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File #: 150995

February 28, 2013

VIA HAND DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Application of PPL Electric Utilities Corporation filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of Transmission Lines Associated with the Northeast-Pocono Reliability Project in Portions of Luzerne, Lackawanna, Monroe, and Wayne Counties, Pennsylvania Docket Nos. A-2012-2340872, et al.

Dear Secretary Chiavetta:

Enclosed for filing is the Response of PPL Electric Utilities Corporation to the Request for Waiver and New Matter filed by Covington Township in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Christopher T. Wright

CTW/jl

Enclosures

cc: Honorable David A. Salapa
Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of PPL Electric Utilities : Docket No. A-2012-2340872
Corporation filed Pursuant to 52 Pa. Code :
Chapter 57, Subchapter G, for Approval of the :
Siting and Construction of Transmission Lines :
Associated with the Northeast-Pocono :
Reliability Project in Portions of Luzerne, :
Lackawanna, Monroe, and Wayne Counties, :
Pennsylvania :

Petition of PPL Electric Utilities Corporation : Docket No. P-2012-2340871
for a Finding that a Building to Shelter Control :
Equipment at the North Pocono 230-69 kV :
Substation in Covington Township, :
Lackawanna County, Pennsylvania is :
Reasonably Necessary for the Convenience or :
Welfare of the Public :

Petition of PPL Electric Utilities Corporation : Docket No. P-2012-2341105
for a Finding that a Building to Shelter Control :
Equipment at the West Pocono 230-69 kV :
Substation in Buck Township, Luzerne :
County, Pennsylvania is Reasonably Necessary :
for the Convenience or Welfare of the Public :

Application Of PPL Electric Utilities :
Corporation Under 15 Pa.C.S. §1511(c) For A :
Finding And Determination That The Service :
To Be Furnished By The Applicant Through :
Its Proposed Exercise Of The Power Of :
Eminent Domain To Acquire Right-of-Way :
And Easement Over A Certain Portion Of The :
Lands Of The Following For Siting And :
Construction Of Transmission Lines :
Associated With The Proposed Northeast- :
Pocono Reliability Project Is Necessary Or :
Proper For The Service, Accommodation, :
Convenience Or Safety Of The Public: :
:

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Art Mortgage Borrower Propco 2010-5 LLC	:	Docket No. A-2013-2341238
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Margaret G. Arthur and Barbara A. Saurman, Trustees of the Residuary Trust of James C. Arthur	:	Docket No. A-2012-2341115
	:	
	:	
Blue Ridge Real Estate	:	Docket No. A-2013-2341277
	:	
Clifton Acres, Inc.	:	Docket No. A-2013-2341236
	:	
Sylvester J. Coccia	:	Docket No. A-2013-2341267
	:	
Dietrich Hunting Club	:	Docket No. A-2013-2341237
	:	
Dianne L. Doss	:	Docket No. A-2013-2341214
	:	
Lawrence Duda	:	Docket No. A-2013-2341271
	:	
Fr E2 Property Holding LP	:	Docket No. A-2013-2341263
	:	
FR First Avenue Property Holding, LP	:	Docket No. A-2012-2341123
	:	
Donald W. Henderson and Louis V. Bellucci	:	Docket No. A-2013-2341262
	:	
	:	
Bradley D. Hummel	:	Docket No. A-2013-2341220
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International Consolidated Investment Company	:	Docket No. A-2013-2341216
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John F. and Veronica B. Iskra	:	Docket No. A-2013-2341233
	:	
	:	
Donald Januszewski	:	Docket No. A-2013-2341215
	:	
	:	
John C. Justice and Linda S. Justice	:	Docket No. A-2012-2341107
	:	
	:	
Anthony J. Lupas, Jr. and Lillian Lupas, John Lupas and Judy Lupas, Grace Lupas, Eugene A. Bartoli and Robert J. Frankelli	:	Docket No. A-2012-2341118
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	:	
Mark M. Mack, J. Dean Mack and Heather K. Mack In Bear Creek Township, Luzerne County, Pennsylvania	:	Docket No. A-2013-2341272
	:	
	:	
Christopher Maros and Melinda Maros	:	Docket No. A-2013-2341213

Michael A. Mitch and Sue K. Mitch	:	Docket No. A-2013-2341234
NLMS, Inc.	:	Docket No. A-2013-2341239
Michael Palermo and Joanne Palermo	:	Docket No. A-2013-2341221
Peter Palermo and Francine Palermo	:	Docket No. A-2013-2341211
William Petrouleas and Joanna Petrouleas	:	Docket No. A-2013-2341209
Edward R. Schultz	:	Docket No. A-2013-2341253
Roberta Scarfoss a/k/a Judy Scarfoss, Executrix of the Estate of Euylla Hughes a/k/a Eylla Hughes	:	Docket No. A-2013-2341232
Ronald G. Sidovar and Gloria J. Sidovar	:	Docket No. A-2012-2341120
Ronald Solt	:	Docket No. A-2013-2341249
Merel J. and Arlene J. Swingle	:	Docket No. A-2013-2341250
Three Griffins Enterprises Inc.	:	Docket No. A-2012-2341114
Transcontinental Gas Pipe Line Corporation	:	Docket No. A-2013-2341208
US Industrial Reit II	:	Docket No. A-2013-2341241
James L & Michaelene J Butler,	:	Docket No. A-2013-2344353
Susan Butler Living Trust,	:	Docket No. A-2013-2344604
Grumble Knot LLC,	:	Docket No. A-2013-2344612
Pennsylvania Glacial Till LLC, and	:	Docket No. A-2013-2344616
Blueberry Mountain Realty LLC.	:	Docket No. A-2013-2344605

Chris and Melinda Maros : Docket No. C-2012-2305047
v. :
PPL Electric Utilities Corporation :

Joe & Vanessa Caparo : Docket No. C-2011-2276731
v. :
PPL Electric Utilities Corporation :

**RESPONSE OF PPL ELECTRIC UTILITIES CORPORATION
TO THE REQUEST FOR WAIVER AND NEW MATTER
FILED BY COVINGTON TOWNSHIP**

TO ADMINISTRATIVE LAW JUDGE
DAVID A. SALAPA:

PPL Electric Utilities Corporation (“PPL Electric”) hereby files this Response to the New Matter filed by Covington Township pursuant to Section 5.63 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.63. For the reasons explained below, Covington Township’s New Matter should be denied.

Preliminarily, PPL Electric notes that the Covington Township filed a “Request for Waiver to File Answer and New Matter to Petition of PPL Electric Utilities Corporation” (“Waiver”). In its Waiver, Covington Township seeks to file a *nunc pro tunc* answer and new matter to the “Petition of PPL Electric Utilities Corporation for a Finding that a Building to Shelter Control Equipment at the North Pocono 230-69 kV Substation in Covington Township, Lackawanna County, Pennsylvania is Reasonably Necessary for the Convenience or Welfare of the Public” (“North Pocono Zoning Petition”), which was filed on December 28, 2012, at Docket No. P-2012-2340871. PPL Electric denies that the Waiver sets forth sufficient grounds to

warrant a waiver of the time established by the Commission for filing an answer and new matter to a petition. Moreover, as clearly explained in Prehearing Order No. 1 issued by Administrative Law Judge David A. Salapa on January 8, 2013, any entity wishing to become a party to this proceeding must file either a petition to intervene or a protest on or before February 27, 2013. To the extent that Covington Township intends to participate in this matter, its remedy is to file a timely protest or petition to intervene. For this reason, Covington Township's request for a waiver is procedurally improper and should be denied.

Notwithstanding, and without waiver of the forgoing, PPL Electric herein responds to the each of the separately- number paragraphs set forth in the New Matter of Covington Township as follows:¹

50. Admitted. It is admitted that the North Pocono Zoning Petition was served on the Covington Township Planning Commission on December 28, 2012.

51. Admitted in part and denied in part. It is admitted that the Covington Township Subdivision and Land Development Ordinance, Complicd 1998 ("SALDO"), is a publicly available written document, the terms of which speak for themselves. Any characterization or interpretation thereof is denied. By way of further response, it is specifically denied that the Covington Township SALDO applies to PPL Electric or the proposed Northeast-Reliability Project. *See Newtown Twp. v. Philadelphia Elec. Co.*, 594 A.2d 834, 837 (Pa. Cmwlth. 1991) (noting that "it is clear that no 'implied' power exists in the [Municipalities Planning Code] which would allow the Township to regulate [the Philadelphia Electric Company] through its subdivision and land development ordinance").

¹ The separately numbered paragraphs of the New Matter begin with Paragraph 50. PPL Electric's response will correspond to the numbering set forth in the New Matter.

52. Denied. PPL Electric incorporates Paragraph 51, *supra*, as though fully set forth herein.

53. Denied. The averments set forth in Paragraph 53 of the New Matter are legal conclusions to which no responsive pleading is required. To the extent a response is deemed necessary, PPL Electric denies the same. By way of further response, PPL Electric believes that its control equipment buildings are not “buildings” but, rather, are parts of its substation facilities. The North Pocono Zoning Petition was filed as a precaution in the event that the Commission were to determine that the control equipment building is not a facility and, therefore, potentially subject to local zoning ordinances.

In further response, the lack of authority for a local municipality to regulate the design, location, or construction of public utility facilities is consistent with the long line of cases holding that public utilities are exempt from local ordinances. *See Duquesne Light Company v. Monroeville Borough*, 449 Pa. 573, 580, 298 A.2d 252, 256 (1972) (“This Court has consistently held, however, that the Public Utility Commission has exclusive regulatory jurisdiction over the implementation of public utility facilities”) (citations omitted). *See, e.g., County of Chester v. Philadelphia Elec. Co.*, 420 Pa. 422, 218 A.2d 331 (1966) (holding that regulation by a multitude of jurisdictions would result in “twisted and knotted” public utilities with consequent harm to the general welfare); *Newtown Twp. v. Philadelphia Elec. Co.*, 594 A.2d 834, 837 (Pa. Cmwlth. 1991) (noting that “it is clear that no ‘implied’ power exists in the [Municipalities Planning Code] which would allow the Township to regulate [the Philadelphia Electric Company] through its subdivision and land development ordinance”); *Heintzel v. Zoning Hearing Bd. of Millcreek Twp.*, 533 A.2d 832 (Pa. Cmwlth. 1987) (holding that township had no power to regulate, under its zoning ordinance, city’s erection of water tower because that power was under the exclusive

jurisdiction of the PUC); *South Coventry Twp. v. Philadelphia Elec. Co.*, 504 A.2d 368 (Pa. Cmwlth. 1986) (noting that to possibly subject [the Philadelphia Electric Company] to a miscellaneous collection of regulations upon its system would clearly burden and indeed disable it from successfully functioning as a utility); *Commonwealth v. Delaware and Hudson Railway Co.*, 339 A.2d 155 (Pa. Cmwlth. 1975) (holding that the [Municipalities Planning Code] did not authorize local governments to regulate public utilities in any manner which infringes upon the power of the Commission to so regulate).

Further, the General Assembly has specifically exempted such buildings from local ordinances if the Commission finds that the building is reasonably necessary for the convenience or welfare of the public. *See* Section 619 of the Municipalities Planning Code, Act of July 31, 1968, P.L. 805, *as amended*, 53 P.S. § 10619. As clearly explained in the North Pocono Zoning Petition, the Northeast-Pocono Reliability Project, including the North Pocono 230-69 kV Substation, is necessary to provide reasonable service by resolving planning and reliability guidelines violations, and reinforce the existing 138/69 kV systems in Monroe, Carbon, Wayne, Lackawanna, and Pike Counties by creating a 230 kV line to bring a new 230 kV supply into the area. The North Pocono 230-69 kV Substation must include certain equipment in order to operate properly, and said equipment must be protected from the elements. The most efficient and appropriate means of protecting the equipment at this Substation is construction of a Control Equipment Building on the site proposed for the new North Pocono 230-69 kV Substation. Because the Northeast Pocono Reliability Project, including the North Pocono 230-69 kV Substation, is reasonably necessary for the public convenience and welfare, the control equipment building is reasonably necessary and, therefore, exempt from the

Covington Township's ordinances pursuant to Section 619 of the Municipalities Planning Code. *Del-AWARE Unlimited, Inc. v. Pa. P.U.C.*, 513 A.2d 593 (Pa. Cmwlth. 1986).

54. Denied. The averments set forth in Paragraph 54 of the New Matter are legal conclusions to which no responsive pleading is required. To the extent a response is deemed necessary, PPL Electric denies the same. By way of further response, PPL Electric incorporates Paragraphs 51 and 53, *supra*, as though fully set forth herein.

55. Admitted. It is admitted that Covington Township has adopted an ordinance electing to enforce the Pennsylvania Construction Code Act, 35 P.S. §§ 7210.101-7210.1103. By way of further response, PPL Electric incorporates Paragraph 53, *supra*, as though fully set forth herein.


56. Denied. Section 501 of the Pennsylvania Construction Code Act, 35 P.S. § 7210.501, is a statute, the terms of which speak for themselves. Any interpretation or characterization thereof is denied.

57. Denied. The averments set forth in Paragraph 57 of the New Matter are legal conclusions to which no responsive pleading is required. To the extent a response is deemed necessary, PPL Electric denies the same. By way of further response, PPL Electric incorporates Paragraph 53, *supra*, as though fully set forth herein.

58. Denied. The averments set forth in Paragraph 58 of the New Matter are legal conclusions to which no responsive pleading is required. To the extent a response is deemed necessary, PPL Electric denies the same. By way of further response, PPL Electric incorporates Paragraph 53, *supra*, as though fully set forth herein.

WHEREFORE, for the foregoing reasons, PPL Electric Utilities Corporation respectfully requests that Administrative Law Judge David A. Salapa deny the New Matter of Covington Township and find that the control equipment building proposed by PPL Electric Utilities Corporation at the North Pocono 230-69 kV Substation is reasonably necessary for the convenience or welfare of the public and, therefore, are exempt from the local ordinances of Covington Township.

Respectfully submitted,



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Of Counsel:
Post & Schell, P.C.

Date: February 28, 2013

Attorneys for PPL Electric Utilities Corporation

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Response** has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA FIRST CLASS MAIL

Pennsylvania Department of
Environmental Protection
P.O. Box 2063
Market Street State Office Building
Harrisburg, PA 17105-2063
Attn: Office of Field Operations

Honorable Barry J. Schoch, PE, Secretary
Pennsylvania Department of Transportation
Commonwealth Keystone Building
400 North Street, 9th Floor
Harrisburg, PA 17120
Attn: William J. Cressler, Chief Counsel

Pennsylvania Historical and
Museum Commission
Bureau for Historic Preservation
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120-0053
Attn: Mr. Douglas C. McLearn, Chief

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
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Commonwealth Keystone Building
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Harrisburg, PA 17105-3265

Office of Consumer Advocate
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5th Floor, Forum Place
Harrisburg, PA 17101-1925

Office of Small Business Advocate
Commerce Building
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Lackawanna County Administration Bldg.
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Lackawanna County Planning Commission
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Scranton, PA 18503

Luzerne County Council
Luzerne County Courthouse
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Wilkes-Barre, PA 18711

Luzerne County Planning Commission
20 N. Pennsylvania Avenue
Wilkes-Barre, PA 18711

Monroe County Commissioners
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Stroudsburg, PA 18360-2141

Monroe County Planning Commission
1 Quaker Plaza, Room 106
Stroudsburg, PA 18360-2169

Wayne County Commissioners
Wayne County Courthouse
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Honesdale, PA 18431

Wayne County Planning Department
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Honesdale, PA 18431

Bear Creek Township Board of Supervisors
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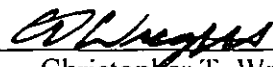
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Counsel for: Lawrence Duda

Date: February 28, 2013



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