UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL PARKS CONSERVATION ASSOCIATION, 777 6th Street, NW, Suite 700 Washington, DC 20001, APPALACHIAN MOUNTAIN CLUB, 5 Joy Street Boston, MA 02108, APPALACHIAN TRAIL CONSERVANCY, 799 Washington Street P.O. Box 807 Harpers Ferry, WV 25425, ASSOCIATION OF NEW JERSEY ENVIRONMENTAL COMMISSIONS, P.O. Box 157 Mendham, NJ 07945, DELAWARE RIVERKEEPER NETWORK, 925 Canal Street 7th Floor, Suite 3701 Bristol, PA 19007, NEW JERSEY HIGHLANDS COALITION, 508 Main Street Boonton, NJ 07005, NEW YORK-NEW JERSEY TRAIL CONFERENCE, 156 Ramapo Valley Rd Mahwah, NJ 07430, ROCK THE EARTH, 1536 Wynkoop Street, Suite B200 Denver, CO 80202, SIERRA CLUB, 85 Second Street, Second Floor San Francisco, CA 94105, STOP THE LINES,	Civ. No. _____ **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

P.O. BOX 398
Tranquility, NJ 07879,

Plaintiffs,

v.

KENNETH SALAZAR, in his official capacity as Secretary of the United States Department of the Interior; DENNIS REIDENBACH, in his official capacity as Northeast Regional Director of the United States National Park Service,
1849 C Street, N.W.
Washington, DC 20240,

Defendants.

1. Appalachian Mountain Club, Appalachian Trail Conservancy, Association of New Jersey Environmental Commissions, Delaware Riverkeeper Network, National Parks Conservation Association, New Jersey Highlands Coalition, New York–New Jersey Trail Conference, Rock the Earth, Sierra Club, and Stop the Lines (collectively, "Plaintiffs") challenge the National Park Service's environmental review and decision approving a right-of-way and special use permit for the Susquehanna-Roseland transmission line ("Project" or "S-R Line") through three treasured national park units. As authorized by the Park Service's October 1, 2012 Record of Decision ("ROD"), the Project proposed by PPL Electric Utilities Corporation ("PPL") and Public Service Electric and Gas Company ("PSE&G") (jointly, "Applicants") would slice through the Delaware Water Gap National Recreation Area ("National Recreation Area"), the Middle Delaware National Scenic and Recreational River ("Middle Delaware"), and the Appalachian National Scenic Trail ("Appalachian Trail") (collectively, the "Parks") in an area of the Parks renowned for spectacular scenery and home to unique and rare geological resources, ecological communities, and special-status species, including the bald eagle.

2. The dismantling of a transmission line along the chosen right-of-way, the widening of the right-of-way, and the erection of transmission towers twice as tall as the existing towers and carrying more than three times the number of transmission lines energized at more than double the current voltage, would impair and unacceptably affect park resources in violation of the National Park Service Organic Act, 16 U.S.C. §§ 1 to18f-3, and the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271-1287. Moreover, the Environmental Impact Statement used to justify the Park Service's action ("S-R EIS") fails to consider and publicly disclose information vital both to the agency's and the public's understanding of the environmental consequences of the Project and its various alternatives, in violation of the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. §§ 4321-4375. For instance, the Park Service fails to consider at all – much less meaningfully – key elements of the required environmental analysis, including reasonable non-transmission alternatives and direct and indirect impacts of the Project. The Park Service also proposes to accept $56 million as compensation for damage to the Parks without disclosing the reasoning or analysis justifying such compensatory mitigation.

3. Rather than protecting the Parks as a sanctuary for the natural environment, wildlife, and humans alike, the Park Service has contravened its duty to protect the Parks from impairment and adverse impacts. Accordingly, this Court should invalidate the Park Service's environmental analysis and ROD and enjoin the Park Service's decision to approve the Project.

JURISDICTION AND VENUE

4. This action arises under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706; the National Park Service Organic Act, 16 U.S.C. §§ 1 to 18f-3; NEPA, 42 U.S.C. §§ 4321-4375; the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271-1287; and the following National Park enabling acts: Pub. L. No. 89-158, 79 Stat. 612 (1965) (codified at 16 U.S.C. §§

460o to 460o-7) (establishing the Delaware Water Gap National Recreation Area); Pub. L. No. 95-625, 92 Stat. 3467 (1978) (codified at 16 U.S.C. § 1274(a)(20)) (designating the Middle Delaware Scenic and Recreational River); National Trails System Act, Pub. L. No. 90-543, 82 Stat. 919 (1968) (codified at 16 U.S.C. § 1244) (designating the Appalachian National Scenic Trail).

5. The Park Service's ROD approving a right-of-way and special use permit for the Project constitutes a "final agency action" for purposes of the APA. *See Greater Yellowstone Coal. v. Kempthorne*, 577 F. Supp. 2d 183, 189 (D.D.C. 2008); *see also Ouachita Watch League v. Jacobs*, 463 F.3d 1163, 1173 (11th Cir. 2006) (noting the "well settled" proposition that the final environmental impact statement or record of decision constitutes "final agency action").

6. Accordingly, this Court has jurisdiction pursuant to 28 U.S.C. § 1331. The Court may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201-2202.

7. Venue lies in the District of Columbia pursuant to 28 U.S.C. § 1391(e) because Defendants and Plaintiff National Parks Conservation Association reside in the District.

PARTIES

8. Plaintiff Appalachian Mountain Club ("AMC") is a non-profit membership organization whose mission is to promote the protection, enjoyment, and understanding of the mountains, forests, waters, and trails of the Appalachian region. AMC has 100,000 members, supporters, and advocates, most of whom reside in the Mid-Atlantic and Northeast regions of the United States, including more than 10,000 members who belong to AMC's Delaware Valley and New York–North Jersey chapters. AMC has a long history of outdoor recreation and hands-on stewardship in the National Recreation Area. In 1971, AMC opposed construction of the Tocks Island Dam and supported creation of the National Recreation Area. In 1975, AMC prepared the

Delaware Water Gap National Recreation Area Recreation Management Plan for the Park Service, and in 1992, AMC completed an inventory and recommendations for trail development and maintenance in the park. That year, AMC volunteers began maintaining trails in the park in partnership with the Park Service. Today, AMC's volunteer trail crew contributes over 3,000 volunteer hours each year and maintains over 30 miles of trails in the National Recreation Area. In 1993, AMC established the Mohican Outdoors Center facility in the National Recreation Area, which now introduces more than 10,000 visitors a year to the park. AMC members routinely visit the park for their own enjoyment, and AMC volunteers lead education, recreation, and conservation programs in the National Recreation Area, along the Middle Delaware River, and on the Appalachian Trail. These members and volunteers regularly enjoy views and hike through areas that will be permanently degraded as a result of construction of the S-R Line.

9. Plaintiff Appalachian Trail Conservancy ("ATC") is a national not-for-profit corporation whose mission is to preserve and manage the Appalachian Trail, ensuring that its natural beauty and cultural heritage can be shared and enjoyed today and for centuries to come. Representing 31 Trail maintaining clubs, as well as 43,000 members from all 50 states and more than 15 countries, ATC supports the day-to-day management of the Appalachian Trail under a formal cooperative management agreement with the National Park Service and agreements with its Trail maintaining clubs. ATC initiated the creation of the Appalachian Trail in 1925 by bringing together trail building organizations and completed the Trail in 1937. Today, 6,000 ATC volunteers maintain the Trail and surrounding corridor lands, providing approximately 200,000 hours of service annually. Guided by the values of the National Trails System Act and the Appalachian National Scenic Trail Comprehensive Plan, ATC and its volunteer leaders and federal agency partners have developed numerous policies and programs to guide Trail

management and protection to ensure that the scenic, natural, and cultural values of the Trail are preserved and that each Trail visitor enjoys a safe and high quality recreational experience. These policies are developed in conjunction with the Appalachian Trail National Park Service office and are congruent with Park Service and other public agency directives and policies. One example of such a policy is an effective and standard approach to viewshed analysis that has been used to assess the visual impacts of projects adjacent to the Appalachian Trail. ATC members regularly visit the National Recreation Area and Appalachian Trail to assist in maintaining and protecting the trail and to enjoy hiking, backpacking, camping, and other outdoor activities amidst the undeveloped landscapes and undisturbed scenery of these parks.

10. Plaintiff Association of New Jersey Environmental Commissions ("ANJEC") is a private non-profit educational organization whose mission is to achieve responsible and sustainable use of New Jersey's natural resources through leadership, education, and support of environmental commissions and other local boards, public officials, environmental organizations, and concerned citizens. Over the past 43 years, ANJEC has helped municipal environmental commissions in New Jersey advise their local governments on natural resources protection and pollution abatement. ANJEC has over 2,700 members, including both municipal environmental commissioners and members of the public. ANJEC members reside in communities abutting or near the National Recreation Area through which the Project will be constructed. ANJEC members also include individuals and families throughout New Jersey who are closely connected to the affected Parks and regularly visit the National Recreation Area to hike, enjoy the scenery, and enjoy outdoor recreation both in the Middle Delaware and Appalachian Trail within the National Recreation Area.

11. Plaintiff Delaware Riverkeeper Network ("DRN") is a non-profit membership organization established to champion the rights of communities to a free-flowing, clean, and healthy Delaware River. DRN's staff and volunteers work throughout the Delaware River watershed including portions of Pennsylvania, New Jersey, Delaware, and New York, engaging in environmental advocacy, volunteer monitoring programs, stream restoration projects, and public education to protect and restore the ecological, recreational, commercial, and aesthetic qualities of the Delaware River and its tributaries, ecosystems, and habitats. DRN has approximately 10,000 members who reside, work, and/or recreate within the Delaware River watershed. Many of these members enjoy outdoor activities in the Delaware River Basin in general and in the National Recreation Area in particular, where they swim, boat, fish, bird, sightsee, camp, and hike. Additionally, DRN and its members have been involved in efforts to raise awareness of the value of the National Recreation Area and of the important role healthy rivers play in healthy ecosystems and in biological and human communities. DRN staff and volunteers have led hikes, canoe trips, and camping trips in the National Recreation Area to enable DRN members and other participants to experience the scenic beauty of the Middle Delaware.

12. Plaintiff National Parks Conservation Association ("NPCA") is a non-profit membership organization headquartered in Washington, DC, and the leading national organization dedicated solely to protection of the national park system. NPCA's mission is to protect and enhance America's national park system for present and future generations. NPCA was founded in 1919 by Stephen Mather, the first National Park Service director, who saw the need for a citizen advocacy group outside of the influence of government that could help to ensure the national parks would endure into the future. NPCA has approximately 340,000

members across the country, who care deeply about the shared natural and cultural heritage of the national park system and want to preserve these lands unimpaired for the enjoyment of future generations. More than 26,000 NPCA members live in New Jersey and Pennsylvania, where the National Recreation Area offers one of the few opportunities in the region for recreation amidst undeveloped landscapes and wilderness-like areas. A number of NPCA members regularly visit the Recreation Area to bike, birdwatch, enjoy the scenery, and hike on trails in the park, including the Appalachian Trail. Many NPCA members also enjoy use of the Delaware River within the National Recreation Area, whether to canoe, kayak, swim, or fish.

13. Plaintiff New Jersey Highlands Coalition is a local non-profit organization that represents both individual members and a diverse network of 72 local, regional, state, and national organizations in pursuing the goal of protecting, enhancing, and restoring the New Jersey Highlands and preserving the quality and quantity of drinking water for the 850,000 people in the Highlands and the more than four million people in surrounding areas who depend on Highlands water. The New Jersey Highlands are part of the Appalachian region and include nearly 860,000 acres of forested ridges, rolling farmlands, abundant wildlife habitat, and historic treasures in a 60-mile stretch within seven northwest New Jersey counties. Many of the more than 500 members of the New Jersey Highlands Coalition visit the Parks regularly to hike, backpack, recreate on the Delaware River, watch bald eagles, and enjoy the scenery. These members enjoy and use areas of the Parks that will be irreversibly impacted by the Project, including Millbrook Village, Van Campen Glen trail, and Old Mine Road, and are concerned about the Project's impacts on the Parks as well as on the Highlands, which are hydrologically connected to the Parks through the shared Delaware River Basin.

14. Plaintiff New York–New Jersey Trail Conference ("TC") is a non-profit federation of member clubs and individuals dedicated to providing recreational hiking opportunities in the mid-Atlantic region and representing the interests of the hiking community. The TC is committed to developing, building, and maintaining hiking trails; protecting hiking trail lands through support and advocacy; and educating the public in the responsible use of trails and the natural environment. The TC has 10,000 individual members, and 100 member clubs represent approximately 100,000 hikers. As a volunteer-directed public service organization, the TC partners with parks to create, protect, and promote a network of over 1,800 miles of trails in the New York-New Jersey metropolitan region and organizes volunteer service projects to keep these trails safe, accessible, and enjoyable for the public. The TC is the Appalachian Trail maintaining club for New York and New Jersey and works with ATC and the Park Service to manage the Appalachian Trail within these states. The TC completed construction of the Appalachian Trail on the Kittatinny Ridge in 1930. Today, the TC and its volunteer members put in thousands of hours annually in the National Recreation Area maintaining and managing trails within the park, including the stretch of the Appalachian Trail in the National Recreation Area. It is part of the TC's management responsibility to defend against activities and projects, like the S-R Line, that threaten the scenic, aesthetic, and recreational values of the trails it maintains. In addition to the thousands of hours spent by TC staff and members maintaining trails within the National Recreation Area, TC members regularly visit the park and its trails, including the Appalachian Trail, to enjoy its scenic views and rich natural and cultural resources.

15. Plaintiff Rock the Earth is a Pennsylvania non-profit conservation organization whose mission is to protect America's natural resources through partnerships with the music industry and the world-wide environmental community. Rock the Earth serves as an advocate to

ensure a sustainable and healthy environment for communities across the country and, in doing so, works closely with the music industry and its fans, many of whom are concerned with the fate of public lands, air, and water. Rock the Earth has approximately 2,000 members nationally, nearly 400 of whom reside in New Jersey, New York, and Pennsylvania. Rock the Earth members routinely visit and enjoy various parts of the National Recreation Area, including the Rivers Bend Campsite and the McDade Trail near the Schoonover House, to enjoy recreational activities such as backpacking, hiking, camping, bird viewing, photography, and other non-motorized activities.

16. Plaintiff Sierra Club is a national conservation organization with more than 1.4 million members and supporters. Founded in 1892, the Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The affected Sierra Club chapters whose members are harmed by the Park Service's actions include the New Jersey Chapter, which has approximately 20,000 members, and the Pennsylvania Chapter, which has approximately 24,000 members. Members of both chapters of the Sierra Club live in areas that will be traversed by the S-R Line. Additionally, members of both the New Jersey and Pennsylvania Chapters frequent the National Recreation Area and Appalachian Trail and routinely use and enjoy areas of the parks that will suffer impacts from the Project, including Old Mine Road, Sunfish Pond, the McDade Trail, Hamilton River campsites, Millbrook Village, Watergate Recreation Site, Van Campen Glen trail and picnic site, and the Walpack Bend region of the Delaware River.

17. Plaintiff Stop the Lines is a New Jersey-based grassroots organization dedicated to raising awareness about the S-R Line and garnering support to stop a costly transmission line that is not necessary to meet energy demand in the mid-Atlantic region. Stop the Lines engages in citizen education and political action to raise public awareness about the harms construction of the S-R Line would cause. Stop the Line has 440 active members, many of whom are regular visitors to the Delaware Water Gap National Recreation Area and who enjoy the park's spectacular scenery and undeveloped solitude while hiking, picnicking, and rafting on the Middle Delaware. At least 20 Stop the Lines members live within a few miles of the National Recreation Area, and many others live near the right-of-way on which the S-R Line will be constructed. These members are concerned about the impacts of the significant expansion entailed by the S-R Line for a number of reasons, including the effect on views in and around the park and the transmission line's facilitation of dirty coal-fired power.

18. Members of each of the Plaintiff organizations visit the Parks to recreate outdoors and to enjoy the undeveloped vistas, abundant wildlife, and healthy ecosystems found in the Parks. Even from afar, members of each of the Plaintiff organizations take an active interest in maintaining the integrity of the public's shared natural resources in the national park system. The Park Service's authorization of a special use and right-of-way permit for construction of the 195-foot-tall, 500 kilovolt S-R Line through the Parks, as outlined in the ROD, causes direct injury to the recreational, aesthetic, and conservation interests of the members of Plaintiff organizations. These injuries are fairly traceable to the ROD and S-R EIS and are redressable through this action to invalidate the ROD and S-R EIS.

19. Defendant Ken Salazar, the Secretary of Interior, has oversight authority for all actions taken by the Park Service. Secretary Salazar is sued in his official capacity.

20. Defendant Dennis Reidenbach, Northeast Regional Director of the National Park Service, is responsible for authorizing the Record of Decision at issue in this case. Regional Director Reidenbach is sued in his official capacity.

THE LEGAL FRAMEWORK

I. THE NATIONAL PARK SERVICE ORGANIC ACT PROHIBITION AGAINST IMPAIRMENT

21. Each area of the national park system, including the three affected in this action, is administered pursuant to the National Park Service Organic Act, Park Service regulations and Management Policies, and the legislation establishing the particular park unit.

22. The Park Service's overriding responsibility in administering the national park system is to prevent impairment to park resources and values. In establishing the national park system and the Park Service in 1916, Congress directed the agency to manage and regulate the use of areas in the national park system in conformity with their "fundamental purpose," that is:

> to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

16 U.S.C. § 1.

23. In 1978, Congress reaffirmed this core mandate, clarifying that "the promotion and regulation of the various areas of the National Park System . . . shall be consistent with and founded in the purpose established by [the Organic Act], to the common benefit of all the people of the United States." *Id.* § 1a-1. To this end, Congress directed that

> the protection, management, and administration [of national park units] shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress.

Id.

24. The National Park Service 2006 Management Policies, the agency's binding and official interpretation of the Organic Act, further elaborate on the non-impairment mandate:

> While Congress has given the Service the management discretion to allow impacts within parks, that discretion is limited by the statutory requirement . . . that the Park Service must leave park resources and values unimpaired unless a particular law directly and specifically provides otherwise. This, the cornerstone of the Organic Act, establishes the primary responsibility of the National Park Service. It ensures that park resources and values will continue to exist in a condition that will allow the American people to have present and future opportunities for enjoyment of them.

Nat'l Park Serv. Management Policies § 1.4.4 (2006), *available at* http://www.nps.gov/policy/mp2006.pdf; *see also id.* at 3 ("This volume is the basic Service-wide policy document of the National Park Service. Adherence to policy is mandatory . . . .").

25. The Park Service defines impairment as "an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values." *Id.* § 1.4.5.

> An impact would be more likely to constitute impairment to the extent that it affects a resource or value whose conservation is
>
> - necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park, or
> - key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park, or
> - identified in the park's general management plan or other relevant NPS planning documents as being of significance.

Id.

26. The legislation establishing the Delaware Water Gap National Recreation Area directs that the park be managed "for public outdoor recreation use" and "preservation of the scenic, scientific and historic features contributing to public enjoyment." Pub. L. No. 89-158 §§ 1, 5, 79 Stat. 612 (codified at 16 U.S.C. §§ 460o, 460o-4).

27. The legislation establishing the Appalachian Trail designates it as a national scenic trail, "so located as to provide for maximum outdoor recreation potential and for the conservation and enjoyment of the nationally significant scenic, historic, natural, or cultural qualities of the areas through which" the trail passes. Pub. L. 90-543 §§ 3(b), 82 Stat. 919; *see also id.* § 5(a)(1).

II. THE WILD AND SCENIC RIVERS ACT MANDATE TO PROTECT SCENIC FEATURES

28. The Wild and Scenic Rivers Act implements a Congressional policy recognizing that certain rivers and their immediate environments "possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values" and establishing a commitment to protect these rivers and their immediate environment "for the benefit and enjoyment of present and future generations." 16 U.S.C. § 1271.

29. In 1978, Congress selected the approximately 40-mile segment of the Delaware River within the boundaries of the National Recreation Area – the Middle Delaware National Scenic and Recreational River – for inclusion in the wild and scenic rivers system. *See* Pub. L. No. 95-625 § 705, 92 Stat. 3467 (codified at 16 U.S.C. § 1274(a)(20)).

30. Pursuant to this designation, the Middle Delaware must be administered so as "to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values." 16 U.S.C. § 1281(a). Administration of the river must give "primary emphasis" to protecting the river's "esthetic, scenic, historic, archeologic, and scientific features." *Id.*

31. Moreover, the Wild and Scenic River Act prohibits any federal agency or department from "assist[ing] by loan, grant, license, or otherwise in the construction of any water

resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration." *Id.* § 1278(a).

III. NEPA REVIEW REQUIREMENTS

32. The Park Service is obligated to comply with NEPA, 42 U.S.C. §§ 4321-4375, the "basic national charter for protection of the environment," 40 C.F.R. § 1500.1(a). NEPA implements procedures that "insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b).

33. Pursuant to NEPA, federal agencies must prepare an EIS before approving "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(C). The EIS must contain a "full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. § 1502.1; *see also* 42 U.S.C. § 4332(C). "Publication of an EIS, both in draft and final form, . . . serves a[n] informational role" by "giv[ing] the public the assurance that the agency has indeed considered environmental concerns in its decisionmaking process and, perhaps more significantly, provid[ing] a springboard for public comment." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (internal quotation marks and citation omitted).

34. The EIS must be prepared so as to "serve practically as an important contribution to the decisionmaking process" and cannot be "used to rationalize or justify decisions already made." 40 C.F.R. § 1502.5; *see also id.* §§ 1502.2(f), 1506.1.

35. In determining the scope of an EIS, the agency must consider "connected actions." *Id.* § 1508.25. Actions are connected if they "[a]utomatically trigger other actions

which may require [EISs]," "[c]annot or will not proceed unless other actions are taken previously or simultaneously," or "[a]re interdependent parts of a larger action and depend on the larger action for their justification." *Id.*

36. Moreover, the agency must disclose and consider the "environmental consequences" of a proposed action, including its direct, indirect, and cumulative impacts. *Id.* §§ 1502.16, 1508.25. Direct effects are those that "are caused by the action and occur at the same time and place." *Id.* § 1508.8(a). Indirect effects are those that are "caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." *Id.* § 1508.8(b). Cumulative impacts are those that "result[] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." *Id.* § 1508.7.

37. At the "heart" of the EIS is the agency's evaluation of the potential impacts of all reasonable alternatives for completing the proposed action. *Id.* § 1502.14; *City of Alexandria v. Slater*, 198 F.3d 862, 866 (D.C. Cir. 1999). The agency must "[r]igorously explore and objectively evaluate all reasonable alternatives" to a proposed action, thereby "sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public." 40 C.F.R. § 1502.14.

38. Additionally, the agency must "contain a detailed discussion of possible mitigation measures." *Robertson v. Methow Valley Citizens Council*, 490 U.S. at 351; *see also* 40 C.F.R. §§ 1502.14,(f); 1502.16(h); 1508.25(b)(3). Mitigation measures must be discussed in "sufficient detail to ensure that environmental consequences have been fairly evaluated." *Robertson v. Methow Valley Citizens Council*, 490 U.S. at 352.

39. Where "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts," the agency must prepare a supplement to its EIS. 40 C.F.R. § 1502.9(c)(1)(ii).

FACTUAL BACKGROUND

I. THE PARKS

40. The Delaware Water Gap National Recreation Area, the eighth most visited national park unit in the nation, encompasses 67,210 acres along the Delaware River in New Jersey and Pennsylvania. *See* Final Environmental Impact Statement for the Susquehanna to Roseland 500-kilovolt Transmission Line, Appalachian National Scenic Trail; Delaware Water Gap National Recreation Area and Middle Delaware National Scenic and Recreational River 7 (2012) ("S-R EIS"), *available at* http://parkplanning.nps.gov/dewa. The park contains "some of the best-known scenic landscapes in the northeastern United States," *id.* at 8, which is most dramatically characterized by the Delaware Water Gap itself.

41. A water gap is a geological feature in which a river cuts through a mountain ridge. Within the boundaries of the National Recreation Area, the Delaware River – designated a part of the wild and scenic river system in 1978, the longest undammed river in the eastern seaboard, and one of the cleanest rivers in the nation – cuts through the Appalachian Mountains to form the famed Delaware Water Gap. *See id.*; *see also* Nat'l Park Serv., Delaware River Basin: National Wild and Scenic River Values 32-41 (2012), *available at* http://www.nps.gov/dsc/ne/DelawareRiverBasin_Sept2012.pdf (identifying the wild and scenic river values of the Middle Delaware). The Water Gap is a mile wide from Mount Tammany in New Jersey to Mount Minsi in Pennsylvania and 1,200 feet deep from the tops of these mountains to the surface of the Delaware River. S-R EIS at 8.

42. The Appalachian Trail, designated the nation's first national scenic trail in 1968, is a 2,175-mile-long footpath traversing undisturbed forests and wild lands in 14 states and connecting Springer Mountain in Georgia to Mount Katahdin in Maine. *Id.* Twenty-seven miles of the Appalachian Trail run along Kittatinny Ridge and the length of the National Recreation Area. *Id.* at 7.

43. The National Recreation Area is the second largest acreage national park unit in the Northeast Region of the Park Service and one of the largest public open spaces remaining in the northeast United States. *See id.* at 11. In the rapidly expanding metropolitan corridor of the Mid-Atlantic region, the National Recreation Area offers valuable and increasingly rare opportunities for natural resource-based recreation and the enjoyment of unbounded landscapes and rural solitude. *See id.* More than 5.2 million people visit the National Recreation Area each year to hike, bike, cross-country ski, rock climb, boat, fish, swim, canoe, kayak, tube, and view the plethora of cultural history that abound within the park. *See id.* at i. Visitation is steadily increasing, largely from the New York and Philadelphia areas. *See id.* at 11. Additionally, an estimated two to three million people a year visit the Appalachian Trail to enjoy the unparalleled opportunity to experience countless miles of undeveloped natural and scenic landscapes. *See id.* at 8.

44. In the late 1920s, when the lands in the Delaware Water Gap region were still privately-owned properties not yet designated for special protection as part of the national park system, as they are now, Applicants (or their predecessors) acquired rights-of-way on which they constructed the 230-kilovolt Bushkill-to-Kittatinny transmission line ("B-K Line"). *See id.* at L-267. The transmission towers for the B-K Line are approximately 80 feet in height, *see id.* at 4 –

well below the surrounding tree canopy, which averages 120-130 feet in height, *id.* at M-110. There are no existing access roads to the B-K Line right-of-way. *Id.* at v.

45. After constructing the B-K Line, Applicants allowed much of the right-of-way to revegetate, and as of May 2010, portions of the right-of-way within the National Recreation Area had not been cleared "in decades." *Id.* at M-28; *see also id.* at iv.

46. The B-K Line right-of-way crosses 4.3 miles at the center of the National Recreation Area, which includes "the most undeveloped areas of the park, containing large swaths of contiguous mature forest, few manmade intrusions, unique geological formations, a globally significant rare plant community, and abundant opportunities for solitude." *Id.* at 680. This part of the park, in the Park Service's words, is "particularly sensitive . . . because it contains high concentrations of many important and unique natural features," which attract visitors and consequently is the destination for "a large proportion of DEWA users." *Id.*

47. The right-of-way bisects park resources "recognized for their superlative biodiversity," *id.* at 514, including rare limestone geology that support unique calcareous wetlands such as Arnott Fen, the Hogback Ridge wetlands, and the Van Campen Brook riparian area, *id.* at 396. These ecological communities "are significant resources in park and regional contexts, making any impacts in these locations even more acute." *Id.*

48. The right-of-also way slices across the north-south Kittatinny Ridge, an important migratory corridor for birds, *see id.* at 460, and is located next to "one of only two known communal roosts for wintering bald eagles," *id.* at 79. Additionally, the right-of-way crosses areas of the park "with high concentrations of cultural resources including pre-Columbian fishing camps and 36 historic structures." *Id.*

49. The right-of-way passes near the "most natural and least developed section of the [Middle Delaware Scenic and Recreational River]," *id.* at 673, crossing the river just downstream of Walpack Bend, a "unique river feature" and "premier visitor attraction" within the National Recreation Area, *id.* at 680. This area around the Delaware River "has the least evidence of human occupancy and influence making it a popular river destination because it offers an experience of solitude and exceptional scenic quality." *Id.* at 673.

50. The B-K Line right-of-way also crosses the Appalachian Trail in a stretch of the trail on the Kittatinny Ridge that is "[b]uffered from human development and encroachment" and "known for the solitary and wilderness-like experience it offers." *Id*.

II. THE PROPOSED ACTION

51. It is this right-of-way on which Applicants have requested approval from the Park Service to construct the S-R Line connecting the Susquehanna Substation in Berwick, Pennsylvania to the Roseland Substation in Roseland, New Jersey. *See* ROD at 1.

52. PPL's route for the S-R Line through Pennsylvania is depicted and described on PPL's website. *See Susquehanna-Roseland Project: Preconstruction Activities Under Way*, PPL Electric Utilities, http://www.pplreliablepower.com/construction-info.htm (last visited Oct. 14, 2012). PSEG's route for the S-R Line through New Jersey is described on PSEG's website. *See Susquehanna-Roseland: An Electric Reliability Project*, PSEG, http://www.pseg.com/family/pseandg/powerline/index.jsp (last visited Oct. 14, 2012).

53. The S-R Line as proposed and approved by the Park Service would remove the existing single-circuit 230-kilovolt B-K Line and replace it with a new double-circuit 500-kilovolt transmission line. *See* ROD at 1. The approximately 80-feet-tall transmission towers for the B-K Line would be replaced by new 195-feet-tall towers. S-R EIS at 4. The new towers

would hold an additional circuit, carrying both the 500-kilovolt S-R line as well as the B-K line initially energized at 230 kilovolts but built to carry 500 kilovolts. *Id.* at 30, 36. "The configuration of the conductors for the S-R Line would be vastly different than that of the B-K Line. Instead of 6 lines, the S-R Line structures (which would be twice as tall as the B-K Line structures) would carry a total of 20 lines." *Id.* at 442.

54. To accommodate this new construction, Applicants have requested, in addition to the special use permit for construction, an expanded right-of-way. The existing B-K Line right-of-way has historically been cleared to a width between 80 and 150 feet within the deeded width of 100 to 380 feet. *Id.* at v; *see also* ROD at 3. Construction of the S-R Line will require additional clearing of vegetation, up to a 200 feet wide right-of-way. *See* ROD at 3. Approximately 5.3 miles of access roads would be constructed, including approximately 1.9 miles outside the existing right-of-way. *See id.*

55. Construction of the Project in Park Service lands is expected to take approximately eight months. S-R EIS at 45. Construction will entail removal of the existing 22 transmission towers for the B-K Line. *Id.* at v, 39. The existing tower foundations above ground level would be mechanically chipped and removed, but the foundations would remain in place below ground. *Id.* at 39. After clearing of approximately 240 acres in the right-of-way – 129 acres of which is mature forest – as well as an additional 25.4 acres outside of the right-of-way, access roads and spur roads would be constructed, along with construction staging areas and pulling and splicing sites. *Id.* at 38, 83.

56. Six new towers would be installed per mile, for a total of 26 new towers within the National Recreation Area. *Id.* at 38. The towers would be constructed on 6- to 9-feet-wide concrete foundations and tower installation would require excavation to depths between 15 and

30 feet or more. *Id.* at 38, 41. Portions of the right-of-way would be graded to create level areas for the towers and crane pads, which would be used for assembly and erection at each tower location. *See id.* at 38, 41.

57. Because the right-of-way traverses terrain marked by steep slopes – "[t]welve of the proposed tower locations and associated crane pads are in areas with slopes ranging from 10% to 30%," *id.* at 361 – extensive excavation would be required to create a level pad, *see id.* at 41. "Areas with higher slopes would require additional excavation of soil and bedrock . . . ." *Id.* at 361. Such large excavations in an area characterized by glacial till create a potential for landslides "because some slopes may be unstable." *Id.* at 361.

58. The right-of-way also crosses rare and unique limestone and/or shale geologic formations and unstable areas with weathered bedrock. *Id.* at 360. Seven of the new towers would be constructed in rare or unique geologic features and another seven will be constructed in geologic formations adjacent to the Delaware River that "have fair to poor stability." *Id.*

III. THE CONTEXT OF THE PARK SERVICE'S ENVIRONMENTAL REVIEW

59. The Park Service published its notice of intent to prepare an EIS for the proposed action and invited scoping comments in 2010. *See* 75 Fed. Reg. 3486 (Jan. 21, 2010).

60. On October 5, 2011, the Administration announced that the S-R Line would be among the pilot projects for which the Rapid Response Team for Transmission, consisting of nine federal agencies including the Department of Interior, would "accelerate" permitting and construction. *See* Press Release, Obama Administration Announces Job-Creating Grid Modernization Pilot Projects (Oct. 5, 2011), http://www.doi.gov/news/pressreleases/Obama-Administration-Announces-Job-Creating-Grid-Modernization-Pilot-Projects.cfm.

61. In its draft EIS released November 21, 2011, the Park Service did not select a Preferred Alternative but identified the no-action alternative as the Environmentally Preferred Alternative. *See* Nat'l Park Serv., Susquehanna to Roseland 500-KV Transmission Line Right-of-Way and Special Use Permit Draft Environmental Impact Statement vii (2011) ("Draft EIS"), *available at* http://parkplanning.nps.gov/dewa. In the Draft EIS, the Park Service noted that Applicants' proposed route along the B-K Line right-of-way "poses high risk for irreparable damage to significant ecological communities and drastic scenic degradation that could violate the Organic Act (impairment)." *Id.* at 686.

62. At a January 24, 2012 tribal consultation related to the environmental review of the S-R Line, the Superintendent of the National Recreation Area noted that the Park Service and Applicants "need to come to an agreement because of increasing political pressure." S-R EIS at M-111. The Superintendent further noted that the Park Service "must make a decision by October 2012" and that the utilities will "more than likely sue to gain a permit to construct, if the NPS managers choose the no-action alternative." *Id.*

63. In late January 2012, before the close of the public comment period on the Draft EIS, the Park Service reported that Applicants had "announced that they plan to submit a mitigation proposal when filing their comments on the [Draft EIS]." Press Release, Nat'l Park Serv., Utilities Propose Mitigation for Power Lines (Jan. 23, 2012), http://www.nps.gov/dewa /parknews/mitigation-proposal.htm. In the press statement, the Park Service "welcome[d] the utilities' efforts" but noted that the agency "will not be able to determine whether the lost use and resource impacts are offset until the agency has fully evaluated the mitigation proposal and the public has had a chance to review it." *Id.*

64. In their January 30, 2012 comments on the Draft EIS, Applicants proposed compensatory mitigation based on their own methodology for calculating impacts that valued the affected park resources at $9,500 per acre. *See* S-R EIS at L-274; *see also* PPL, CMP Contribution Methodology 8 (2012), *available at* http://www.pplreliablepower.com/NR /rdonlyres/836A0C89-9722-4A75-94A5-9D69F2D2A4AA/0/ CMPContributionmethodologyNPS7.pdf. Applicants offered to fund the Park Service's acquisition of land outside of the National Recreation Area that would, pursuant to their methodology, "result in compensatory mitigation on the order of $30-$40 million." *See* S-R EIS at L-274 to L-276.

65. At the time of its January 30, 2012 comments, Applicants already had "engaged and provided funds to a . . . land conservation organization to begin acquiring interests in private properties," and Applicants were already in "dialogue with landowners" over certain tracts of land. *Id.* at L-276. Applicants and their consultants had committed to keeping information about the lands proposed to be purchased secret and were willing to "share information that is not governed by specific confidentiality agreements with the [Park Service]" only if the Park Service agreed not to disclose this information to the public. *See id.*

66. On March 29, 2012, the Park Service identified Alternative 2 as its preferred alternative. *See* Press Release, Nat'l Park Serv. Ne. Region, National Park Service Identifies Preferred Alternative for Proposed Susquehanna-Roseland Transmission Line (Mar. 29, 2012), http://www.nps.gov/appa/upload/NPS-Susquehanna-Roseland-3-29-release.pdf.

IV. THE PARK SERVICE'S ENVIRONMENTAL REVIEW

A. The Alternatives Considered

67. The EIS considers six alternatives. Aside from Alternative 1, the no-action alternative, the five alternatives considered are merely different routing alignments for the transmission line. *See* S-R EIS at v-vii.

68. The Park Service did not consider non-transmission alternatives among the six alternatives. The Park Service dismissed "[t]he use of distributed energy generation sites and localized renewable energy" from consideration "because they do not meet the purpose and need for federal action or that of the applicant" and because "ordering the adoption of such systems is beyond the authority of the NPS." *Id.* at 71.

69. The Park Service determined that Alternative 1, the no-action alternative, is the environmentally preferable alternative because "[i]t is the alternative that causes the least damage to the biological and physical environment and that best protects, preserves, and enhances historic, cultural, and natural resources." *Id.* at 75. The Park Service further acknowledged that "if the only consideration were protection of park resources and values," the no action alternative "would be the best choice." ROD at 18.

70. Alternative 2 is Applicants' proposed route using the B-K Line right-of-way. This alternative would require widening the right-of-way to accommodate the taller towers as described above. *See* S-R EIS at 50, 56.

71. Alternative 2b, Applicants' alternate proposal, also would use the B-K Line right-of-way, but would not require widening the right-of-way. *See id.* at 56. In this alternative, Applicants would construct the S-R Line within their existing deeded right-of-way and would require only a special use permit from the Park Service. Because the S-R Line would be built on a narrower right-of-way in this alternative, it would require two more towers than Alternative 2. *Id.* These towers would be constructed within the 100-feet-wide portion of the right-of-way. *Id.*

72. "The feasibility of this alternative is dependent on the applicant's ability to clear danger trees beyond the existing [right-of-way]," and Applicants have made, in the Park Service's words, the "controversial assumption that they have a right to clear danger trees on [Park Service] property outside any deeded [right-of-way]." *Id.* at vi. As documented in Appendix D of the EIS, the Park Service disagrees with Applicants' view of Alternate 2b's feasibility. Because the "minimum horizontal clearance to the edge of the [right-of-way] under high wind conditions" is greater than 100 feet, the Park Service is concerned about the safety of constructing the S-R Line within the existing right-of-way. *Id.* at vi; *id.* at 717 ("Ultimately, the NPS found that constructing the proposed project according to the proposed plan for the 100-foot [right-of-way] would violate [National Electrical Safety Code] safety guidelines.").

73. Alternative 3 would cross 5.4 miles within the boundaries of the National Recreation Area and also would cross the Middle Delaware and Appalachian Trail. *See* S-R EIS at 61. Rather than following the B-K Line right-of-way, the Alternative 3 alignment would pass through the park along the right-of-way of other "existing transmission and distribution lines." *Id.* at vi.

74. Alternatives 4 and 5 largely follow the same alignment in the southernmost portion of the National Recreation Area. *See id.* at 62, 67. Alternative 4 would cross 1.5 miles of Park Service lands while Alternative 5 would cross 0.9 miles within Park Service lands. *Id.* at 62, 67. The S-R Line in these alternatives would follow the path of an existing distribution line right-of-way. *Id.* at vi. According to the Park Service, "Alternatives 4 and 5 both have far less impacts on park resources and values than the other action alternatives . . . ." ROD at 19.

B. The Scope and Extent of Analysis

75. The study area used by the Park Service for assessing impacts varied with the resource. For most of the resources analyzed, the EIS studied a narrow area within the parks limited to the right-of-way itself and areas outside the right-of-way where pulling and splicing sites, staging areas, and access roads are "proposed or would be expected." S-R EIS at 355 (using this study area for geologic resources); *id.* at 384 (for wetlands); *id.* at 406 (for vegetation); *id.* at 460 (for special-status aquatic and terrestrial species); *id.* at 498 (for rare and unique communities).

76. The study areas for other resources, specifically cultural resources and landscape connectivity, wildlife habitat, and wildlife, were based in part on visual split locations ("VSL"), "[t]he geographical point outside the parks at which it becomes physically possible for the applicant to route the line as it sees fit," *id.* at 33. *See id.* at 220, 426.

77. According to the Park Service, "because the NPS cannot dictate where the line would actually go" outside of the parks, "direct impacts from the construction and maintenance of the transmission line outside the study area cannot be determined." *Id.* at 387. Because of this perceived restriction, the Park Service deviated from its usual standards for undertaking analysis. The Park Service noted, for instance that "[t]he assessment of landscape connectivity in its traditional sense of continuity of habitat on a regional scale cannot be accomplished in this analysis. Because the location of the S-R line outside the study area cannot be determined at this time, a direct analysis of the impacts on landscape connectivity at the regional scale is not possible." *Id.* at 424.

78. For nearly all of the resource areas examined, the Park Service reasoned that "[b]ecause the location of the S-R Line outside the study area cannot be determined at this time," "potential impacts outside the study area" – that is, the S-R Line's indirect impacts – can be

addressed only "generally" and "indirect impacts on [the resource] cannot be evaluated per alternative." *Id.* at 355-56 (referring to geologic resources); *id.* at 384 (wetlands); *id.* at 406 (vegetation); *id.* at 426 (landscape connectivity, wildlife habitat, and wildlife); *id.*at 460-61 (special-status species); *id.* at 498 (rare and unique communities). Accordingly, for these resources, "further surveys would be required prior to construction of the S-R Line." *Id.* at 384; *see also id.* at 356, 406, 426, 461, 498.

79. Additionally, the Park Service acknowledged that "[d]ue to the strict timing constraints," it "did not have enough time to conduct a full analysis" of the visual impacts from the Project. *Id.* at L-91.

80. In ascertaining cumulative impacts, the agency claimed that it "combin[ed] the impacts of the proposed alternative being considered and other past, present, and reasonably foreseeable actions that would also result in beneficial or adverse impacts. If the impacts of the proposed alternative being considered are major, the relative contribution to the cumulative impact would be greater." *Id.* at 351. Yet, for each resource, the Park Service failed to explain how it reached its conclusions about whether an alternative would contribute to cumulative impacts.

81. For instance, the Park Service stated:

> Adverse cumulative impacts on landscape connectivity, wildlife habitat, and wildlife would result inside the terrestrial study area from past, present, and reasonably foreseeable projects . . . . Alternative 2 would contribute to the cumulative adverse impact on these resources, particularly with regard to fragmentation, loss of landscape connectivity, and hazard to migratory birds. When the adverse impacts as a result of alternative 2 are combined with the impacts from the other projects in the terrestrial study area, an overall adverse cumulative impact would be expected. *Alternative 2 would not increase the levels of impacts*."

Id. at 444 (emphasis added).

82. With respect to mitigation, the EIS and ROD set forth general mitigation plans, many of which have yet to be developed and considered by the agency. For instance, one "mitigation measure" requires the submittal of "a detailed drilling plan for NPS review and approval for all drilling activities prior to drilling and construction activities." ROD at 4; *see also* S-R EIS at F-5. Other "plans" that are identified as mitigation measures but have yet to be developed and considered by the agency include a spill prevention and response plan, S-R EIS at F-5; ROD at 5; a long-term, park-specific vegetation management plan for the operation and maintenance of the line, S-R EIS at F-7; ROD at 6; an invasive species management plan, S-R EIS at F-7; ROD at 6; species-specific conservation and mitigation plans, S-R EIS at F-10; ROD at 8; a construction staging plan, S-R EIS at F-14; ROD at 12; a plan to control unauthorized public access and use on NPS lands that could result from the proposed project, S-R EIS at F-14; ROD at 12; and a plan to avoid or minimize impacts to park visitors, S-R EIS at F-16; ROD at 14.

83. Yet other mitigation measures consist of mandates to minimize impacts without guidance, detail, or information about how such impacts will in fact be effectively minimized. *See*, *e.g.*, S-R EIS at F-6 ("Restore watershed conditions to eliminate accelerated runoff caused by soil compaction, poor vegetation cover, or the unnatural conveyance of water by roads, ditches, or trails."). For instance, the EIS concludes that the applicants must "[d]evelop a buffer zone around areas of sensitive geologic resources," which would "protect these areas from drilling and excavation activities, limiting impacts." *Id.* at F-5. The agency does not explain how such a buffer zone might be implemented and with what effect, given that portions of the Project will be constructed *in* sensitive geological resources, necessitating drilling and excavation of such resources. *See id.* at 359-61.

C. The Significant Adverse Impacts of the Project

84. In the S-R EIS, the Park Service is unequivocal: "Permitting the project would adversely affect multiple protected resources inside the parks, in some instances irreversibly." *Id.* at 680. More specifically,

> Alternative 2 would cause significant adverse impacts to geologic resources; wetlands; vegetation; landscape connectivity, wildlife habitat, and wildlife; special-status species; rare and unique communities; archeological resources; historic structures; cultural landscapes; socioeconomics; infrastructure, access and circulation; visual resources; visitor use and experience; wild and scenic rivers; park operations; and human health and safety.

Id. at viii.

85. With respect to the Middle Delaware, the Park Service concedes that the chosen alternative "*would result in significant long-term degradation of the scenic values for which the river was designated*, which would be contrary to the directives in section 10(a) of the Wild and Scenic Rivers Act to 'protect and enhance' those values which caused the river to be included in the system." *Id.* at 696 (emphasis added).

86. Based on "the abundant evidence of the environmental damage that would occur if the project were to move forward," *id.* at 75, the Park Service determined that "alternative 2 has the potential to result in a very high level of impact on a variety of important resources found along the existing transmission corridor, higher than some of the other action alternatives evaluated and much higher than the environmentally preferable alternative (Alternative 1: No Action . . .)," *id.* at 74. The Park Service further acknowledged that "Alternative 2 would be less consistent than [the no-action alternative] with the purpose of fulfilling the responsibilities of each generation as trustee for the environment due to the magnitude and severity of impacts to resources." *Id.* at 76.

87. The Park Service concluded that the Project "would result in considerable, and in some cases, severe adverse impacts on visitor experience." *Id.* at 680. "The taller towers and wider [right-of-way] would create a dramatic visual disturbance where very little disturbance currently exists," *id.* at 623, and "would degrade the wilderness viewshed and cultural landscape," *id.* at 77; *see also id.* at 80. These impacts "would affect a relatively large area, a large number of users, and would exist for the life of the project," *id.* at 680, and "have the potential to violate the Organic Act" by causing park resources to become "unavailable for the enjoyment of future generations," *id.* at 80.

88. In a report prepared for the Park Service, dated July 27, 2012, the human use and ecological impacts associated with the Project are estimated at $89 million. *See* Human Use and Ecological Impacts Associated with the Proposed Susquehanna to Roseland Transmission Line (2012), *available at* http://parkplanning.nps.gov/document.cfm?parkID=220&projectID=25147&documentID=49117.

V. THE RECORD OF DECISION

89. In the ROD, the Park Service selected Alternative 2, Applicants' preferred route, because the agency concluded that the no-action alternative was not a realistic option. While acknowledging that "the no action alternative would be the best choice if the only consideration were protection of park resources and values," the Park Service noted that it "cannot ignore the fact that the applicant owns a property interest in the existing powerline corridor" and that "[t]he applicant asserts that these existing rights are sufficient to allow it to build an alternative design to the line (Alternative 2b) without the grant of additional rights." ROD at 18.

90. The Park Service speculated that if it selected the no-action alternative, "the applicant *may decide* to pursue alternative 2b, as analyzed, asserting its present property rights,

and *if it were prevented* from constructing within its present rights, it *might* assert a 'takings' claim against the United States." *Id.* (emphasis added). "Under these circumstances," the Park Service "rejected the no-action alternative in favor of the selected alternative, which, while causing more impact than failure to construct would, causes less impact than Alternative 2b." *Id.*

A. The Non-Impairment Determination

91. In spite of the significant adverse impacts set forth in the EIS and acknowledged in the ROD, the Park Service concluded that the Project will not impair park resources and values. *See* ROD Attachment A. For instance, although "impacts to geologic resources will be significant" and hold a potential for fracturing limestone and changing groundwater flows, the Park Service concluded that "the adverse impacts will not result in impairment" because "the overall integrity of the geologic formations and paleontological resources" will not change, "nor will the adverse impacts to geologic resources substantially change the scenic landscapes of the Appalachian Ridge and Valley Province . . . ." *Id.* at 4. Similarly, the Park Service noted that the Project will present "a visible intrusion that degrades the existing scenic quality of the area that it traverses," but concludes that visual resources will not be impaired because "[o]verall, the visual resources of the parks will remain intact." *Id.* at 12.

92. In ascertaining impairment to the Middle Delaware, the Park Service conceded that "many of the values for which the river was designated will be perceptibly changed," and that "[a]dverse impacts to visual qualities of the river will . . . be experienced by visitors who view the river from locations beyond the immediate crossing." *Id.* at 13. Yet, the agency concluded, without more, that "there will be no impairment of the qualities that caused the river to be included in the wild and scenic river system." *Id.*

B. Compensatory Mitigation

93. Applicants' "Plan for Compensatory Mitigation" dated May 25, 2012 was included in Appendix N to the Final EIS as "Applicant Materials Received Subsequent to the DEIS" provided for "informational purposes only" and "not analyzed or otherwise included in the FEIS." *See* S-R EIS App. N. This May 2012 plan is substantially the same as the proposal attached to Applicants' January 30, 2012 comments on the Draft EIS – down to calculating the same impact acreage (38,221 acres), valuing the lands at the same dollar amount ($9,500 per acre), and reaching the same dollar value for affected resources ($36,494,241). *Compare* S-R EIS App. N "Plan for Compensatory Mitigation" *with* PPL, CMP Contribution Methodology (2012), *available at* http://www.pplreliablepower.com/NR/rdonlyres/836A0C89-9722-4A75-94A5-9D69F2D2A4AA/0/CMPContributionmethodologyNPS7.pdf.

94. The Park Service's only mention of compensatory mitigation in the Final EIS was an acknowledgement that "[t]he applicant submitted a draft Mitigation Concept S-R Line Project to the NPS in May 2011 . . . [that] is included in appendix F." EIS at 73. The Park Service engaged in no discussion of the plan or the methodology used to assess impacts.

95. The Park Service presented the Middle Delaware Compensation Fund for the first time ever in the ROD. *See* ROD at 15. The Park Service announced that Applicants would deposit $56 million "as will be described in a memorandum of agreement to be entered with and managed by The Conservation Fund." *Id*. Nowhere in the EIS or the ROD is there any explanation of how the $56 million figure was determined.

96. According to the ROD, money from the Fund would be used to "[a]cquire lands from willing sellers that can be included in the boundaries of [the Appalachian Trail] and [the National Recreation Area] as compensatory mitigation for lands over which [right-of-way] rights

are granted." *Id*. Yet, the ROD neither identifies the lands that would be purchased nor reflects the Park Service's consideration of whether and how such lands will be chosen and evaluated.

97. Similarly, the ROD explains that money from the Fund would be used to "[c]arry out wetlands restoration projects" and historic preservation projects within the parks, but nowhere explains to the public how these projects would in fact compensate for the harms inflicted by the Project. *Id*. At most, the Final Statement of Findings ("SOF") for wetlands and floodplain management generally identifies nine compensatory mitigation projects for wetlands. *See* ROD Attachment B at 43, 46-49. But these mitigation projects are described at the exact same level of generality in the Final SOF as they were described in the Draft SOF. *See* Nat'l Park Serv., Draft Statement of Findings for Executive Order 11990, "Protection of Wetlands" and Executive Order 11998, "Floodplain Management" 43-63 (July 2012). As indicated in both the Draft SOF and Final SOF, the Park Service has not yet even decided which projects to pursue because it needs "a better understanding of what functions and values the projects can provide, [the] practicality of completing the projects, and expected success of the project." ROD Attachment B at 43.

FIRST CAUSE OF ACTION
Violation of National Park Service Organic Act

98. Plaintiffs hereby reallege and incorporate each and every allegation in paragraphs 1 through 97.

99. Under the National Park Service Organic Act, the Park Service is prohibited from authorizing activities that would result in the impairment of park resources or values, *see* 16 U.S.C. § 1, that is, impacts that "would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values," Nat'l Park Serv. Management Policies § 1.4.5. Park resources and values encompass

"the park's scenery, natural and historic objects, and wildlife," including "ecological, biological, and physical processes that created the park and continue to act upon it; scenic features; . . . natural landscapes; . . . water and air resources; soils; geological resources; paleontological resources; archeological resources; cultural landscapes; . . . and native plants and animals." *Id.* § 1.4.6.

100. As memorialized in the ROD, the Park Service has approved a Project that will result in what the agency acknowledges are serious and abiding damage to the Parks. *See, e.g.*, S-R EIS at 680-81; ROD Attachment A at 3-13; ROD Attachment B at 27-30. The Park Service failed to provide any reasonable explanation for why it chose an alternative with such significant adverse impacts and why the acknowledged harms do not constitute impairment in violation of the National Park Service Organic Act. This failure to provide a rational connection between the facts found, as presented in the Final EIS and acknowledged in the ROD, and the conclusion of non-impairment and approval of the Project make the agency's decision to grant the requested permits arbitrary, capricious, an abuse of discretion, and not in accordance with the National Park Service Organic Act. *See* 5 U.S.C. § 706(2)(A).

SECOND CAUSE OF ACTION
Violation of Wild and Scenic Rivers Act

101. Plaintiffs hereby reallege and incorporate each and every allegation in paragraphs 1 through 97.

102. As part of the river system protected under the Wild and Scenic Rivers Act for its "outstandingly remarkable . . . values," 16 U.S.C. § 1271, the Middle Delaware must be administered so as "to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values." *Id.* § 1281(a). Administration of the

river must give "primary emphasis" to protecting the river's "esthetic, scenic, historic, archeologic, and scientific features." *Id.*

103. The Park Service's environmental review concluded that the Project "would result in significant long-term degradation of the scenic values for which the river was designated, which would be contrary to the directives in section 10(a) of the Wild and Scenic Rivers Act to 'protect and enhance' those values which caused the river to be included in the system." S-R EIS at 696. Accordingly, the Park Service's decision authorizing the Project is arbitrary, capricious, an abuse of discretion, and not in accordance with the Wild and Scenic Rivers Act. *See* 5 U.S.C. § 706(2)(A).

THIRD CAUSE OF ACTION
Violation of Wild and Scenic Rivers Act

104. Plaintiffs hereby reallege and incorporate each and every allegation in paragraphs 1 through 97.

105. The Wild and Scenic River Act prohibits any federal agency or department from "assist[ing] by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration." 16 U.S.C. § 1278(a). A water resources project is defined to include a transmission line under the Federal Power Act. *See* 36 C.F.R. § 297.3.

106. In light of the Park Service's acknowledgment that the Project "would result in significant long-term degradation of the scenic values for which the [Middle Delaware] was designated," S-R EIS at 696, the Park Service's authorization of the Project as outlined in the ROD is arbitrary, capricious, an abuse of discretion, and not in accordance with the Wild and Scenic Rivers Act. *See* 5 U.S.C. § 706(2)(A).

FOURTH CAUSE OF ACTION
Violation of NEPA
(Failure to Consider Reasonable Alternatives)

107. Plaintiffs hereby reallege and incorporate each and every allegation in paragraphs 1 through 97.

108. Under NEPA, the Park Service is required to "[r]igorously explore and objectively evaluate all reasonable alternatives," 40 C.F.R. § 1502.14(a), with specific attention to each alternative's "[e]nergy requirements and conservation potential," *id.* § 1502.16(e). An alternative outside the legal jurisdiction of the agency must still be analyzed in the EIS if it is reasonable. *See* Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026, 18,027 (Mar. 23, 1981). The Department of Interior's rules implementing NEPA further clarify that the appropriate range of alternatives is determined by the agency's "purpose and need for action," *not* the applicant's needs and goals, and that it is the agency's purpose and need that "provide a basis for the selection of an alternative in a decision." 43 C.F.R. § 46.420.

109. The Park Service's environmental review did not consider reasonable non-transmission alternatives. The Park Service dismissed from consideration "[t]he use of distributed energy generation sites and localized renewable energy," for instance, because "they do not meet the purpose and need for federal action *or that of the applicant*" and because "ordering the adoption of such systems is beyond the authority of the NPS." S-R EIS at 71 (emphasis added). Neither of these reasons can justify the exclusion of a reasonable alternative from consideration. The Park Service's failure to consider reasonable non-transmission alternatives in the EIS is therefore arbitrary, capricious, an abuse of discretion, and not in accordance with NEPA and its implementing regulations. *See* 5 U.S.C. § 706(2)(A).

FIFTH CAUSE OF ACTION
Violation of NEPA
(Failure to Consider and Disclose All Direct Effects)

110. Plaintiffs hereby reallege and incorporate each and every allegation in paragraphs 1 through 97.

111. NEPA requires the Park Service to take a hard look at and fully disclose the "environmental consequences" of a proposed action, including its direct impacts. 40 C.F.R. §§ 1502.16, 1508.25; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). Despite the fact that the proposed route of the transmission line is publicly available on Applicants' websites, the Park Service failed to consider and disclose "direct impacts from the construction and maintenance of the transmission line" outside a narrowly-defined study area largely limited to Park boundaries. *See* S-R EIS at 387. Accordingly, the agency acknowledged that an assessment of landscape connectivity "in its traditional sense of continuity of habitat on a regional scale" was not undertaken in the EIS. *See id.* at 424. This failure to analyze and disclose direct impacts within an appropriate study area using reasonably available information is arbitrary, capricious, an abuse of discretion, and not in accordance with NEPA and its implementing regulations. *See* 5 U.S.C. § 706(2)(A).

SIXTH CAUSE OF ACTION
Violation of NEPA
(Failure to Consider and Disclose All Indirect Effects)

112. Plaintiffs hereby reallege and incorporate each and every allegation in paragraphs 1 through 97.

113. NEPA requires the Park Service to consider the indirect effect of actions, which is defined as those effects that are "caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." 40 C.F.R. § 1508.8(b). The Park Service

conceded that it addressed the Project's indirect impacts outside of the identified study areas only "generally" and further acknowledged that it did not evaluate indirect impacts "per alternative." *See, e.g.*, S-R EIS at 355-56, 384, 406, 426. The Park Service's failure to examine indirect effects is arbitrary, capricious, an abuse of discretion, and not in accordance with NEPA and its implementing regulations. *See* 5 U.S.C. § 706(2)(A).

SEVENTH CAUSE OF ACTION
Violation of NEPA
(Failure to Consider and Disclose Connected Action)

114. Plaintiffs hereby reallege and incorporate each and every allegation in paragraphs 1 through 97.

115. NEPA requires the Park Service to consider connected actions, that is those actions that "[a]utomatically trigger other actions which may require [EISs]," "[c]annot or will not proceed unless other actions are taken previously or simultaneously," or "[a]re interdependent parts of a larger action and depend on the larger action for their justification." 40 C.F.R. § 1508.25. The Project is a portion of a longer transmission line between Berwick, Pennsylvania and Roseland, New Jersey. The transmission line outside the boundaries of the Parks is a connected action under NEPA, the effects of which should have been considered in the EIS, but were not. The Park Service's failure to consider a connected action in the EIS is arbitrary, capricious, an abuse of discretion, and not in accordance with NEPA and its implementing regulations. *See* 5 U.S.C. § 706(2)(A).

EIGHTH CAUSE OF ACTION
Violation of NEPA
(Failure to Consider Cumulative Impacts)

116. Plaintiffs hereby reallege and incorporate each and every allegation in paragraphs 1 through 97.

117. Pursuant to NEPA, the Park Service is required to consider the cumulative impacts of the Project, which are those that "result[] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." 40 C.F.R. § 1508.7.

118. The Park Service provided no basis for understanding how the agency arrived at its determination of whether the Project contributed to cumulative impacts. The agency's cumulative impact analysis included a statement about whether the examined alternative would have adverse impacts on the particular resource and a statement about whether cumulative impacts on that resource already exist in the study area from other actions. These statements were followed by ungrounded and perfunctory conclusions about whether the alternative would contribute to cumulative impacts on the resource. *See, e.g.*, S-R EIS at 362; 444. Such a failure to provide a basis for the agency's conclusions about cumulative impact deprives the public of any assurance that the agency has indeed "considered environmental concerns in its decisionmaking process," *Balt. Gas & Elec. Co. v. Natural Res. Def. Council*, 462 U.S. 87, 97 (1983), and is arbitrary, capricious, an abuse of discretion, and not in accordance with NEPA and its implementing regulations. *See* 5 U.S.C. § 706(2)(A).

NINTH CAUSE OF ACTION
Violation of NEPA
(Failure to Consider and Disclose Mitigation Measures)

119. Plaintiffs hereby reallege and incorporate each and every allegation in paragraphs 1 through 97.

120. The EIS must "[i]nclude appropriate mitigation measures" for each alternative. 40 C.F.R. § 1502.14(f); *see also* §§ 1502.16(h); 1508.25(b)(3). In its EIS, the Park Service failed to evaluate meaningfully the means by which harm would be mitigated. Rather than including "a

detailed discussion of possible mitigation measures" that contains "sufficient detail to ensure that environmental consequences have been fairly evaluated," *Methow Valley Citizens Council*, 490 U.S. at 351-52, the Park Service's presentation of mitigation in its EIS, and as finalized in the ROD, included plans to make plans to mitigate harm and mandates to minimize impacts without information about how and whether such measures would in fact effectively minimize impacts. *See* S-R EIS App. F "Mitigation Measures." The Park Service's consideration and disclosure of mitigation consequently is arbitrary, capricious, an abuse of discretion, and not in accordance with NEPA and its implementing regulations. *See* 5 U.S.C. § 706(2)(A).

TENTH CAUSE OF ACTION
Violation of NEPA
(Failure to Prepare a Supplement)

121. Plaintiffs hereby reallege and incorporate each and every allegation in paragraphs 1 through 97.

122. Where "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts," NEPA requires the Park Service to prepare a supplement to its EIS. 40 C.F.R. § 1502.9(c)(1)(ii). In this case, Applicants presented a general compensatory mitigation concept valuing impacts at $9,500 an acre and estimating mitigation on the scale of $30-40 million to compensate for the harm from construction and operation of the Project along its preferred route. *See* S-R EIS at L-274 to L-276. Because Applicants did not propose this compensation publicly until after the close of the comment period on the Draft EIS, the public had no opportunity to comment on the proposal. The Final EIS included a reference to the compensatory mitigation, but no discussion of Applicants' proposal or the methodology they used in arriving at an estimate of impacts. *See* S-R EIS at 73.

123. Despite this significant new information bearing on the impact assessment for Alternative 2 and the Park Service's failure to engage in and disclose any analysis of the proposed compensation, the ROD announced a Middle Delaware Compensation Fund of at least $56 million to "compensate" for the harm from the Project. *See* ROD at 15. The Park Service's failure to prepare a supplement to the EIS disclosing and explaining its consideration and analysis of the proposed compensation leading to the conclusion announced in the ROD is arbitrary, capricious, an abuse of discretion, and not in accordance with NEPA and its implementing regulations. *See* 5 U.S.C. § 706(2)(A).

ELEVENTH CAUSE OF ACTION
Violation of NEPA
(Prejudgment)

124. Plaintiffs hereby reallege and incorporate each and every allegation in paragraphs 1 through 97.

125. The EIS must be prepared so as to "serve practically as an important contribution to the decisionmaking process" and cannot be "used to rationalize or justify decisions already made." 40 C.F.R. § 1502.5; *see also id.* §§ 1502.2(f), 1506.1. The inclusion of the Susquehanna-Roseland transmission line in the set of projects to be "fast-tracked" by the Rapid Response Team for Transmission placed undue pressure on rapid approval of the Project and influenced the Park Service to commit to a determination about the preferred alternatives before environmental review under NEPA had been properly concluded. Such prejudgment by the agency is arbitrary, capricious, an abuse of discretion, and not in accordance with NEPA and its implementing regulations. *See* 5 U.S.C. § 706(2)(A).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

1. Declare that the S-R Line ROD and final EIS are unlawful and set them aside;

2. Enjoin implementation of the ROD;

3. Remand the matter to the National Park Service;

4. Award Plaintiffs their reasonable fees, costs, and expenses, including attorneys' fees associated with this litigation; and

5. Grant Plaintiffs such further and additional relief as the Court may deem just and proper.

Respectfully submitted this 15th day of October 2012,

/s/ Jennifer Chavez
Jennifer Chavez
D.C. Bar No. 493421
Earthjustice
1625 Massachusetts Avenue NW, Suite 702
Washington, DC 20036-2212
Phone: 202-667-4500
Fax: 202-667-2356
jchavez@earthjustice.org

Hannah Chang
Abigail Dillen
Lisa Perfetto
Earthjustice
156 William Street, Suite 800
New York, NY 10038
Phone: 212-791-1881
Fax: 212-918-1556
hchang@earthjustice.org
adillen@earthjustice.org
lperfetto@earthjustice.org

Aaron Kleinbaum
Alice Baker
Eastern Environmental Law Center

744 Broad Street, Suite 1525
Newark, NJ 07102
Phone: 973-424-1166
Fax: 973-710-4653
akleinbaum@easternenvironmental.org
abaker@easternenvironmental.org

Counsel for Plaintiffs