court only tendered Mr. Owen as an expert in real estate appraisal. As discussed in detail above, Mr. Owen’s expertise in real estate appraisal does not extend to the estimation of alleged diminution of value as a result of fear and stigma allegedly arising from a natural gas transmission pipeline right-of-way and the associated signage. Without additional evidence that Mr. Owen had scientific, technical or specialized knowledge in this area (which he did not and could not offer), Mr. Owen’s proffered testimony on proximate damages was beyond the scope of the expertise for

which he was tendered. Condemnor respectfully submits that the Order should be altered or amended to add, after the sentence on page 4 of the Order that reads “The landowners proffered the testimony of Mr. Bruce Owen as an expert real estate appraiser,” the following language “Mr. Owen was tendered and qualified as an expert only in the area of real estate appraisal.”

6. Landowners’ witness Alma Rene Smith Murray did not testify that, in her opinion, the ROW negatively impacted the value of the tract, as stated on page 4 of the Order. Even if Ms. Murray did offer such opinion, she is not qualified, even as a fractional owner of the tract, to offer such opinion on this issue, and any such testimony by her would have been improper and inadmissible. Neither the owner nor anyone else may base an opinion of value on personal fear.... admissible evidence is an opinion of value of a qualified witness based on the existence of fear in the buying public in general which affects market value. Western Farmers Electric Coop. v Ennis, 1999 OK Civ. App. 111, 993 P.2d 787 (Ok. 1999) (Case involving high voltage power line and fear of electro-magnetic fields [“EMFs”])

Condemnor respectfully submits that the Court reconsider this issue and alter or amend the Order to delete any reference to Ms. Murray testifying as to her opinion of the ROW’s negative impact on the value of the tract.

7. There is no evidence that the “Caution” sign was present on the date of the taking, June 22, 2012, as referenced in page 3 of the Order. Condemnor’s witness, Adam Long, the engineering Project manager for the Line 378 Project, testified that the “Caution” sign was not the type of sign that would be used in connection with an underground natural gas pipeline, pursuant to Condemnor’s policies, and had been

removed prior to the hearing. There is no reliable evidence that the “Caution” sign, or other above ground markings or monitoring devices, decrease the value of the remaining property. The “Caution” sign, monitoring device and gate were not a part of the original taking, as referenced on page 2 of the Order, and should not be considered as an element of just compensation.

Condemnor respectfully submits that the Court should reconsider this issue and that the Order should be altered or amended so as to exclude any references to the “Caution” sign, gate, above ground markings and monitoring device. In the alternative, the Order should be altered or amended to reflect that the “Caution” sign, gate, above ground markings and monitoring device were not part of the original taking, and that there is no evidence as to when the “Caution” sign and other items were placed on the property. Also in the alternative, the Order should be altered or amended to reflect that the “Caution” sign has been removed, and to refer to the “Caution” sign in the past tense. The Order should further be altered and amended find an amount of just compensation that does not include proximity damages.

8. Condemnor’s appraisal witness, H. Corbin Haskell, testified that he investigated and evaluated the issue of whether there were damages to the remainder and concluded that there were none. He further testified that he had considered market data, including evidence of sales in nearby neighborhoods in proximity to similar natural gas pipeline right of ways, and interviews with local developers, and determined from this market evidence that the existence of a natural gas pipeline did not decrease the property values or deter builders from placing lots and houses near or on the right of way.

Condemnor respectfully submits that the Court should reconsider this issue and alter or amend the Order to reflect the foregoing.

9. The evidence adduced at trial showed that at least four (4) lots located in The Townes at Riverwood Farm subdivision were located immediately adjacent to the natural gas pipeline right of way in that subdivision, and were not separated from the right of way by a road “buffer area”, as referenced on page 6 of the Order. Condemnor’s appraisal witness, H. Corbin Haskell, pointed out the fact that the right of way located in the Townes at Riverwood Farm bisected a portion of the parent tract, whereas the right of way in this case was located along and adjacent to the northern boundary of the parent tract. There is no evidence to support the conclusion, on page 6 of the Order, that “it is apparent that the developer did in fact use a buffer zone methodology for the purpose of ameliorating or minimizing damages.” As there was no evidence as to that developer’s methods or purpose, any such conclusion could only be based on speculation. There is no evidence that the proximity to the natural gas pipeline diminished the value of the properties in the subdivision or deterred development and construction in proximity to the right of way. Condemnor respectfully submits that the Court should reconsider this issue and alter or amend the Order to reflect the foregoing.

10. The evidence adduced at trial showed that the natural gas pipeline right of way located in the Mason’s Crossing subdivision was actually located on several of the residential lots in the subdivision. Landowners’ appraisal witness, R. Bruce Owen, testified that he did not know if the privacy fences that he observed in the subdivision were located along the rear lot lines or along the boundary of the right of way. There is no evidence that any of the homes in the subdivisions had constructed “buffers” behind

their residences, as referenced on page 7 of the Order; no “buffer” would be possible, as the right of way is located on the lots themselves. The relative size and value of the homes in the subdivision is not relevant to the issue of whether property values are diminished by proximity to the natural gas pipeline right of way. There is no evidence that the proximity to the natural gas pipeline diminished the value of the properties in the subdivision or deterred development and construction in proximity to the right of way. Condemnor respectfully submits that the Court should reconsider this issue and alter or amend the Order to reflect the foregoing.

11. The presence of “Caution” signs on other properties, referenced on page 3 of the Order, is not relevant to the issue of just compensation in this case. Condemnor respectfully submits that the Court should reconsider this issue and alter or amend the Order to delete these references.

12. The references to the mediation conference in this case, and the settlements in other cases, referenced on page 3 of the Order, are irrelevant and inadmissible, pursuant to Rule 408, SCRE. Condemnor respectfully submits that the Court should reconsider this issue and alter or amend the Order to delete these references.

13. Condemnor objected to the admissibility of Landowners’ appraisal witness, R. Bruce Owen, based, in part, on the issue of the reliability of his testimony and opinion as to proximity damages and diminution in value of the remaining property. Condemnor objected because, among other things, Mr. Owen did not base his conclusion on any reliable sources, data or methodology. Expertise, reliability, and the ability of the testimony to assist the trier of fact are all threshold determinations to be made prior to the admission of expert testimony, and generally, a witness’s expert status will be determined

prior to determining the reliability of the testimony. State v Tapp, 398 S.C. 376, 728 S.E.2d 468 (2012) (“Under *White*, after qualifying Prodan as an expert, the circuit court judge should have evaluated the substance of Prodan’s testimony to determine if it was reliable, as required by Rule 702, SCRE.”) Condemnor respectfully submits that the Court should reconsider this issue and alter or amend the Order to accurately characterize Condemnor’s positions on these issues.

14. In quoting from the case of Western Farmers Electric Coop. v Ennis, 1999 OK Civ. App. 111, 993 P.2d 787 (Ok. 1999), in the Order the Court omitted the following relevant passage: “Under the minority rule, the parties’ evidence and arguments are limited to the existence of fear, its prevalence, and its effect on market value, if any. Under either the ‘intermediate reasonable fear’ approach or the ‘minority perceived fear’ rule neither the owner nor anyone else may base an opinion of value on personal fear. Admissible evidence is an opinion of value of a qualified witness based on the existence of fear in the buying public in general which affects market value.” (internal quotations omitted) The appellate court in that case also referenced the evidence that the expert witness was relying on to base her opinion as to the issue of public dissemination of information relating to the possible dangers of electro magnetic fields. Such reliable evidence and data are wholly lacking as support for Mr. Owen’s opinion as to proximity damages.

In referencing the case of Arents v ANR Pipeline Co., 281 Wis.2d 173, 696 N.W.2d 194 (WI App. 2005), on page 11 of the Order, the Court erroneously states that only the testimony of pollsters was excluded in that case. The Wisconsin Court of Appeals also affirmed the exclusion of other evidence concerning “fear and stigma” and

alleged safety concerns. Further, the Court omitted the following relevant passage from the case:

Numerous jurisdictions throughout the country have admitted evidence regarding fear and safety concerns of natural gas transmission pipelines, electrical transmission lines and oil and gasoline pipelines in partial takings cases such as the one here. The primary guiding principle in these cases in determining the admissibility of this evidence is whether the evidence is relevant; in other words, has a qualified expert, such as a person involved in the buying or selling of real estate (real estate agent or broker, or a real estate appraiser), successfully drawn the pertinent nexus in the calculation of damages between evidence of that fear and the fair market value of the property being condemned following the taking. Accordingly, we conclude that where the requisite nexus has been established by a qualified expert between the evidence of fear regarding the presence of a natural gas transmission pipeline on condemned property and the fair market value of that property following the taking and the evidence is relevant and not speculative, remote or a waste of time, such evidence may be admissible in a condemnation proceeding to determine the diminution value of that property,

In the present case, Mr. Owen has not drawn the “pertinent nexus” in the calculation of damages in his opinion, and his evidence and opinion are therefore speculative and remote. The holding in Arents is narrower than the Order would suggest, and Mr. Owen’s opinion as to proximity damages should have been excluded.

The Court also referenced the case of Crusciola v Pasny, 81 N.Y.2d 649, 621 N.E.2d 1195 (N.Y. 1993) on page 11 of its Order. The Court omitted the following relevant passage from that case in the Order:

We, of course, do not hold that claimants are relieved from giving any proof to establish their claims and just compensation damages. Rather, claimants must still establish some prevalent perception of a danger emanating from the objectionable condition. As the *Ryan* court noted, “no witness, whether expert or non-expert, may use his or her personal fear as a basis for testifying about fear in the marketplace. Some credible, tangible evidence that a fear is prevalent must be presented to prove the adverse market value impact. Claimants should have to connect the market value diminution of the property to the particular fear in much the same manner that any other adverse market effects are shown, e.g., by proffering evidence that the market value of property across which power lines have been built has been negatively affected in relation to comparable properties across which no power lines have been built (*see generally*, 4 Nichols, Eminent

Domain Sec. 12.02 [Sackman 3d ed. 1993]). Thus, while a personal or quirky fear or perception is not proof enough, the public's or the market's relatively more prevalent perception should suffice, scientific certitude or reasonableness notwithstanding.

In the present case, there is no reliable evidence that a fear or negative perception is prevalent in the marketplace, or that such is connected to any adverse market effects. Consequently, Mr. Owen's opinion concerning proximity damages should have been excluded.

The Court cites the case of Cartee v Lesley, 286 S.C. 249, 333 S.E.2d 341 (Ct. App. 1985), which was decided prior to the adoption of the South Carolina Rules of Evidence and the subsequent South Carolina Supreme Court cases of State v Council, 335 S.C. 1, 515 S.E.2d 508 (1999), Watson v Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010), et.al. Condemnor submits that, subsequent to Cartee, the Rules of Evidence and subsequent case law have created more rigorous and stringent requirements for the admission of expert testimony and opinion.

The Court cites North Carolina Supreme Court case of State Highway Commission v E. R. Conrad and Sally D. Conrad, 263 N.C. 394, 139 S.E.2d 553 (1965) on page 9 of the Order. In that case, the exclusion of the drawing referenced in the Order, and testimony as to the value of proposed subdivided lots based upon the drawing, was affirmed by the North Carolina Supreme Court. Further, the holding of the Conrad case, set forth on page 9 of the Order, was subsequently limited by the North Carolina Supreme Court, as to the issue of proximity damages, in Department of Transportation v Haywood County, 260 N.C. 349, 626 S.E.2d 645 (2006) wherein it was held that:

In land condemnation cases, mere conjecture, speculation, or surmise is not allowed by the law to be a basis of proof in respect of damages or compensation. The testimony offered should tend to prove the fact in question with reasonable

certainty. Although each expert had experience in appraising real estate, none articulated any method used to arrive at his figures, even when closely questioned. To the contrary, these experts testimony about feelings and personal opinions, unsupported by objective criteria, explains and justifies the trial court's concern that their opinions were based upon hunches and speculation. Because the trial court's threshold determination that the experts' method of proof lacked sufficient reliability was neither arbitrary nor the result of an unreasoned decision, we hold that the trial court's grant of plaintiff's motion for a directed verdict was not an abuse of discretion.

In the present case, Mr. Owen's testimony and opinion is based upon conjecture, speculation, and surmise, and should therefore have been excluded.

Condemnor respectfully requests that the Court reconsider these issues and alter or amend its Order to set forth the complete and correct holdings of the above referenced cases, exclude the testimony and opinion of R. Bruce Owen as to proximity damages, and award an amount of just compensation that does not include proximity damages.

15. Condemnor respectfully submits that the Court should alter or amend its Order to find the facts specially and state separately its conclusions of law thereon, pursuant to Rule 52, SCRCP.

16. Landowners did not meet their burden of proof to show that the value of their remaining land will be diminished by the taking. Condemnor respectfully submits that the Court should reconsider this issue, and alter or amend the Order to reflect that Landowners failed to meet their burden of proof to show proximity damages, and to find and Order an amount of just compensation that does not include these proximity damages.

17. Condemnor requested various modifications to the proposed Order prior to the entry of the order on June 25, 2015. While Condemnor respectfully disagrees with the Court's conclusions arising out of the trial of this matter and objects to the entry of

any Order in favor of the Landowners, Condemnor requests that the Court reconsider the requested modifications and amend or alter the Order as follows:

A. Page 2 - the sentence that reads: "The right of way includes various ground markers including a gate, a monitoring device and a caution sign located immediately at the entrance to the subject property." The words "now-removed" should be added in front of the words "caution sign."

B. Page 2 - the sentence that reads: "The caution sign in question is at the front of the property at the entranceway, not more than approximately twenty feet (20') or so and clearly visible from Rock Road." The word "is" should be changed to "was."

C. Page 4 - the sentence that reads: "The landowners proffered the testimony of Mr. Bruce Owen as an expert real estate appraiser." After that sentence, the following language should be added: "Mr. Owen was tendered and qualified as an expert only in the area of real estate appraisal."

D. Page 4 - the sentence that reads: "He testified that one methodology that he considered appropriate to ameliorate damage to the remainder would be to allow for a buffer zone along the right of way and depreciating the buffer zone for additional damages." The word "one" should be changed to "the."

E. Page 4 - the sentence that reads: "Mr. Owen testified that he had made an investigation into the land values by comparable sales of tracts of land, but also had had numerous discussions with developers both before and after his assignment to determine the extent to which the offending right of way with accompanying caution sign would diminish the value of the remaining tract." After that sentence, the following

language should be added: "Mr. Owen relied on the opinions of these developers as to the development values of the property in reaching his opinions about the diminution in property values for the subject property."

F. Page 5 - the sentence that reads: "Based on his research and his years of experience, Mr. Owen determined that the damages for the area within the right of way and the small severance equal the sum of One Hundred Seventy Five Thousand Three Hundred Twenty Four (\$175,324.00) Dollars." The sentence should be changed to read: "Based on his research, his years of experience, the opinions of the developers he talked to about the development value of the property and in reliance on the alleged remarks by the developers, Mr. Owen determined that the damages for the area within the right of way and the small severance equal the sum of One Hundred Seventy Five Thousand Three Hundred Twenty Four (\$175,324.00) Dollars."

G. Page 5 - the paragraph that begins with the sentence: "In addition to the buffer zone methodology, Mr. Owen further offered the opinion that he had considered general damages to the remainder without specifying or without considering the buffer zone as a method of ameliorating damages." This paragraph should have been removed.

H. Page 6 - the sentence that reads: "PNG through its expert, H. Corbin Haskell, sought to offer examples of other subdivisions whereby gas line rights of way did not affect the relative sales prices of houses within those subdivisions." A sentence should be added after this sentence reading: "Mr. Haskell considered market data including nearby neighborhoods and determined that the existence of a gas line did

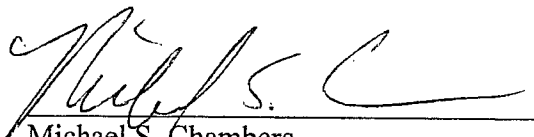
not decrease the property values or deter builders from placing lots and houses near or on the right of way.”

I. Page 12 - the sentence that reads: “It is my conclusion and I so find that fear or stigma associated with the natural gas pipe transmission line ROW involved herein and the accompanying signage and markers are a proper element to be considered by the Court. Further, I find that the methodology employed by Mr. Owen in forming his appraisal is both reasonable and appropriate.” The sentence should be revised to read: “It is my conclusion and I so find, as a matter of law, that fear or stigma associated with the natural gas transmission pipeline and accompanying caution sign in question are proper elements to be considered as damages in this case. I also find that the methodology employed by Mr. Owen in forming his appraisal is proper.”

Condemnor objects to the Order as entered, and further Objects to the entry of a reconsidered, altered or amended order including only the revisions identified in this Paragraph in favor of the Landowners. Condemnor respectfully requests that the Court reverse its earlier ruling and find in favor of the Condemnor. Condemnor offers these matters for reconsideration of the Court in accordance with Rules 52, 59 and 60, SCRPC.

WHEREFORE, PNG respectfully requests that this Court grant its motion to reconsider, alter or amend the Order as described above.

Respectfully submitted, this 6th day of July, 2015.


Michael S. Chambers
121 Manly Street, Suite B
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(864) 242-9245
S.C. Bar I.D. No. 001178

R147

Date: July 6, 2015

Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C. A. No.: 2012-CP-23-4064
	)	
Piedmont Natural Gas Company,	)	
	)	
Condemnor,	)	
	)	MEMORANDUM IN OPPOSITION
-vs-	)	TO CONDEMNOR'S MOTION TO
	)	RECONSIDER, ALTER, OR AMEND
Richeous Smith, et al.,	)	JUDGMENT
	)	
Landowners, Other	)	
Condemnees, and	)	
Unknown Claimants.	)	

The Landowners/Condemnees hereby submit this Memorandum in Opposition to Piedmont Natural Gas Company's Motion to Reconsider, Alter, or Amend Judgment (the "Motion") filed in the within matter. Pursuant to Rules 52, 59, and 60, SCRCF, Condemnor has articulated no basis upon which the Court's Order of June 23, 2015, should be reconsidered, altered, or amended. Landowners respectfully submit that the Order should stand as drafted.

Specific responses to Condemnor's Motion are as follows:

1, 13¹. THE COURT PROPERLY ADMITTED AND CONSIDERED THE EXPERT TESTIMONY AND OPINION OF LANDOWNERS' APPRAISAL WITNESS.

The Landowners proffered R. Bruce Owen as their expert appraiser to testify to the amount of just compensation due from Condemnor to Landowners. Condemnor stipulated that Mr. Owen was properly qualified as an expert appraiser. As the Court noted, Mr. Owen has been qualified and testified as an expert appraiser in dozens, if not hundreds, of condemnation cases. Under the Watson v. Ford Motor Co. analysis and Rule 702 of the South Carolina Rules of Evidence, Mr. Owen's testimony as to diminution in value was properly admitted and considered by the Court.

¹ Numerical references contained here are for the Court's convenience, and refer to the paragraph numbers of Condemnor's Motion.

2. SOUTH CAROLINA LAW PERMITS “STIGMA” DAMAGES.

Contrary to Condemnor’s representations to the Court in its Motion, South Carolina DOES allow for stigma damage as an element of recovery. Condemnor has mischaracterized the holding of Gray v. Southern Facilities, Inc., 256 S.C. 558, 183 S.E.2d 438 (1971) by saying that stigma damages were “inappropriate,” and by describing this case as a “stern warning” against the use of stigma damages. In fact, the Gray court declined to address the stigma damage issue. Id. at 570, 183 S.E.2d at 444. Declining to address an issue does not a stern warning make.

Condemnor has also misstated the summary of Stigma Damages: Defining the Appropriate Balance Between Full Compensation and Reasonable Certainty, Jennifer L. Young, 52 S.C. L.Rev. 409 (2001). Ms. Young’s article reviews the only two South Carolina cases which had addressed stigma damages at that time, Gray and Yadkin Brick Co. v. Materials Recovery Co., 339 S.C. 640, 529 S.E.2d 764 (Ct. App. 2000). As discussed above, Gray did not address the issue, and Yadkin held that stigma damages were properly included in the measure of damages when the stigma damages were permanent. Id. at 647-48, 529 S.E.2d at 768. Thus, South Carolina law, in fact, DOES permit stigma damages.

3, 13. LANDOWNERS’ EXPERT WITNESS WAS PROPERLY QUALIFIED AS TO ALL TESTIMONY PROFERRED.

Condemnor stipulated to the qualification of Mr. Owen as an expert real estate appraiser. As such, and based upon his extensive and wide-ranging experience, Mr. Owen was properly qualified to testify regarding proximity or stigma damages in the context of a real estate appraisal. Because such testimony was within the scope of his expertise, it was properly admitted by the Court.

4, 5, 13. ALL TESTIMONY PROFERRED BY LANDOWNERS' EXPERT WITNESS WAS RELIABLE AND PROBATIVE.

Mr. Owen testified that his opinion regarding the diminution in value was based upon his personal experience as a real estate appraiser and home builder, as well as upon conversations both past and present with various real estate developers. Though such evidence in other circumstances would be inadmissible, South Carolina specifically allows experts to rely on it in forming their opinions, pursuant to Rule 703, SCRE. Further, it is well established that the argument of probative v. prejudicial in the context of a bench trial is fruitless. See, e.g., State v. Inman, 395 S.C. 539, 566, 720 S.E.2d 31 (2011) (“[I]t is a near insurmountable burden...to prove prejudice in the context of a bench trial as a judge is presumed to disregard prejudicial or inadmissible evidence”).

Further, based on the foregoing, the Order should not be amended to limit Mr. Owen's tender and qualifications.

6. TESTIMONY BY A PROPERTY OWNER IS PROPER AND ADMISSIBLE.

Specific testimony offered by each witness can, of course, be verified upon receipt and review of the trial transcript. Landowners' witness, Alma Rene Smith Murry, did offer testimony regarding the impact of the Condemnor's pipeline upon the property, both upon herself personally and upon the value of the property to a prospective purchaser. To the extent Ms. Murry's testimony is being characterized by Condemnor as an inadmissible layperson's opinion of value, her testimony is cumulative with that offered by Landowners' expert appraiser. Ms. Murry's testimony was properly offered and admitted by the Court.

7, 11. EVIDENCE OF THE CAUTION SIGN EXISTS IN THE RECORD.

Contrary to Condemnor's assertion in its Motion, there is evidence that the "Caution" sign was present on the date of the take, in the form of testimony from Ms. Murry, who lives on the property. Condemnor's witness's testimony that such sign was not required is irrelevant.

Further, Condemnor now wishes to diminish the ugly appearance of the timing of its removal of the Caution sign. Landowners notified Condemnor of their intent to use the Caution sign as an element of damages and an exhibit at trial as early as October of last year. Much discussion was had regarding the Caution sign at the Court-ordered mediation in this matter on February 5, 2015. The sign was mysteriously removed less than two weeks later, and counsel for Landowners were not informed for another two months. The removal of the sign after three years on the eve of trial was a blatant attempt by Condemnor to lessen Landowners' just compensation award.

All references to the Caution sign therefore should remain as drafted in the Order.

8. CONDEMNOR'S EXPERT WITNESS'S TESTIMONY IS ACCURATELY REFLECTED IN THE ORDER.

Condemnor's expert witness, H. Corbin Haskell, found no damages to the remainder of Landowners' property. The Order states this on Page 5. No additional language regarding Mr. Haskell's testimony is necessary in the Order.

9-10. EVIDENCE REGARDING OTHER SUBDIVISIONS AFFECTED BY NATURAL GAS PIPELINES.

All evidence regarding both The Townes at Riverwood Farm and Mason's Crossing subdivisions was properly admitted and accurately described in the Court's Order.

12. REFERENCE TO THE MEDIATION CONFERENCE IS PROPER.

Rule 408, SCRE, prohibits the admission of evidence of compromises and settlement negotiations to prove liability. The reference to the mediation conference in the Court's Order is merely used as a point in a timeline, after which Condemnor removed its Caution signs. Rule 408 specifically allows admission of such evidence for a purpose other than to prove liability; as such, the Order should not be amended on this point.

14. CASE CITES AND QUOTATIONS IN THE ORDER ARE PROPER.

Condemnor wishes to include the entirety of each court's opinion in every case cited in the Order. Such inclusions are neither necessary nor appropriate.

15. FINDINGS OF FACT AND CONCLUSIONS OF LAW NEED NOT BE COMPARTMENTALIZED.

Rule 52, SCRCP, does not require that the findings of fact and conclusions of law be somehow designated or arranged, but rather that the order include both items, as the Court's Order currently does.

16, 17. THE COURT'S ORDER SHOULD STAND AS WRITTEN.

Based on all the foregoing information, as well as the testimony and evidence presented at the hearing on this matter, the Court's Order is complete, proper, and appropriate as drafted, and should not be altered or amended in any way. Condemnor has offered no legitimate grounds upon which the Court should reconsider its decision. Additionally, it is important for the Court to note the following: (1) Condemnor was given a full and fair opportunity to comment upon the proposed Order of the Court prior to its issuance; (2) the Court incorporated certain of Condemnor's requested changes in its final Order; and (3) the bulk of Condemnor's Motion appears to be a rehashing of each of Condemnor's requested changes to the proposed Order, all of which have previously been considered and rejected by the Court.

Further, although Condemnor's Motion purports to be based upon Rule 60, SCRCP, Condemnor has presented no arguments or evidence regarding any of the elements of the Rule. The standard of review is a rigorous one, and the burden is on the moving party to present evidence sufficient to grant the relief sought. Sundown v. Intedge Industries, 383 S.C. 601, 681 S.E.2d 885 (2009), BB&T v. Taylor, 369 S.C. 548, 633 S.E.2d 501 (2006). Condemnor has presented no evidence and its Motion should be denied.

Respectfully submitted,



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Greenville, SC

July 14, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
C.A. NO.: 2012-CP-23-4064

Piedmont Natural Gas Company,)
Condemnor,)

Vs.)

Richeous Smith, et al.,)
Landowners,)

MOTION TO DETERMINE
INTEREST DUE ON VERDICT

FILED
GREENVILLE CO. S.C.
PAUL E. WOODENSHNER
2015 JUN 25 PM 12 44

TO: MICHAEL S. CHAMBERS, ESQUIRE, ATTORNEY FOR CONDEMNOR,
PIEDMONT NATURAL GAS COMPANY:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the
landowners will move before the court at such time and place as the court
may determine for an order setting and establishing interest due on the verdict
pursuant to SC Code §28-2-420(A) which provides:

A condemnor shall pay interest at the rate of eight percent a year upon sums found to be just compensation by the appraisal panel or judgment of a court to the condemnee. This interest shall accrue from the date of filing of the Condemnation Notice through the date of verdict or judgment by the court. Interest accruing on funds on deposit with the clerk of court must be offset against the interest computed pursuant to this section. Interest shall not accrue during the twenty-day period commencing upon the date of verdict or order of judgment. If the judgment is not paid within the twenty-day period, interest at the rate provided by law for interest on judgments must be added to the judgment.

Thereafter, the entire judgment shall earn interest
at the rate provided by law for interest on judgments.

That the Condemnation Notice was filed on June 22, 2012 and verdict
entered on June 24, 2015. That the landowners are therefore entitled to statutory
interest at eight (8%) per centum per annum for such period, the computation of
which is shown on Exhibit "A" attached hereto and incorporated herein by reference.

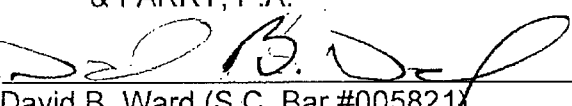
That further, the condemnor is entitled to credit for the interest earned upon
funds held with the clerk of court for Greenville County, and such computation is
also shown on Exhibit "A".

That, as the landowners are further informed and believe the condemnor is
required and compelled to deposit such additional funds with the clerk of court and
the same to earn interest at the statutory rate for judgments, including compound
interest, after twenty days (20) from the date of the final order referred to
hereinabove.

Erin Culbertson of
Kehl Culbertson Andrighetti & Kornfeld, LLC

and

HORTON, DRAWDY, WARD, MULLINAX
& FARRY, P.A.

By: 

David B. Ward (S.C. Bar #005821)

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Attorneys for the Landowners

June 25, 2015

EXHIBIT "A"**PIEDMONT NATURAL GAS v. RICHEOUS SMITH, ET AL.****C.A. NO.: 2012-CP-23-4064****INTEREST FROM JUNE 22, 2012 – JUNE 12, 2015**

<u>VERDICT</u>	<u>DATE</u>	<u>INTEREST</u>
\$414,752.00	6/22/12 – 6/22/13	\$33,180.16
	6/22/13 – 6/22/14	\$33,180.16
	6/22/14 – 6/22/15	\$33,180.16
June 23, 2015 & June 24, 2015 @ \$90.90 per day		<u>\$ 181.80</u>
		<u>\$99,722.28</u>
CREDIT FOR INTEREST AT CLERK OF COURT THROUGH MAY 31, 2015		\$ 50.36
PLUS INTERIM INTEREST NOT COMPOUNDED, AT THE RATE OF 0.01% PER MONTH OR \$1.72 =		<u>\$ + 1.72</u>
		\$ 52.08
TOTAL INTEREST THROUGH JUNE 24, 2012		\$99,670.20
TOTAL VERDICT PLUS INTEREST		<u>\$514,422.20</u>

Pursuant to Rules 52, 59 and 60, S.C.R.C.P. the Condemnees/Landowners respectfully move

2. That the court erred in considering a copy of *Faulkenberry* handed up by counsel at the hearing, without notice, highlighting irrelevant provisions and misdirecting the court's attention.

3. Failing to apply the clear and unambiguous requirement of §28-2-420 requiring the payment of interest on funds on deposit with the clerk of court as recited therein.

4. That the court erred in considering the holding in *Windham v. Honeycutt*, 290 S.C. 60, 348 S.E.2d 185 (Ct. App. 1986). inasmuch as such holding is irrelevant to the issue before the court.

5. In denying the condemnees interest on funds on deposit with the clerk of court on the premise that the Condemnees could have reached a settlement, in that such holding is extrajudicial and has no basis in law or fact.

ARGUMENT

We filed a motion setting forth the exact terms of the provision for pre-judgment interest, and no response was made. At the hearing, Mr. Chambers offered the court a copy of *South*

Carolina Department of Transportation v. Faulkenberry, 522 S.E.2d 822, 337 S.C. 140 (1999), with certain provisions highlighted in yellow. Over my objection, the court allowed that proffer on the premise that it was simply for the purpose of calling the court's attention to relevant provisions.

Unfortunately, the areas highlighted in yellow misdirect the court's attention to non-issues and to references unrelated in anywise to our present inquiry. More pointedly, the holding in *Faulkenberry* was not highlighted at all.

The lower court in *Faulkenberry* held that the condemnee would be entitled to interest on 50% of the original appraisal, even after it had been paid directly to the condemnee. *South Carolina Department of Transportation v. Faulkenberry*, 522 S.E.2d 822, 823, 337 S.C. 140 (1999). The appellate court in *Faulkenberry* looked first at statute 28-2-480 and inquired whether the

statute addressed the question of the condemnee receiving pre-judgment interest after a draw down.¹

The specific holdings of the Court of Appeals is:

SCDOT argues the trial court erred in ordering it to pay interest on one-half of the amount tendered to Faulkenberry after he received it. It asserts interest under S.C.Code Ann. § 28-2-420 does not accrue on any amount paid to the condemnee after its receipt. We agree.

Faulkenberry at 825.

and

SCDOT notes Section 29-2-420 does not address the amount of interest to be paid the condemnee when he draws down deposited funds. The statute specifically states, "Interest accruing on funds on deposit with the clerk of court must be offset against the interest computed pursuant to this section." We believe this statement implies interest shall accrue only on such funds as "*are on deposit with the clerk of court.*"

Faulkenberry, also at 825

As the holding deals with the question of no interest being allowed on funds drawn down, that should end our inquiry into *Faulkenberry*. A corollary of that holding is that if the funds are not drawn down they continue to earn interest for the benefit of the condemnee as provided by §28-2-420. Otherwise, if funds never earn interest in either in the event of drawn down or no

¹ The lower court reasoned that since the additional sum agreed upon to be added to the appraisal was not part of the original deposit, the landowner would be entitled to interest on that sum. In fact a double dip, which the

draw down, why make a distinction when funds are drawn down? There would be no point in making such a distinction. Therefore, the obvious import is that when the funds are not drawn down the interest is earned.

The analysis in *Faulkenberry* is premised on the conclusion that the question of interest on funds after draw down is not addressed in the applicable statutes. Therefore it looked outside of the South Carolina Eminent Domain Act for some analogy. The holding of *Faulkenberry* is simply that a party is not entitled to a double dip based on "equity". The recitation of the laws of other states is irrelevant given that the provision for interest on funds on deposit is clearly within the construct of the applicable South Carolina Eminent Domain Act.

Nevertheless, I would point out that there are some provisions of the *Faulkenberry* case that are instructive and may be of some assistance. Note that after the verdict, SCDOT tendered the amount of the excess verdict plus interest on the appraisal during the period such funds were on deposit with the clerk of court.² That is, during the time period funds were on deposit with the clerk of court SCDOT conceded the landowner would be entitled to the 8% interest for that time period. The fact that it was only 64 days does not matter, the principle is having been established. That is, SCDOT construes the statute to provide as long as funds are on deposit with the clerk of court, the 8% interest continues to accrue in favor of the condemnor.

Faulkenberry recites the following:

In interpreting a statute, this court's primary function is to ascertain the intention of the legislature. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998). Statutes should be construed with regard the whole system of law of which they form a part. *Roche v. Young Bros., Inc.*, 332 S.C. 75, 504 S.E.2d 311 (1998) (Citing 82 C.J.S. *Statutes* § 362 (1953)). A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. *TNS Mills, Inc. v. South Carolina Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998). In construing a statute, this court will reject any interpretation that leads to an unreasonable result. *Busby v. Moore*, 330 S.C. 201, 498 S.E.2d 883 (1998). Further, construction of a statute by an agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons. (*emphasis added*)

Faulkenberry at 825, 826

SCDOT construes the statute to require it to pay interest on funds while on deposit with the clerk of court. Its interpretation of the statute should be accorded the most respectful consideration and not be overruled absent compelling reasons.

Putting *Faulkenberry* aside, and looking at §28-2-420 the condemnee is entitled to interest at 8% on the entire amount of the verdict with interest accruing on funds on deposit with the clerk of court being offset against such interest.

2 Note that the original settlement provided that SCDOT paid directly to Faulkenberry the sum of \$863,574.00, and the funds on deposit with the clerk of court were remitted to SCDOT. It is safe to assume that SCDOT also received interest earned on the funds on deposit.

Given the court's ruling, the funds on deposit with the clerk of court continue to earn interest at some rate.³ If the Condemnees are not entitled to interest on funds on deposit, to what would the interest accruing on such funds be credited? Would such interest be credited against the interest earned on the amount in excess of the amount on deposit? That is completely inconsistent with the statutory scheme. In fact, that reading necessarily requires the statute to be radically amended to provide that no credit would accrue on funds left on deposit. That would be tantamount to rewriting the statute.

As cited above in construing a statute it must be given a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers. More to the point, any interpretation that would lead to an unreasonable result must be rejected.

But it gets worse. Assume that the Court of Appeals reverses the allowance of the verdict

in excess of the original appraisal of \$172,200.00. Would the interest on the funds on deposit then be credited against the \$172,200.00? In the event there is no excess verdict, could the court again rewrite the statute to provide that in the event there were no excess verdict, there would be no credit. The statute does not say that, and any such attempt to rewrite the statute in that regard is unreasonable.

Mr. Chambers has highlighted a number of holdings of other states where the statutes do not provide for pre-judgment interest. Attention was directed to the citation of *Lin v. Houston Community College System*, 948 S.W.2d 328 (Tex. App. 1997) which held there is no right to

³ The fact that it may be a very small rate at the present is immaterial. In fact it could be the rate could be even higher than 8% under some circumstances, that doesn't matter.

prejudgment interest under the terms Texas statutes. That is, by highlighting that reference, the court's attention has been directed to provisions of the statutes of another state to interpret the statute of South Carolina, where there is no ambiguity in the S.C. statutes.⁴

I would direct the courts attention to the history of the South Carolina Eminent Domain Act as outlined in *Faulkenberry*. *Faulkenberry* cites *Carolina Power & Light Co. v. Copeland*, 258 S.C. 206, 188 S.E.2d 188 (1972) where the court noted that there was no provision for interest prior to 1986:

The landowner argued that he was entitled to interest based on theory of just compensation as defined in the U.S. and South Carolina Constitutions. It will not be presumed that the absence of such provision was an oversight which this court should remedy by reading such into the acts.

Faulkenberry at 827

Subsequently, in 1987, the South Carolina Legislature sought to establish uniform procedures for the condemnation of property by the state, its political subdivisions, and private entities so as to minimize the costs of the litigation.

⁴ Mr. Chambers does not highlight the contrary observations made in *Faulkenberry*. "The governing statute in Arizona specifically provides the condemnee is allowed interest on the amount of the deposit he has withdrawn, but only from the date of the condemnor's possession until the date of withdrawal. *Ariz.Rev.Stat.Ann.* §12-1123(B). Ohio Rev.Code Ann. §163.17 covers a number of different scenarios, but where the landowner has withdrawn a portion of the deposit, interest accrues only on the amount of the verdict that exceeds the amount withdrawn. *Faulkenberry* at 828 I make reference to these only to point out that highlighting selected portions of statutes from other states have no bearing on interpretation of the South Carolina statute. Again, by reason those statutes

The South Carolina Eminent Domain Procedure Act adopted in 1987 requires a condemnor

Pay interest at the rate of eight percent a year upon sums found to be just compensation by the appraisal panel or judgment of a court to the condemnee. This interest shall accrue from the date of filing of the Condemnation Notice through the date of verdict of judgment by the court. Interest accruing on the funds on deposit with the clerk of court must be offset against the interest computed pursuant to this section. Interest shall not accrue during the twenty-day period commencing upon the date of verdict or order of judgment.

§28-2-420(a) 1987 Act No. 173, §1⁵

The *Faulkenberry* court observed that the current South Carolina Eminent Domain Procedure Act was subsequently adopted, including §28-2-420(a), in 1987 and specifically provides for prejudgment interest.⁶

The reference to statutes of other states by the court in *Faulkenberry* can only be construed as an attempt to find some analogy with the situation where there has been a complete draw down, where the provisions for interest upon complete draw down not being addressed in our statute.

Section 28-2-420 provides for interest on the entire verdict, and does not make any exception if funds are not drawn down. Under §28-2-480 the landowner has the option of applying for 50% draw down "at any time", and the statute requires a written application by all named Condemnees. That is practically impossible in this case, but in any event it is not

are referred to at all, is that the issue of interest after draw down is not addressed by our statute. The interest accruing without draw down, is specifically provided for.
5 §28-2-420(a) 1987 Act No. 173, §1

mandatory but permissive. I again refer the court to the fact that in *Faulkenberry*, SCDOT tendered interest for the term that funds were actually on deposit, in keeping with the applicable statute.

Mr. Chambers highlighted the holding in *Horry County v. Woodward*, 291 S.C. 1, 3, 351 S.E.2d 877, 878 (Ct.App.1986) which had held that there was no statutory provision for post judgment interest in eminent domain proceedings in South Carolina. That case was decided before 1986. Note that the consolidated Eminent Domain Procedures Act was enacted in 1987 after *Horry County*. It clearly reverses that prior holding. Then *Faulkenberry* was decided in 1999. The drafter of the opinion in *Faulkenberry* apparently did not update the applicable provisions of the Eminent Domain Act. Finally, the South Carolina Supreme Court in *SCDOT v. First Carolina Corp.*, 631 S.E.2d 533, 369 S.C. 150 (S.C. 2006), held that the general provisions of Rule 67 S.C.R.C.P. allowing judgment funds to be deposited with the court and stopping the running of

interest, do not apply to the Eminent Domain Procedures Act in that the act provides:

“In the event of conflict between this act and the South Carolina Rules of Civil Procedure, this act shall prevail.” S.C. Code Anno. §28-2-120, 1987 Act No. 173, §1

Further, the court in *First Carolina Corp.*, *supra*, goes on to note that the reliance on *Faulkenberry*, *supra*, is misplaced holding:

SCDOT relies on *South Carolina Dept. of Transp. v. Faulkenberry*, 337 S.C. 140, 522 S.E.2d 822 (Ct.App.1999) to support its position that a deposit pursuant to Rule 67, SCRPC, does not conflict with the Act, and that the deposit should be allowed to stop the accrual of post-judgment interest. This reliance is misplaced.

First, *Faulkenberry* is primarily a case involving pre-judgment interest. In *Faulkenberry*, the landowner was paid \$863,574 as just compensation upon SCDOT's filing of a condemnation action. After trial, the jury awarded the landowner \$2,396,100. The landowner claimed that he was due prejudgment interest on the full jury verdict under § 28-2-420 from the date of condemnation through the date of the verdict. SCDOT contended that the landowner was entitled to interest only on the difference between the jury verdict and *156 the initial payment. The court of appeals held that the landowner was entitled to interest only on the condemnation award in excess of the amount he was originally paid. *Faulkenberry*, 337 S.C. at 156, 522 S.E.2d at 830.

Additionally, *Faulkenberry* does not address deposits with the court pursuant to Rule 67, SCRPC.^[2] The only reference to deposits in *Faulkenberry* relates to deposits made pursuant to § 28-2-90(3). The fundamental difference between these two types of deposits is that the landowner has the right to withdraw the funds deposited under § 28-2-90(3), whereas that same right does not apply under Rule 67, SCRPC. Accordingly, *Faulkenberry* does not address the present issue, and cannot be relied upon to show that there is no conflict between Rule 67, SCRPC, and § 28-2-420.

Accordingly, the clear and unambiguous language of § 28-2-420(A) and § 28-2-120 require post-judgment interest to accrue on any judgment not paid within twenty days of the entry of the order of the judgment. Therefore, we find that the trial court abused its discretion by allowing SCDOT to deposit the judgment funds and stop the accrual of post-judgment interest.

Carolina First at 536.

The holding in *Horry County* (no post judgment interest) is before 1986. The Eminent Domain Procedures Act was adopted in 1987 and completely reverses that decision. The scrivener in drafting *Faulkenberry* in 1999 overlooked Act No. 173 that was adopted in 1987. *Faulkenberry* then makes reference to *Horry County* as if it were still good law.

Then we have *First Carolina Corp.* decided by the South Carolina Supreme Court in 2006, which complete refutes that entire line of reasoning. Finally, the court's attention was directed by yellow highlighting to the original and refuted *Horry County* holding, which only had the effect of misdirecting the court's attention.

The court's opinion refers to the concept of "*fruits of possession*" holding that the fruits of possession and the full statutory interest mutually exclusive. That term is derived from *Windham v. Honeycutt*, 290 S.C. 60, 348 S.E.2d 185 (Ct. App. 1986). Honeycutt contracted to sell land to Windham, but Honeycutt defaulted. Windham was successful in requiring specific performance at which time Windham tendered the purchase price. In addition, Windham was granted special damages in the form of lost income from the property during the period of default. Honeycutt, as seller successfully argued that he should be entitled to interest on the funds from the date the sale

should have closed, the premise being that otherwise the buyer, Honeycutt, would have the fruits of possession (earning anticipated income on the property during such time) at the same time not pay interest. The court logically held that Honeycutt had the fruits of possession and he should therefore pay interest during the same time period. That is, the fruits of possession and the interest are mutually exclusive.

In our case, condemnees do not have possession as the funds remain on deposit with the clerk of court as contemplated by the statute with "*interest accruing being credited to the condemnor*". Based on the court's ruling, we have the reverse situation where the condemnor is

given credit for the interest earned, and the condemnees are denied statutory interest to which it they are entitled.

Section 28-2-510 would only allow the landowner to have a draw down equal to 50% of the amount on deposit. Again, that is permissive and not mandatory. The court's order, however, recites that since the landowners could have each reached an agreement for the entire deposit, no interest is allowable on any of the funds on deposit. How can a party be denied a statutory benefit that is expressly delineated in a comprehensive fashion because they do not reach an agreement extrajudicially?

Again, based on the court's ruling, the condemnor is entitled to credit for all interest earned on all funds on deposit, as the landowners are entitled to no interest on any of it. That is inconsistent with the clear provisions of the statutes.

Putting aside *Faulkenberry*, which does not address the questions we are dealing with at all, I would direct the court's attention to the express provisions of the statutes that do apply. Section 28-2-120 provides that the Eminent Domain Procedure Act takes precedence over any other civil procedure or rulings for that matter.

Section 28-2-420 requires a condemnor to:

Pay interest at the rate of eight percent a year upon sums found to be just compensation by the appraisal panel or judgment of a court to the condemnee. This interest shall accrue from the date of filing of the Condemnation Notice through the date of verdict of judgment by the court. Interest accruing on the funds on deposit with the clerk of court must be offset against the interest computed pursuant to this section. Interest

shall not accrue during the twenty-day period commencing upon the date of verdict or order of judgment. (emphasis added)⁷

Section 28-2-480 provides:

Upon written application, in form satisfactory to the clerk of court, by all named Condemnees at any time which the condemnor has taken possession, when the right to take is not contested, the clerk of court shall pay to them the amount applied for up to fifty percent of the funds deposited with the clerk of court by the condemnor in that action. (emphasis added)⁸

We do not need to look beyond the statutes.

As no funds were drawn down the landowners are entitled to 8% interest on the entire verdict as clearly delineated in the statute. I would finally note that in the *First Carolina SCDOT* deposited with the court prejudgment interest, conceding that it had accrued. There is no indication SCDOT withheld interest on funds on deposit with the clerk of court. Again, the interpretation by SCDOT is entitled to great weight. While I am constrained or not to go outside of the published opinions, I would point out there are certainly many dozens if not hundreds of unreported lower court decisions, most by consent, where prejudgment interest has been paid by SCDOT on all funds on deposit.

The landowners are statutorily entitled to interest on the entire award at 8% per centum per annum from the day of the take to the day of judgment with credit to the condemnor for

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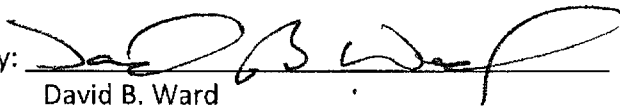
interest on the funds on deposit with the clerk of court. Further, interest on the entire amount, after the 20 days grace period, accrues at the judgment rate.

Respectfully submitted,

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August 13, 2015

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Honorable Charles B. Simmons, Jr., Circuit Court Judge

Case No.: 2012-CP-23-4064

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

v.

Richeous Smith, Worthly Smith a/k/a, Worley Smith, Pearl Terry, Ethel Butler, Tweety Smith a/k/a Tweety Smith Harris, Doreth Smith, Fletcher Lee Harris, Alma Williams Smith, James R. Smith, Loree Smith, Gene A. Smith, Adolf Smith, Janie Sue Smith, Samuel Paul Smith, Ruby Smith Mansell, Buford Mansell, Ethel Mae Smith, Wilson Smith, Patrick R. Smith, Reginald Lamont Smith, Eric Smith, Christine Smith Dawkins, William G. Dawkins, Alma Renee Smith Murry, Sharai Smith Brock, Robert Lee Smith, Melissa F. Smith, Rosalyn Annette Steven, Edith Smith Foster, George Waymon Foster, Bridgette Smith Blassingame, Tara Smith, Waymon Odell Smith, Martha Miller Smith, Calvin Lee Smith, Reece W. Smith, Raymond Eddie Smith, Michael Smith, Odell Smith, Dorothy Smith Pearson, Gary Pearson, Jerome Smith, Jaygo Terry, Ida Terry, Mack Terry, Zone Terry, Leola Terry Smith, James Smith, J. P. Terry, David Brayvelle Terry, Ettie Pearl Booker, Tecora O. Terry Mason, Odell Mason, Lenora Holley, Dorothy Terry Sheppard, Orangelee Sheppard, Vernon Sheppard, Kasandra Sheppard Jenkins, Karen Sheppard Spates, Theodore Terry, Sr., Gracie Terry, Kelvin F. Terry, Theodore Terry, Jr., Keith Terry, Leola Terry Daniels, Wilford Daniels, Terrance Leslie, Sr., Derrick McGee, Jr., Fred Smith, Jr., Mannell Terry, Patricia Terry, Sheila Terry, Barbara Evans, Leonard Evans, Linda Evans, Thomas Evans, Johnny R. Williams, Connie Evans, Michael Evans, Iola Terry Cox, William Henry Cox, Johnny F. Cox, Joyce A. Smith, Anthony Cox, Alfred Cox, J. Henry Cox, Charlette J. Cox, Charles J. Cox, Michael Cox, Supearl Terry Gilliam a/k/a Supearl Terry Gilliam Miranda, Eugene Gilliam, Terry Gilliam, Jerry Gilliam, Warren Gilliam, Eugene Gilliam, Jr., Melvin Gilliam, Rodney Gilliam, Cindy Gilliam, Shakima Gilliam, Carmella Cottom, Nina Gilliam, Vermell Gilliam Phillips, Shaynise Alston, John Gilliam, Donald Gilliam, Sr., Leunette Gilliam, Donnette Gilliam Ortchere, Leslie Gilliam Peter, Angela Gilliam, Donald E. Gilliam, Raymond T. Gilliam, Juan Miranda, Carmen Miranda a/k/a Carmen Miranda Glavin, John Glavin, Sr., John Glavin, Jr., Miranda Glavin, Jeffrey Glavin, Yolanda Glavin, Ezell Terry, Magaline Terry, Leroy Terry, Kenneth Terry, James (Jimmy) Terry, Pearlie Mae Terry,

Winnie L. Terry Anderson, Furman Anderson, Tommy Anderson, Abigail Dodd, Angela Reid, Sandra McDowell, Harold Anderson, Mary Ann Davis, Charlene Peaks, Albert Anderson, Paul Terry, Betty Jo Terry, Donald E. Terry, Deloris I. Terry, Paul A. Terry, Mark G. Terry, Terry Sholer, Jamie Terry, James O.C. Smith, Pauline Smith, Gloria Gore, Paul Smith, Ethel Allen, Desiree Golden, Pauline Workman, Brenda Moulhem, Eric Rogers, Tonya S. Turner, LaTasha D. Terry, and if any of the aforementioned be deceased, then their heirs, successors, devisees, distributees, Administrators, Executors and Personal Representatives, and any party claiming by or through them, The United States of America, acting by and through its agency, the Internal Revenue Service, The United States of America, acting by and through its agency the United States Department of Justice, The South Carolina Department of Revenue, The South Carolina Department of Mental Health, The State of South Carolina, Bullhead Investments, LLC, Arrow Financial Services, LLC, Sharonview Federal Credit Union, Discover Bank, Zachery Arnold, GE Commercial Finance Business Property Corporation, Midland Funding, LLC, Greenville County, John Doe and Mary Roe, being fictitious names used to represent all persons and condemnees whose true names are not known, including the heirs, successors, devisees, distributees, Administrators, Executors and Personal Representatives of any of the above named Landowners and Other Condemnees who may be deceased; and also all Condemnees whose names are not known, including heirs, infants, persons under disability and persons who may be in Military service, who claim, or may claim, an interest in the property being condemned, and also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the Condemnation Notice and Tender of Payment herein, said property being identified as a portion of Greenville County Tax Map Numbers 0531010102100 and 0531010102101,.....Respondents.

Of whom:

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

Piedmont Natural Gas Company, Inc.; Richeous Smith (deceased); Worthly Smith a/k/a Worley Smith (deceased); Pearl Terry (deceased); Ethel Butler (deceased); Tweety Smith a/k/a Tweety Smith Harris (deceased); Doreth Smith (deceased); Fletcher Lee Harris (deceased); Alma Williams Smith (deceased); Adolf Smith (deceased); Janie Sue Smith (deceased); Samuel Paul Smith (deceased); Ruby Smith Mansell (deceased); Buford Mansell (deceased); Ethel Mae Smith (deceased); Wilson Smith (deceased); Christine Smith Dawkins (deceased); Robert Lee Smith (deceased); Melissa F. Smith; Edith Smith Foster (deceased); George Waymon Foster (deceased); Waymon Odell Smith (deceased); Reece W. Smith; Raymond Eddie Smith; Michael Smith; Odell Smith; Dorothy Smith Pearson (deceased); Gary Pearson (deceased); Jerome Smith; Jaygo Terry (deceased); Ida Terry (deceased); Mack Terry (deceased); Zone Terry (deceased); Leola Terry Smith (deceased); James Smith (deceased); J. P. Terry (deceased); David Brayvelle Terry (deceased); Ettie Pearl Booker; Tecora O. Terry Mason (deceased); Odell Mason (deceased); Dorothy Terry Sheppard (deceased); Theodore Terry, Sr. (deceased); Leola Terry Daniels (deceased); Wilford Daniels; Terrance Leslie, Sr. (deceased); Terrance Leslie, Jr.; Terrell Leslie; Teaira Leslie; Mannell Terry (deceased); Patricia Terry; Sheila Terry; Barbara Evans (deceased); Leonard Evans (deceased); Johnny R. Williams (deceased); Donald Ray Gilliam (deceased); Connie Evans (deceased); Iola Terry Cox (deceased); William Henry Cox (deceased); Johnny F. Cox; J. Henry Cox (deceased); Charlette J. Cox (deceased); Charles J. Cox (deceased); Michael Cox (deceased); Supearl Terry Gilliam a/k/a Supearl Terry Gilliam Miranda (deceased); Eugene Gilliam (deceased); Terry Gilliam; Jerry Gilliam; Eugene Gilliam, Jr. (deceased); Melvin Gilliam (deceased); Rodney Gilliam (deceased); Vermell Gilliam Phillips (deceased); Donald Gilliam, Sr. (deceased); Donnette Gilliam Ortchere; Angela Gilliam; Juan Miranda (deceased); Carmen Miranda a/k/a Carmen Miranda Glavin (deceased); John Glavin, Sr.; John Glavin, Jr.; Miranda Glavin; Jeffrey Glavin; Yolanda Glavin; Ezell Terry (deceased); Magaline Terry (deceased); Leroy Terry; Kenneth Terry; James (Jimmy) Terry; Pearlie Mae Terry; Winnie L. Terry Anderson (deceased); Furman Anderson (deceased); Albert Anderson (deceased); Paul Terry (deceased); James O. C. Smith (deceased); Pauline Smith (deceased); Ira K. Carroll; Demetrius J. Gilliam; Kehimonnie S. Gilliam; Bianca S. Gilliam; Eric Rogers; Tonya S. Turner; LaTasha D. Terry; and if any of the aforementioned be deceased, then their heirs, successors, devisees, distributees, Administrators, Executors, and Personal Representatives, and any party claiming by or through them; The United States of America, acting by and through its agency, the Internal Revenue Service; The United States of America, acting by and through its agency, the United States Department of Justice; The South Carolina Department of Revenue; The South Carolina Department of Mental Health; The State of South Carolina; Bullhead Investments, LLC; Arrow Financial Services, LLC; Sharonview Federal Credit Union; Discover Bank; Zachery Arnold; GE Commercial Finance Business Property Corporation; Midland Funding, LLC; Greenville County; John Doe and Mary Roe, being fictitious names used to represent all persons and landowners whose true names are not known, including the heirs, successors, devisees, distributees, Administrators, and Personal Representatives of any of the above-named Landowners and Lienholders who may be deceased; and also all landowners whose names are not known, including heirs, infants, persons under disability and persons who may be in military service, who claim, or may claim, an interest in the property at issue in this matter, and also all other persons unknown, claiming any right, title estate, interest in, or lien

upon the property described in the Lis Pendens herein, said property being identified as a portion of Greenville County Tax Map Numbers 0531010102100 and 0531010102101,.....Appellants/Respondents.

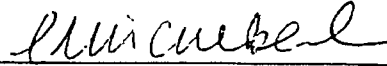
NOTICE OF APPEAL

Ethel Allen, Shaynise Alston, Harold Anderson, Tommy Anderson, Bridgette Smith Blassingame, Sharai Smith Brock, Carmella Cottom, Alfred Cox, Anthony Cox, Mary Ann Davis, William G. Dawkins, Abigail Dodd, Linda Evans, Michael Evans, Thomas Evans, Chavonte Gilliam, Cindy Gilliam, Derrick Gilliam, Donald E. Gilliam, Jr., John L. Gilliam, Lakisha Gilliam, Latonya Gilliam, Leunette Gilliam, Mattie M. Gilliam, Nina Gilliam, Raymond T. Gilliam, Rodney Gilliam, Shakima Gilliam, Warren Gilliam, Desiree Golden, Gloria Gore, Lenora Holley, Kasandra Sheppard Jenkins, Terrance Leslie, Sr., Sandra McDowell, Derrick McGee, Jr., Brenda Moulhem, Alma Rene Smith Murry, Charlene Peake, Leslie Gilliam Peter, Angela Reid, Orangelee Sheppard, Vernon Lee Sheppard, Charles Terry Sholer, Calvin Smith, Eric Smith, Fred Smith, Jr., Gene A. Smith, James R. Smith, Joyce A. Smith, Loree Smith, Martha Miller Smith, Patrick Smith, Paul Smith, Reginald Lamont Smith, Tara Smith, Karen Regenia Spates, Rosalyn Annette Steven, Betty Jo Terry, Donald E. Terry, Deloris I. Terry, Gracie Terry, Jamie Terry, Keith Terry, Kelvin F. Terry, Leroy Terry, Mark G. Terry, Paul Terry, Jr., Theodore Terry, Jr., Porsha Williams, and Pauline Workman (hereinafter the "Smith Family") hereby appeal from: (1) the Order Determining Interest Due on Verdict by the Honorable Charles B. Simmons, Jr., filed on August 10, 2015, in the above-referenced matter; and (2) the Order filed on August 19, 2015, denying the Smith Family's Motion to Reconsider, Alter or Amend that Order. The Smith Family timely filed its Motion to Reconsider on August 13, 2015. An Order denying the Smith Family's Motion to Reconsider was issued on August 19, 2015, without a hearing. This Notice of Appeal is being timely served within thirty (30) days of the Smith Family's receipt of written notice of the Order denying the Smith Family's Motion to Reconsider on August 24, 2015.

The Smith Family has previously requested and received the transcript from the post-trial motion hearing from the court reporter; therefore, the time for filing the initial brief of the Smith Family Appellants/Respondents will begin to run on the date of service of the within Notice of Appeal.

Respectfully submitted this 15th day of September, 2015.

{Signature page follows}



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Landowner/Condemnee

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Landowner/Condemnee

Jerry Gilliam
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Buffalo, NY 14211

Landowner/Condemnee

Donnette Gilliam Ortchere
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Buffalo, NY 14212

Landowner/Condemnee

Angela Gilliam
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Landowner/Condemnee

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Greer, SC 29651

Landowner/Condemnee

Pearlie Mae Terry
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Landowner/Condemnee

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Tonawanda, NY 14150

Landowner/Condemnee

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Landowner/Condemnee

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