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September 9, 2013

VIA ELECTRONIC FILING

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 Reply Brief of PPL Electric Utilities Corporation in the above-referenced proceeding.

Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,


David B. MacGregor

DBM/jl
Enclosures

cc: Honorable David A. Salapa (*Via E-Mail & First Class Mail*)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing 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).

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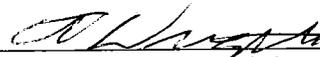
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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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Three Griffins Enterprises Inc. : Docket No. A-2012-2341114
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Transcontinental Gas Pipe Line : Docket No. A-2013-2341208
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Pennsylvania Glacial Till LLC, and : Docket No. A-2013-2344616
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Blueberry Mountain Realty LLC. : Docket No. A-2013-2344605

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

**RESPONSE BRIEF OF
PPL ELECTRIC UTILITIES CORPORATION**

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*Joint Default Service Plan for Citizens’ Electric Company of Lewisburg, PA and Wellsboro Electric Company for the Period of June 1, 2010 through May 31, 2013, Docket Nos. P-2009-2110798, et al., 2010 WL 1259684 at *2, 19-20 (Feb. 25, 2010)31*

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I. INTRODUCTION

On August 26, 2013, PPL Electric Utilities Corporation (“PPL Electric”) filed its Initial Brief in accordance with the Scheduling Order issued by Administrative Law Judge David A. Salapa (“ALJ”) on March 13, 2013. Therein, PPL Electric explained its positions on the various issues pending before the Pennsylvania Public Utility Commission (“Commission”) in this proceeding. In so doing, PPL Electric anticipated and, as a practical matter, responded to many of the arguments raised in the Initial Briefs filed by the Office of Consumer Advocate (“OCA”), North Pocono Citizens Alert Regarding the Environment (“NPCARE”), and Covington Township.¹ Nevertheless, it is appropriate for PPL Electric to respond to certain contentions advanced by these parties in their Initial Briefs.²

In this proceeding, PPL Electric seeks (1) approval for the siting and construction of a new 58-mile 230 kV transmission line and approximately 11.3 miles of new 138/69 kV transmission lines needed to connect the new West Pocono and North Pocono 230-69 kV Substations with the existing 69 kV system, (2) findings that the exercise of the power of eminent domain to acquire rights-of-way across 29 tracts of land is necessary or proper for the service, accommodation, convenience or safety of the public, and (3) findings that the locations of the buildings to shelter control equipment at the West Pocono and North Pocono 230-69 kV Substations are reasonably necessary for the convenience or welfare of the public. (PPL Electric Exs. 1 through 36)

¹ Although they served testimony and raised issues in this proceeding, Transcontinental Gas Pipe Line Company, LLC (“Transco”), FR First Avenue Property Holding, LP (“FR First”), and FR E2 Property Holding, LP (“FR E2”) failed to file initial briefs and, therefore, in accordance with well-established Commission and judicial precedent, have waived the issues they wish to have reviewed. It is inappropriate for a party to withhold arguments until its response brief because it fails to provide the other parties with any opportunity to respond to arguments raised for the first time in reply briefs.

² PPL Electric will rely on those portions of its Initial Brief that have already addressed the issues and arguments raised in the Initial Briefs of OCA, NPCARE, and Covington Township rather than repeat the same arguments herein.

For the reasons explained below, as well as those more fully explained in PPL Electric's Initial Brief, the record evidence in this matter clearly demonstrates that: (1) the proposed Northeast-Pocono Reliability Project is reasonably necessary to provide safe and reliable service to its customers; (2) the route selection process was reasonable and the preferred routes for the 230 kV transmission line and 138/69 kV connecting lines will have minimum adverse environmental impacts, considering the electric power needs of the public, the state of the available technology, and the available alternatives; (3) the locations of the buildings to shelter control equipment at the West Pocono and North Pocono Substation sites are reasonably necessary for the convenience or welfare of the public; and (4) the exercise of the power of eminent domain by PPL Electric to acquire rights-of-way across 29 tracts of land is necessary or proper for the service, accommodation, convenience, or safety of the public. Accordingly, the ALJ and the Commission should find that the proposed Northeast-Pocono Reliability Project satisfies the requirements of the applicable statutes and regulations and approve the pending siting application, two zoning exemption petitions, and 29 eminent domain applications.

II. SUMMARY OF ARGUMENT

The evidence in this proceeding demonstrates that the Northeast-Pocono Reliability Project is needed, and that PPL Electric has selected a reasonable route for this project. The arguments presented by opposing parties, to a surprising degree, are almost entirely based on erroneous legal standards and/or simply ignore un rebutted record evidence. These arguments should be rejected, and PPL Electric's applications and petitions should be approved.

The OCA, the only party to evaluate or brief the need for the Project, agrees that the electric system serving the Northeast Pocono region needs to be reinforced. However, the OCA contends that the Commission should consider adopting a rejected 138 kV alternative electrical

solution because it addresses violations of PPL Electric's Reliability Principles & Practices ("RP&P"), would have fewer environmental impacts, and is slightly less expensive. These arguments should be rejected for several reasons.

First, the unrebutted record evidence demonstrates that the 138 kV alternative electrical solution is not a viable alternative. While it addresses the RP&P violations, it does not and cannot address or resolve the underlying need to reduce line length exposure and bring a 230 kV source of supply into this growing area. Even more troubling, the 138 kV alternative electrical solution would result in less reliable service to customers due to massive voltage drops during outages and increased "momentary" outages due to networked operation. By focusing solely on RP&P violations, the OCA has ignored the many problems created by the 138 kV alternative electrical solution and, more fundamentally, has failed to recognize that the 138 kV alternative simply does not solve the underlying reliability problems in this region. The OCA's exclusive reliance on the projected RP&P violations also is inconsistent with the Commission's recent holding in *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 a Right-of-Way and Easement Over and Across the Lands of Michael and Logan Wendt in Perry Township, Snyder County Pennsylvania for the proposed Richfield-Dalmatia 69 kV Transmission Tie Line is Necessary or Proper for the Service, Accommodation, Convenience or Safety of the Public*, Docket Nos. A-2011-2267349, *et al.* (July 16, 2013) ("Richfield-Dalmatia").

Second, the 138 kV alternative is an alternative electrical solution, not an alternative line route. In *Board of Supervisors of Springfield Township v. Pa. PUC*, 41 A.3d. 142, 150 (Pa. Cmwlth. 2012) (hereinafter "*Coopersburg*"), both the Commission and the Commonwealth

Court recently held that the Commission's siting regulations do not require a utility to conduct an environmental analysis of rejected projects. The OCA does not and presumably cannot explain its failure to follow this controlling precedent. Moreover, the OCA's assertion that the 138 kV alternative electrical solution would have fewer environmental impacts is not supported by any evidence of record. Neither the OCA or any other party presented any evidence regarding the environmental impacts of the 138 kV alternative electrical solution.

Third, the OCA's arguments regarding the cost of the 138 kV alternative electrical solution are irrelevant and simply wrong. Cost differences can only be relevant where there are two or more viable alternatives. The 138 kV alternative electrical solution is not a viable alternative to resolve the reliability issues in the Northeast Pocono region; its cost therefore is irrelevant. Moreover, the 138 kV alternative electrical solution cost figures relied upon by the OCA assume that no part of the existing 69 kV system would have to be rebuilt if this alternative project were selected. Contrary to the OCA's assumption, the OCA's own expert witness agreed that substantial portions of the 69 kV system would have to be rebuilt. The OCA's cost arguments are inconsistent with the testimony of its own witness and should be rejected.

Regarding siting, PPL Electric has selected the route with the least overall impacts and has undertaken very substantial mitigation efforts to minimize environmental and other impacts. No party has proposed *any* feasible alternative route. There simply is no evidentiary basis to reject the Company's proposed route. Perhaps recognizing the fundamental weakness in its case, NPCARE presents a series of arguments that are either legally wrong or unsupported by the record.

First, NPCARE argues that PPL Electric's application was deficient. In fact, PPL Electric has met and in most cases exceeded all of the requirements in the Commission's siting

regulations. And, in any event, NPCARE has never moved to dismiss the Company's applications and, therefore, has waived any argument in this regard. This proceeding must be decided upon all of the evidence presented and not just the initial applications.

Second, NPCARE argues that the Commission should not act until PPL Electric obtains all necessary permits. This argument has been recently rejected by the Commission and the Commonwealth Court. *Energy Conservation Council of Pa. v. Pa. PUC*, 25 A.3d 440 (Pa. Cmwlth. 2011) (hereinafter "*Susquehanna-Roseland*"). NPCARE does not and presumably cannot explain any basis for not following this controlling precedent.

Third, NPCARE proposes that the Commission adopt an entirely new set of environmental rules and requirements for this project. The Commonwealth Court has repeatedly held that the Commission has neither the jurisdiction, expertise, or resources to adopt this proposal.³ PPL Electric will obtain all necessary permits for this Project. Further requirements, above and beyond those required by the applicable environmental agencies, are unnecessary and would be unlawful.

Fourth, NPCARE argues that PPL Electric has not proposed or implemented adequate measures to mitigate environmental harm. Again, NPCARE misinterprets and misapplies the Commission's siting regulations in a way that would allow environmental impacts to "trump" all other valid siting issues. The Commission is required to balance many different issues and concerns in reviewing a siting application, including, but not limited to, environmental concerns. NPCARE's sole focus on environmental issues is inconsistent with the Commission's siting regulations, all relevant precedent, and, for all practical purposes, would preclude the

³ See *Pickford v. Pa. PUC*, 4 A.3d 707 (Pa. Cmwlth. 2010); *Country Place Waste Treatment Company Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995); *O'Connor v. Pa. PUC*, 582 A.2d 427 (Pa. Cmwlth. 1990); *Del-Aware, Unlimited, Inc. v. Pa. PUC*, 513 A.2d 593 (Pa. Cmwlth. 1986); *Rovin v. Pa. PUC*, 502 A.2d 785 (Pa. Cmwlth. 1986).

construction of new transmission lines. Moreover, NPCARE largely ignores the extensive evidence presented by PPL Electric as to the many, many mitigation measures that it has implemented or will implement for this project. Finally, PPL Electric fully considered each of NPCARE's proposals and has either accepted the proposals or fully explained why they are not reasonable and should not be adopted.

Fifth, NPCARE's proposals, in many instances, are overbroad.⁴ NPCARE, for example, proposes that PPL Electric be required to employ selective clearing and restrictive clearing methods throughout the entire width of the right-of-way, including both the Wire Zone and Border Zone. PPL Electric has explained: (1) why the removal all the vegetation within a new right-of-way is necessary to both establish the extent of the new right-of-way and to safely accommodate the many construction activities that will occur within the right-of-way; and (2) that NPCARE's proposal to apply selectively or restrictive clearing methods in the Wire Zone is preempted by the Energy Policy Act of 2005. In addition, NPCARE's request is clearly overly broad. Although NPCARE's primary focus is on EV streams, EV wetlands, and vernal pools crossed by the West Pocono-North Pocono Segment and the North Pocono 138 kV Connecting Lines, its proposal would extend to the entire right-of-way for the project. PPL Electric agreed to selectively clear the Border Zone within 150 feet of any EV stream crossed by the West Pocono-North Pocono Segment, which reasonably addressed NPCARE's primary concern. However, even if the ALJ and Commission were to adopt NPCARE's proposal, it should be limited only to the Border Zones of EV streams, EV wetlands and vernal pools crossed by the

⁴ Preliminarily, it must be noted that NPCARE's proposals are limited to the West Pocono-North Pocono Segment and the North Pocono 138 kV Connecting Lines. NPCARE expressly states that it has not and is not challenging any other portion of the Northeast-Pocono Reliability Project. (NPCARE Initial Brief, p. 9) (Tr. 482; NPCARE St. 2-R, p. 1)

West Pocono-North Pocono Segment and the North Pocono 138 kV Connecting Lines and not the entire right-of-way as NPCARE suggests.

The record in this proceeding fully demonstrates that PPL Electric has undertaken reasonable measures to minimize environmental impacts from this project. The fact that PPL Electric has not agreed to everything proposed by NPCARE provides no basis to reject PPL Electric's applications.

With respect to the North Pocono Zoning Petition, Covington Township proposes that PPL Electric comply with a laundry list of local zoning requirements that are clearly preempted, within the exclusive jurisdiction of the Commission, and should be rejected.

Regarding eminent domain applications, the only parties to actively participate on these issues, Transco, FR First, and FR E2, simply (and surprisingly) failed to file initial briefs on their issues, thereby depriving PPL Electric, or any other party, of any opportunity to respond. This is particularly problematic where an applicant, such as PPL Electric, has the ultimate burden of persuasion but is without any meaningful opportunity to respond to arguments raised for the first time in reply briefs. Under well-established case law, issues not raised in an initial brief are waived.

For the reasons explained herein, as well as those more fully explained in PPL Electric's Initial Brief, the ALJ and the Commission should approve the Northeast-Pocono Reliability Project Siting Application, the North and West Pocono Zoning Petitions, and the remaining 29 eminent domain applications.

IV. SITING APPLICATION

A. FORM AND CONTENT OF PPL ELECTRIC'S APPLICATION

NPCARE contends that PPL Electric's Siting Application is deficient because, according to NPCARE, it "barely mentions" the many environmental attributes of the Project area, fails to describe the Project's impact on those attributes, and fails to describe what efforts will be made to minimize those impacts. (NPCARE Initial Brief, pp. 10, 37) NPCARE also contends that PPL Electric's Siting Application is deficient because it failed to disclose that the new right-of-way for the Northeast-Pocono Reliability Project will initially be cleared of all vegetation except for grasses and herbaceous or non-woody plants. (NPCARE Initial Brief, pp. 19, 22, 25) According to NPCARE, because PPL Electric's Siting Application is deficient, the ALJ and Commission are precluded from making the necessary determination under 52 Pa. Code § 57.76(a)(4) that the Northeast-Pocono Reliability Project will have minimum adverse impact.

First, NPCARE applies an incorrect legal standard to what is required for a high voltage transmission line application. According to NPCARE, a siting application is deficient unless it includes studies of all the environmental features within a project area, identifies and locates all environmental features in the project area, and includes detailed plans to minimize the impacts to environmental features within a project area. NPCARE's theory on what must be included with a siting application is contrary to the plain language of the Commission's siting regulations.

The form and content required for a transmission line siting application is set forth in 52 Pa. Code § 57.72. With respect to environmental features and impacts, Section 57.72 provides as follows:

(c) An application shall contain:

* * *

(7) *A description of studies which had been made as to the projected environmental impact of the HV line as proposed and of the efforts which have been and which will be made to minimize the impact of the HV line upon the environment and upon scenic and historic areas, including but not limited to impacts, where applicable, upon land use, soil and sedimentation, plant and wildlife habitats, terrain, hydrology and landscape.*

(8) *A description of the efforts of the applicant to locate and identify archaeological, geologic, historic, scenic or wilderness areas of significance within 2 miles of the proposed right-of-way and the location and identity of the areas discovered by the applicant.*

* * *

52 Pa. Code § 57.72(c) (emphasis added).

There is nothing in Section 57.72(c) that requires an applicant to include studies of all the environmental features within a project area, as NPCARE suggests. Rather, as explained by the Commonwealth Court, Section 57.72(c) “does not require that studies actually be performed; rather it requires that, if those studies have been performed, the applicant must provide those studies.” *Energy Conservation Council of Pa. v. Pa. PUC*, 995 A.2d 465, 479 (Pa. Cmwlth. 2010) (hereinafter “*Trailco*”). Similarly, Section 57.72(c) does not require an applicant to identify all environmental features, as NPCARE suggests; rather, “it requires the applicant to describe the applicant’s best efforts to locate and identify such sites.” *Id.* Further, Section 57.72(c) does not require an applicant to include detailed plans to minimize the impacts to environmental features within a project area, as NPCARE suggests; rather, it requires the applicant to provide a description “of the efforts which have been made and which will be made to minimize the impact.” 52 Pa. Code 57.72(c)(7).

Second, it cannot reasonably be argued that PPL Electric’s Siting Application fails to meet the requirements of Section 57.72(c). PPL Electric’s Siting Application contained a detailed description of the environmental features located within the Project area. Specifically,

for each segment of the proposed Project, PPL Electric prepared an inventory of the following natural environment factors and impacts: physiographic provinces and terrain; geologic areas; soil characteristics; hydrology, including streams, 100-year floodplains, lakes, and wetlands; plant and wildlife habitats; vegetation; wildlife, including rare, threatened, and endangered species; and special use areas. Further, PPL Electric prepared an inventory of the following human environment factors and impacts: land use; linear features, including roadways, railroads, utility corridors; historic, cultural, and archaeological resources; historic architecture; and archaeology. (PPL Electric Ex. 1, Att. 3) PPL Electric also provided a detailed description of the projected impacts of the proposed line, which were evaluated and compared to the impacts of the available alternative routes. (PPL Electric Ex. 1, Att. 4) Finally, the Siting Application described PPL Electric's efforts to minimize impacts on land use, natural environment, and cultural resources, including selecting routes that would have the overall combined lowest impacts to the built, natural and engineering environments and would have the overall combined fewest visual, community, permit, construction/maintenance, and delay concerns. (PPL Electric Ex. 1, Atts. 3, 4, and 15) Clearly, the detailed information provided in PPL Electric's Siting Application meets and, in most instances, exceeds the requirements of Section 57.72.

Third, there is nothing in the Commission's siting regulations that requires a siting application to include a plan for the initial clearing of a new right-of-way, as NPCARE suggests. *See* 52 Pa. Code 57.72(c). In essence, NPCARE is improperly attempting to read an additional requirement into Section 57.72(c) that was not provided by the Commission. *See Melmark Home v. Workers' Compensation Appeal Board (Rosnberg)*, 946 A.2d 159, 162 (Pa. Cmwlth. 2008) (holding that it is improper to insert words into statutes where the promulgating body has failed to supply them); *Kmonk-Sullivan v. State Farm Mutual Automobile Insurance Co.*, 567 Pa.

514, 525, 788 A.2d 95, 962 (2001) (holding that although a court must listen to what a statute says, it must also listen attentively to what it does not say).

At most, the Commission's policy statement provides that an applicant for transmission line authority should include a "general description of the utility's vegetation management plan." 52 Pa. Code § 69.3107(a)(1). This is precisely what PPL Electric has done. Attachment 12 to PPL Electric's Siting Application includes a detailed description of the plan to manage the vegetation after the initial clearing of the rights-of-way. As PPL Electric explained, Attachment 12 to the siting Application provides specifications to PPL Electric and its foresters and contractors on how vegetation within the existing rights-of-way should be *maintained*. (PPL Electric Ex. 1, Att. 12; *see also* PPL Electric St. 7-RJ, pp. 2-3; Tr. 422, 425) In addition, PPL Electric's Siting Application includes a copy of a brochure on vegetation management that is publicly disseminated.⁵ (PPL Electric Ex. 1, Att. 16)

Finally, despite NPCARE's assertion to the contrary, the ALJ and Commission are not precluded from making the necessary findings under 52 Pa. Code § 57.76(a)(4) if the information is not provided in the applicant's initial filing. It is well-settled that the findings and determinations of the Commission must be based on the substantial evidence of record. *Met-Ed Indus. Users Group v. Pa. PUC*, 960 A.2d 189, 193, n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Under NPCARE's theory, however, the evidentiary record would be limited solely to the information contained in the pleadings. NPCARE's theory would entirely eviscerate the substantial evidence rule and would render the evidentiary record and 52 Pa. Code § 57.75 meaningless.

⁵ Notably, Attachment 16 to the Siting Application reflects that all vegetation, except grasses and herbaceous or non-woody plants, initially will be removed for the entire width of the right-of-way, and that compatible species will be permitted to regrow over time. (PPL Electric Ex. 1, Att. 16)

Based on the foregoing, PPL Electric's Siting Application meets and, in most cases, exceeds the requirements of the Commission's siting regulations. The Siting Application, together with the extensive, and largely unrefuted, record evidence in this matter, clearly demonstrate that PPL Electric has met its burden to demonstrate that (1) the proposed Northeast-Pocono Reliability Project is reasonably necessary to provide safe and reliable service to its customers; and (2) the route selection process was reasonable and the preferred routes for the 230 kV transmission line and 138/69 kV connecting lines will have minimum adverse environmental impacts, considering the electric power needs of the public, the state of the available technology, and the available alternative routes.

B. NEED FOR THE NORTHEAST-POCONO RELIABILITY PROJECT

1. The OCA Overlooks the Underlying Reliability Problems in the Northeast Pocono Region

In its Initial Brief, PPL Electric explained that, using its system planning process, it determined that the transmission system serving the Northeast Pocono region consists of long, heavily-loaded 69 kV transmission lines that lack a 230 kV source central to the load to be served. PPL Electric's system planning process also determined that certain violations of the system planning and reliability practices set forth in RP&P would occur if the Northeast Pocono transmission system is not reinforced. (See PPL Electric Initial Brief, Section VI.B.1) PPL Electric concluded that the proposed Northeast-Pocono Reliability Project is the best overall solution to provide a long-term plan to reinforce the Northeast Pocono region.

Importantly, the need to reinforce the electric system serving the Northeast Pocono region is undisputed. Indeed, the OCA, the only party to evaluate or brief the need for the

Project, “concluded that reinforcement is needed to the current transmission system in the area.”⁶ (OCA Initial Brief, p. 2) Although the OCA agrees that there is a need to reinforce the electric system serving the Northeast Pocono region, the OCA overlooks the underlying reliability problems and, instead, focuses exclusively on the projected violations of the RP&P.

The OCA’s exclusive reliance on the projected RP&P violations is inconsistent with the Commission’s recent holding in *Richfield-Dalmatia*. Therein, the Commission held that a violation of the RP&P, standing alone, may not satisfy the burden to demonstrate that a proposed project is necessary or proper for the service, accommodation, convenience, or safety of the public. *Id.* Slip Op. at p. 37. The Commission explained that “violations of PPL [Electric’s] RP&P may provide evidence of reliability concerns, but they may not *per se* establish that a particular improvement project is necessary in a specific instance.” *Id.* Slip Op. at p. 36.

In this case, PPL Electric explained that there is a need to not only resolve projected violations of the RP&P, but also to address the long, heavily loaded 69 kV transmission lines serving the Northeast Pocono region and the lack of a 230 kV source of power within the area. Because there are no 230 kV sources located within the areas of higher population density in the Northeast Pocono region, the power supply is too distant to reliably and effectively serve that customer load. The existing 138/69 kV lines serving the Northeast Pocono region are very long in length and each serve a significant number of customers. There has been substantial load growth in this area since the last major reinforcement was constructed 30 years ago, and PPL Electric expects the load growth on these long, already heavily-loaded lines to continue. (See PPL Electric Initial Brief, Section VI.B.1.c)

⁶ NPCARE has not evaluated the need for reinforcement of the transmission system in the Northeast Pocono region. (NPCARE St. 2-R, p. 1; Tr. 483-84) Rather, NPCARE states that it supports and adopts the position of the OCA in challenging the need for the Project. (NPCARE Initial Brief, p. 9) Given that the OCA in fact agrees that there is a need to resolve reliability violations and to reinforce the system in the Northeast Pocono region, it appears that NPCARE also concurs that the electric system serving the Northeast Pocono region needs to be reinforced.

Because the transmission lines serving the area are so long and heavily loaded, there is only a limited ability to transfer load in the event of an outage of one line to other lines. When service on a long, heavily-loaded transmission line is interrupted, the ability to restore service from an alternate source is limited due to unacceptably low voltages that would occur at distribution substations when the load on an interrupted line is transferred to an adjacent line. PPL Electric explained that the transmission system in the Northeast Pocono region experiences these load transfer limitations during peak winter loading periods. (See PPL Electric Initial Brief, Section VI.B.1.c)

Importantly, no parties opposed, and there is nothing in the record to refute the need to resolve these underlying reliability problems. Indeed, the OCA, the only party to evaluate or brief the need for the Project, agreed that “even at their historical [loading] levels, they reflect a need for transmission system reinforcement in the region.” (OCA St. 1, p. 10)

Based on the foregoing, it is undisputed that there is a need to (1) address the long, heavily loaded 69 kV transmission lines serving the Northeast Pocono region and the lack of a 230 kV source of power within Northeast Pocono region, and (2) resolve projected violations of the RP&P.⁷ Accordingly, the ALJ and Commission should find that there is a need to reinforce the electric system serving the Northeast Pocono region to not only resolve projected violations of the RP&P, but also to address the long, heavily loaded 69 kV transmission lines serving the area and the lack of a 230 kV source of power within the area.

⁷ Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the applicant produce additional evidence in order to sustain its burden. *District of Columbia's Appeal*, 343 Pa. 65, 21 A.2d 883 (1941). See, e.g., *Application of Pennsylvania Power & Light Co.*, Docket Nos. A-110500F0196, et al.; 1994 Pa. PUC LEXIS 65 (Oct. 21 1994) (holding that the company met its burden to prove that there was an immediate need for the reinforcement of the power supply where the need for the project was uncontested and no party presented any evidence challenging the need for the project).

3. The 138 kV Alternative Electrical Solution is Not a Viable Alternative

The OCA, and apparently NPCARE, assert that both the proposed Northeast-Pocono Reliability Project and the rejected 138 kV alternative electrical solution are both viable options to resolve the “the identified reliability violations.” (OCA Initial Brief, p. 17; NPCARE Initial Brief, p. 9) The OCA’s conclusion that the 138 kV alternative electrical solution is a viable solution to address the reliability concerns in the Northeast Pocono region is fundamentally flawed, contrary to law, and disregards the undisputed evidence of record.

PPL Electric considered and evaluated multiple alternative electrical solutions, including the 138 kV alternative electrical solution, to resolve the projected violations of the RP&P and to address the long, heavily loaded 69 kV transmission lines serving the Northeast Pocono region and lack of a 230 kV source of power within area. As explained in PPL Electric’s Initial Brief, PPL Electric concluded that the proposed Northeast-Pocono Reliability Project is the best overall solution to provide a long-term plan to reinforce the Northeast Pocono region. (*See* PPL Electric Initial Brief, Section VI.B.2)

As a preliminary matter, it must be noted that PPL Electric is not proposing, nor is it seeking Commission approval of, the rejected 138 kV alternative electrical solution. The Commonwealth Court recently held that, unlike the alternative routes for high voltage transmission lines where the utility is required by the siting regulations to consider and present all reasonably available alternatives, there is nothing in the Commission’s siting regulations that require a utility to present and the Commission to consider rejected electrical solutions. *Coopersburg*, 41 A.3d. 142, 150 (Pa. Cmwlth. 2012).

Transmission system planning, and the overall risks and benefits of an alternative electrical solution, are for the utility to consider in the first instance and ultimately determine which, if any, electrical solution to present to the Commission for approval. *Susquehanna-*

Roseland, 25 A.3d 440, 449-50 (Pa. Cmwlth. 2011). As explained by the Pennsylvania Supreme Court under the management decision doctrine “it is not within the province of the Commission to interfere with the management of a utility unless an abuse of discretion or arbitrary action by the utility has been shown.” *Pa. PUC v. Pennsylvania Electric Company*, 522 Pa. 338, 344, 561 A.2d 1224, 1226-27 (1989).⁸ Otherwise, the Commission would be placed in the position of overseeing the design, engineering, and integrity of the electric system. PPL Electric has no plans to build the 138 kV alternative electrical solution for the many reasons stated its Initial Brief and, moreover, has not presented it in its filing for the Commission’s review. (See PPL Electric Initial Brief, Section VI.B) For this reason alone, the 138 kV alternative electrical solution should be rejected.

Further, OCA’s conclusion regarding the 138 kV alternative electrical solution is fundamentally flawed because the 138 kV alternative electrical solution is not a viable option to address the reliability concerns in the Northeast-Pocono region. In reaching the conclusion that the 138 kV alternative solution is a viable option, the OCA improperly focuses exclusively on the identified violations of the RP&P. Although the OCA is correct that both alternative electrical solutions may resolve the identified violations of the RP&P, it is unrefuted that there is a need to reinforce the Northeast-Pocono region to not only resolve projected violations of the RP&P, but also to address the long, heavily loaded 69 kV transmission lines serving the area and the lack of a 230 kV source of power within area.

PPL Electric explained that the 138 kV alternative electric solution does not address the underlying reliability problems -- long 69 kV transmission lines, heavy line loading, and no 230 kV source of power within the Northeast Pocono region. (PPL Electric Initial Brief, Section

⁸ See also *Metropolitan Edison Co. v. Pa. PUC*, 437 A.2d 76 (Pa. Cmwlth. 1981) (the Commission’s authority to interfere in the internal management of a utility company is limited and it is not empowered to act as a super board of directors for the public utility companies of the state).

VI.B.4.b) Importantly, no party criticized, questioned, or opposed this conclusion. Contrary to the OCA's assertion, the rejected 138 kV alternative electrical solution is not a viable option to address the reliability concerns in the Northeast Pocono region.

In addition, the OCA overlooks the reliability, operational, and constructability concerns with the 138 kV alternative electrical solution. PPL Electric provided a detailed explanation of these concerns with the 138 kV alternative electrical solution, including: the 138 kV alternative would require networked operation, which is not PPL Electric's standard or preferred method of operation; a single fault anywhere on the networked system would cause all customers served by the networked system to experience severe voltage drops; a fault anywhere on a networked system can interfere with service throughout the networked system; it is much more difficult to maintain normal operations during maintenance outages because it is necessary to analyze every relay in the electrical protective system throughout the networked system; an outage on the Bulk Electric System can cause an overload on a networked 69 kV system under certain conditions; approximately 112 miles of existing 69 kV transmission lines, which were initially built for 138 kV operation, would need to be rebuilt due to changing design and construction standards for 138 kV transmission lines; construction would require a very short "return-to-service" time, which would increase the difficulty for construction crews during the line rebuilding process by requiring special work methods and the creation of temporary facilities and/or require hot line work; and coordination issues for concurrent conversion of the existing transmission lines and distribution substations to 138 kV operation. (See PPL Electric Initial Brief, Section VI.B.4.c, d, and e)

The shortcomings, difficulties, and reliability concerns with the 138 kV alternative electrical solution are undisputed. Indeed, the OCA's own expert witness acknowledged many of these concerns with 138 kV alternative electrical solution:

But there are additional considerations, including operational issues, the constructability of new facilities, land use and others. The Company has raised the point, and I concur, that there are some operational shortcomings for the 138 kV alternative, compared to the [Northeast-Pocono Reliability Project], where somewhat more customers experience momentary outages when a fault occurs on a 138 kV line. The Company also has concerns about transient voltage performance during substation bus faults on the 138 kV system, but does not indicate that this performance violates mandatory planning standards.

There is also an issue with the constructability of the 138 kV alternative, which would require the rebuilding of about 40 miles of single circuit 69 kV into double circuit 138 kV transmission lines, which the Company estimates will take about twice as long, or longer, than will constructing the [Northeast-Pocono Reliability Project]. In addition, some of the existing 69 kV lines, which were initially built for operation at 138 kV, may also need rebuilding due to changing design standards. If so, this could increase the cost of the 138 kV alternative....

(OCA St. 1, pp. 16-17)

Although the OCA briefly notes some of the undisputed concerns with the 138 kV alternative electrical solution (OCA Initial Brief, pp. 24-25), it is apparent that the OCA has summarily dismissed these concerns, without any explanation or record support, in reaching its conclusion that the proposed Northeast-Pocono Reliability Project and the rejected 138 kV alternative electrical solution are equally viable options to reinforce the Northeast Pocono region. The OCA cannot simply disregard the undisputed fact that the Northeast-Pocono Reliability Project is superior to the 138 kV alternative electrical solution from a reliability, operational, and constructability standpoint, and that the 138 kV alternative electrical solution would, in critical respects, provide less reliable service than the current system.

Based on the foregoing, it is undisputed that the 138 kV alternative electrical solution simply is not a viable option to resolve the reliability problems in the Northeast Pocono region because it does not resolve the underlying problems in the area. It addresses the “symptoms” but does not provide a “cure” for the underlying reliability problems. That fact, coupled with the reliability, operational, and constructability concerns, demonstrates that the 138 kV alternative electrical solution is not a reasonable solution. For these reasons, PPL Electric is not proposing, nor is it seeking Commission approval of the rejected 138 kV alternative electrical solution. Accordingly, the ALJ and Commission should reject the 138 kV alternative electrical solution as a viable option to address the reliability concerns in the Northeast-Pocono region.

4. The OCA Overlooks the Fact that the Northeast-Pocono Reliability Project will be Completed in a Staged Manner

The OCA asserts that neither the proposed Northeast-Pocono Reliability Project nor the rejected 138 kV alternative electrical solution could be constructed and put in service in time to address the near-term violations of the RP&P and, therefore, no advantage should accrue to either project as to timeliness. (OCA Initial Brief, p. 24) The OCA’s contention must be rejected for several reasons.

First, and foremost, the 138 kV alternative electrical solution is not a viable option to address the reliability concerns in the Northeast Pocono region. As explained above and in PPL Electric’s Initial Brief, although the 138 kV alternative electric solution may resolve the identified violations of the RP&P, it does not address the underlying reliability problems -- long 69 kV transmission lines, heavy line loading, and no 230 kV source of power within the Northeast Pocono region -- and in critical respects would provide less reliable less reliable service than the existing system. (See Section III.B.2, *supra*; see also PPL Electric Initial Brief, Section VI.B.4.b) PPL Electric is not required to present, nor is the Commission to consider,

rejected electrical solutions. *See Coopersburg, supra*. For this reason alone, the timeliness of the construction and completion of the rejected 138 kV alternative electrical solution as compared to the proposed Northeast-Pocono Reliability Project is entirely irrelevant.

Second, even assuming, *arguendo*, that the timeliness of the two solutions were relevant, the OCA completely disregards that the rejected 138 kV alternative electrical solution would likely take significantly longer to complete than the proposed Northeast-Pocono Reliability Project. PPL Electric explained that originally, construction of the rejected 138 kV alternative electrical solution was estimated to take six years instead of three years with the preferred 230 kV option. However, this six-year time estimate for the 138 kV option did not take into account: (1) potential right-of-way concerns that may arise as engineering design progresses or other related issues, *i.e.*, siting regulations and Commission approval, that could arise when trying to rebuild/upgrade 112 miles of transmission line for 138 kV operation; (2) the very short “return-to-service” time required for the construction of the rejected 138 kV alternative electrical solution, which would likely exceed the six-year construction estimate; (3) the coordination required for the conversion of the existing transmission lines, transmission substations, and distribution substations, which would likely take up to 8 years to complete, depending on the construction sequence and manpower levels used in the conversion; and (4) the required rebuilding of the 69 kV transmission lines for 138 kV operation in the 138 kV alternative electrical solution, which would extend the original six year estimate to nearly ten years. (*See* PPL Electric Initial Brief, Section VI.B.4.e)

Third, the OCA overlooks the fact that parts of the Northeast-Pocono Reliability Project will be completed in stages from November 2015 through November 2017. Conditioned upon Commission approval of the Northeast-Pocono Reliability Project, the proposed construction

start date for the North Pocono-Paupack Segment is as soon as practical and no later than March 2014, to meet an in-service date of May 2015; the proposed construction start date for the Jenkins-West Pocono Segment is March 2015, to meet an in-service date of May 2016; and the proposed construction start date for the West Pocono-North Pocono Segment is March 2016 to meet an in-service date of May 2017. (PPL Electric St. 4-R-2, p. 5) Notably, the reliability violations also are projected to occur at different time periods. (PPL Electric St. 2-R, pp. 4-5) PPL Electric has prioritized the staged construction to meet the required in-service dates of the Project sections. (PPL Electric St. 4-R-2, p. 5) Because transmission projects of this size require from three to five years to design and build, the Northeast-Pocono Reliability Project must move ahead at this time in order to be completed by the time the violations are expected to occur. (PPL Electric St. 2-R, p. 13)

Finally, it is undisputed that the earliest possible in-service date for the 138 kV alternative electrical solution is 2020, with a strong possibility that the construction period could be extended another four years to 2024. (PPL Electric St. 2-RJ, p. 5) Although the OCA is factually correct that neither the entire Northeast-Pocono Reliability Project nor the 138 kV alternative electrical solution will be in service by the first RP&P violation in the winter of 2014-2015, in-service dates from November 2015 through November 2017 for the Northeast-Pocono Reliability Project are much more timely to meet the projected RP&P violations than in-service dates ranging from 2020 through 2024.

5. The OCA's Criticisms of the Cost Estimate are Contrary to the Record

The OCA "recognizes that cost alone should not be determinative here," but contends that the Commission should consider the total cost of the proposed Northeast-Pocono Reliability Project and the rejected 138 kV alternative electrical solution. (OCA Initial Brief, pp. 17, 21)

The OCA incorrectly contends that the most current cost estimates for the proposed Northeast-Pocono Reliability Project and the rejected 138 kV alternative electrical solution are almost equal. The OCA also is critical of the increase in the cost estimates from the time of filing to date of the evidentiary hearings. Finally, the OCA incorrectly asserts that the cost estimate for the proposed Northeast-Pocono Reliability Project is too low because it fails to include the costs to rebuild the existing transmission lines in the area. The OCA's arguments are without merit, ignore the evidence of record, and should be rejected for the reasons explained below.

a. The Cost for the Rejected 138 kV Alternative Electrical Solution is Not Relevant

The OCA requests that the Commission consider the total cost of the proposed Northeast-Pocono Reliability Project and the rejected 138 kV alternative electrical solution. (OCA Initial Brief, pp. 17, 21) Although cost is a factor to consider when selecting a proposed solution to a transmission reliability problem, the cost difference between two solutions is only relevant if the two different solutions are both viable and able to resolve the underlying problems or need for the project.

The OCA improperly contends that “[i]f all else were equal between these two alternatives, then this price differential might ... suggest” that the 138 kV alternative is preferable to the Northeast-Pocono Reliability Project. (OCA St. 1, p. 16) However, the OCA's premise is fundamentally flawed because it assumes that the two alternatives are equal. Although the 138 kV alternative electric solution may resolve the identified violations of the RP&P, it does not address the underlying reliability problems -- long 69 kV transmission lines, heavy line loading, and no 230 kV source of power within the Northeast Pocono region. (See Section III.B.2, *supra*; see also PPL Electric Initial Brief, Section VI.B.4.b) Again, OCA

improperly focuses exclusively on the identified violations of the RP&P. *See Richfield-Dalmatia, supra.*

Further, PPL Electric has no plans to build the 138 kV alternative electrical solution for the many reasons stated in its Initial Brief and, moreover, has not presented it in its filing for the Commission's review. (*See* PPL Electric Initial Brief, Section VI.B) PPL Electric is not required to present, nor is the Commission to consider, rejected electrical solutions. *See Coopersburg, supra.* For this reason alone, the cost of the rejected 138 kV alternative electrical solution as compared to the proposed Northeast-Pocono Reliability Project is entirely irrelevant.

Finally, even assuming, *arguendo*, that the cost of the rejected 138 kV alternative electrical solution is relevant, the cost for the rejected 138 kV alternative electrical solution far exceeds the cost for the proposed Northeast-Pocono Reliability Project as explained below.

b. The Cost for the Rejected 138 kV Alternative Electrical Solution far Exceeds the Cost for the Proposed Northeast-Pocono Reliability Project

The OCA incorrectly contends that the most current cost estimates for the proposed Northeast-Pocono Reliability Project and the rejected 138 kV alternative electrical solution are almost equal, \$249 million for the 138 kV alternative and \$247 million for the proposed Project. (OCA Initial Brief, pp. 17, 21) The OCA is incorrect and overlooks the need to rebuild the existing 69 kV lines for 138 kV operation under the 138 kV alternative electrical solution.

The current estimated cost for the 138 kV alternative electrical solution is approximately \$443 million, not \$249 million as suggested by the OCA. (PPL Statement 5-R, p. 2) As acknowledged by the OCA, PPL Electric provided a cost estimate for the 138 kV alternative electrical solution in response to discovery that indicated that the cost for the alternative was estimated to be "\$249 million, *with the potential to increase further to \$443 million, if additional 138/69 kV transmission lines need rebuilding.*" (OCA St. 1SR, p. 4 (emphasis added))

Importantly, OCA's expert witness concedes that the 138 kV alternative electrical solution would "require rebuilding some of the existing 69 kV circuits before they could now be operated at 138 kV" due to changing design and construction standards for 138 kV transmission lines. (OCA St. 1, pp. 13) The OCA's expert witness also concedes that the need to rebuild the existing 69 kV circuits would "increase the cost of the 138 kV alternative above what is stated above." (OCA St. 1, p. 17) Thus, as acknowledged by the OCA's own expert witness, the 138 kV alternative electrical solution would require rebuilding of some of the existing 69 kV circuits and, moreover, the estimated cost of \$249 million for the 138 kV alternative does not include the costs associated with rebuilding the 69 kV circuits.

Remarkably, the OCA completely disregards the costs associated with rebuilding the 69 kV circuits and, instead, represents that the current "total" estimated cost for the 138 kV alternative is \$249 million. (OCA Initial Brief, p. 17) This is directly contrary to the testimony of the OCA's own expert witness. The OCA cannot simply disregard the undisputed record evidence that the 138 kV alternative electrical solution would require rebuilding some of the existing 69 kV circuits, and that the additional costs associated with rebuilding the 69 kV circuits must be included in the 138 kV alternative cost estimate.

PPL Electric explained that, because the 138 kV alternative electrical solution was rejected in early 2011, no in-depth analysis of the 138 kV alternative electrical solution, or the cost to build the 138 kV alternative, was prepared at that time. Consequently, PPL Electric did not initially analyze or determine the number of miles of 69 kV lines that would need to be reconstructed to meet the current 138 kV design standards. (PPL Electric St. 5-R, pp. 2-3) In response to discovery, PPL Electric undertook a preliminary review of the construction of each of the existing 69 kV lines that would need to be converted under the 138 kV alternative

electrical solution. Based upon this initial review, PPL Electric estimated that the 138 kV alternative electrical solution would require at least 112 miles of existing transmission line to be rebuilt or reconstructed. The rebuild of these existing lines is included in the \$443 million estimated cost for the 138 kV alternative electrical solution. (PPL Electric St. 5-R, p. 4)

Based on the foregoing, the undisputed record evidence demonstrates that, if the cost of the 138 kV alternative electrical solution were relevant, which it is not for the reasons stated above, the cost for the rejected 138 kV alternative electrical solution far exceeds the cost for the proposed Northeast-Pocono Reliability Project.

c. There is No Need to Rebuild the Existing System Under the Proposed Northeast-Pocono Reliability Project

In a further effort to demonstrate that the cost estimate for the proposed Northeast-Pocono Reliability Project is flawed, the OCA incorrectly asserts that the cost estimate is too low because it fails to include the costs to rebuild the existing transmission lines in the area. (OCA Initial Brief, pp. 21-24) The OCA appears to assume that because the existing 69 kV lines will be rebuilt under the 138 kV alternative electrical solution, they also would have to be rebuilt under the Northeast-Pocono Reliability Project. The fatal flaw in the OCA's analysis is that, unlike the 138 kV alternative electrical solution, the existing 69 kV lines will continue to operate at 69 kV under the Northeast-Pocono Reliability Project.

Under the rejected 138 kV alternative electrical solution, all of the existing 69 kV transmission lines in the Northeast Pocono area will be converted to and operated at 138 kV. (PPL Electric St. 2-R, pp. 18, 37) As conceded by the OCA's expert, the conversion of the existing 69 kV lines to 138 kV operation would require that some of the existing lines to be rebuilt to meet current design and construction standards for 138 kV transmission lines. (OCA St. 1, pp. 13) As explained above, the \$443 million cost estimate for the rejected 138 kV

alternative electrical solution includes the costs associated with rebuilding these lines. (*See* Section III.B.4.b, *supra*)

The proposed Northeast-Pocono Reliability Project does not require the existing 69 kV transmission lines to be rebuilt. Unlike the 138 kV alternative electrical solution where the existing 69 kV lines will be converted to 138 kV operation, the existing 69 kV transmission lines will continue to operate at 69 kV under the proposed Northeast-Pocono Reliability Project. Accordingly, there is no need to rebuild these lines to meet current design and construction standards for 138 kV transmission lines. (PPL Electric St. 2-RJ, pp. 4-5)

Notwithstanding, the OCA asserts that these lines should be replaced due to their age. However, PPL Electric explained that there is no reason to replace these lines to resolve the identified reliability violations or to resolve the underlying reliability concerns in the Northeast Pocono region. (Tr. 312) Further, PPL Electric explained that it has no foreseeable plans to rebuild any of these 69 kV lines due to aging infrastructure. (Tr. 310) If age alone were the deciding factor, as the OCA suggests, PPL Electric would be required to replace many, many miles of both bulk electric system and non-bulk electric system facilities even if there were no reliability issues on these facilities. This clearly is not a reasonable or rational result.

The OCA incorrectly assumes that the existing 69 kV lines need to be replaced under the Northeast-Pocono Reliability Project. Contrary to the OCA's assumption, the record evidence demonstrates that there is no need to replace the existing 69 kV lines if the Northeast-Pocono Reliability Project is implemented and, therefore, the costs associated with rebuilding such lines should not be included in the cost estimate for the Northeast-Pocono Reliability Project as suggested by the OCA.

e. The OCA Overlooks that the Initial Cost Estimates were Order of Magnitude Estimates

The OCA is critical of the increase in the cost estimates from the time of filing to the date of the evidentiary hearings. (OCA Initial Brief, pp. 17-21) Specifically, OCA contends that the increases in the cost estimate for the rejected 138 kV alternative electrical solution from \$141 million in early 2011 to \$443 million in mid-2013 raise the question as to the accuracy of the cost estimate for the Northeast-Pocono Reliability Project. (OCA Initial Brief, p. 20-21) The OCA's concern, however, overlooks the undisputed reasons why the cost estimates for the 138 kV alternative electrical solution and the proposed Northeast-Pocono Reliability Project increased from 2011 to mid-2013.

In a discovery response served on May 3, 2013, PPL Electric estimated that the cost for the 138 kV alternative electrical solution was approximately \$141 million in early 2011. However, the Company noted that this cost estimate was developed in early 2011 and would need to be updated. On June 3, 2013, PPL Electric provided an updated estimate using 2012 cost data in order to enable a comparison of the 138 kV alternative electrical solution with the cost estimate for the North-Pocono Reliability Project that was submitted at the time of the filing, *i.e.*, late 2012. Using 2012 cost data, as well as the costs associated with rebuilding the 69 kV circuits as discussed above, PPL Electric estimated that the cost for the 138 kV subset option at the time of the filing was approximately \$443 million. (PPL Electric St. 5-R, p. 2; PPL Electric Exs. KJS-1 and KJS-2)

As explained above, and in PPL Electric's Initial Brief, the identification of the need to reconstruct and rebuild at least 112 miles of existing transmission line is the key factor that caused the significant increase in estimated costs for the 138 kV alternative electrical solution. PPL Electric also explained in its Initial Brief that the difference between the 2011 and 2012

estimates can be attributed to several other factors, which need not be repeated here. (See PPL Electric Initial Brief, Section VI.B.4.f)

Further, PPL Electric explained that the early 2011 cost estimate for both the 138 kV alternative electrical solution and the proposed Northeast-Pocono Reliability Project were order-of-magnitude estimates prepared with minimal engineering and operations review, and without an in-depth analysis and field investigation. (PPL Electric St. 5-R, pp. 3-4) Because the 138 kV alternative electrical solution was technically inferior to the proposed Northeast-Pocono Reliability Project and was rejected in early 2011, no further analysis of the costs for the 138 kV alternative electrical solution was prepared at that time. Unlike the 2011 cost estimate for the rejected 138 kV alternative electrical solution, the estimated cost for the proposed Northeast-Pocono Reliability Project at the time of the filing (December 28, 2012) was a more in-depth order of magnitude cost estimate that included 2012 materials and labor costs, and was the most up-to-date cost estimate for the proposed Northeast-Pocono Reliability Project based on the information that was available at the time of the filing. (PPL Electric St. 5-RJ, p. 3)

Although the \$154 million cost estimate for the Northeast-Pocono Reliability Project was based on the most current information available at the time of the filing, it was still an order-of-magnitude estimate developed to provide a rough approximation of costs. PPL Electric explained that, as a project progresses, new information becomes available and the cost of construction is further developed and refined. Such information includes the constructability of the project, design of the project, locations of wetlands and bodies of water, terrain, geology of the soils, land acquisition issues, and many other factors that affect cost. In addition, PPL Electric analyzes the sequence of construction and the need to coordinate construction with construction of other projects and actions that must be undertaken to allow PPL Electric to

continue to provide reliable service during construction. All of these factors can affect the overall cost of the project. (PPL Electric St. 5-R, pp. 3-4)

Since the time of the initial filing in late 2012, PPL Electric has been and is actively working to identify the many factors that impact the overall cost of the Northeast-Pocono Reliability Project. The increase in the estimated cost for the Northeast-Pocono Reliability Project from \$154 million in late 2012 to \$247 million in July 2013 is directly attributable to the identification and analysis of these factors since the time of the filing.⁹ (PPL Electric St. 5-RJ, p. 4)

Based on the foregoing, the OCA overlooks the unique reasons why the cost estimate for the 138 kV alternative electrical solution increased from early 2011 to late 2012. The OCA also overlooks that the initial cost estimates were order of magnitude estimates developed without an in-depth analysis required to identify the many factors that affect the overall cost of the project. For these reasons, the OCA's criticism of the increase in the cost estimates from the time of filing to the date of the evidentiary hearings should be rejected.

C. HEALTH AND SAFETY OF THE NORTHEAST-POCONO RELIABILITY PROJECT

In its Initial Brief, PPL Electric explained that the transmission lines associated with the proposed Northeast-Pocono Reliability Project will be designed, constructed, and maintained to ensure the health and safety of the public. Specifically, PPL Electric explained that the proposed

⁹ It should be noted that this estimate is not a final estimate and may change as additional factors that impact the overall cost of the Project are identified and addressed. Further, the final cost estimate is largely dependent upon the route that ultimately is approved and constructed, as well as the conditions that are encountered during construction. It also should be noted that PPL Electric has not undertaken a similar in-depth analysis and field investigation of the factors that could affect the costs for the 138 kV alternative electrical solution because it will not resolve the underlying reliability issues in the area as discusses above. Therefore, PPL Electric's estimated cost for the Northeast-Pocono Reliability Project as of July 2013 is not an apples-to-apples comparison with the cost estimate for the 138 kV alternative electrical solution that was updated as of the end of 2012. PPL Electric anticipates that the estimated costs for the rejected 138 kV alternative electrical solution would also increase upon the required in-depth analyses and field investigations of the many factors that could affect the costs. (PPL Electric St. 5-RJ, p. 4)

transmission lines will be designed to meet or surpass all requirements specified by the National Electric Safety Code (“NESC”). PPL Electric also explained that, in addition to the safety features incorporated by designing the line in accordance with the NESC, PPL Electric has additional, more stringent design standards. (*See* PPL Electric Initial Brief, Section VI.C.1) Further, PPL Electric has taken electric and magnetic field (“EMF”) mitigation into account by designing the proposed lines to reduce EMFs. (*See* PPL Electric Initial Brief, Section VI.C.2)

In this proceeding, Transco raised the issue of the safety and impact that the proposed transmission lines may have on nearby natural gas pipeline facilities. Transco therefore proposed that “[a]ny approval of PPL [Electric’s] application in this matter must be conditioned upon PPL [Electric] funding a study of and addressing the necessary mitigation caused by their location of their easement close to Transco’s existing pipelines and pipeline facilities.” (Transco St. 1-SR, p. 3) FR First raised the issue of whether the proposed transmission lines will interfere with access to the Covington Industrial Park. FR First therefore proposed that the proposed route be relocated “around the perimeter of the industrial park or avoiding the industrial park.” (FR St. 1, p. 2)

Notably, neither Transco nor FR First filed initial briefs in support of their issues. In its letter informing the Commission that they would not be filing initial briefs, Transco and FR First explained their decision by noting that they do not have the burden of proof. This is not a basis for failing to file an initial brief under a concurrent briefing schedule, and it is legally incorrect. Although PPL Electric, as the applicant, bears the burden of proving that its proposals are in the public interest, a party that proposes an issue that is not included in a public utility’s proposal bears the burden of proof.¹⁰

¹⁰ For example, in *Pa. P.U.C. v. Metropolitan Edison Company, et al.*, Docket Nos. R-00061366, *et al.*, 2007 Pa. PUC LEXIS 5 (Jan. 11, 2007), a party offered proposals that were not included in the public utilities’ filings. The

It is well settled that when parties have been ordered to file briefs and fail to include all the issues they wish to have reviewed, the issues not briefed have been waived.¹¹ Further, it is inappropriate for a party to withhold arguments until its response brief because it fails to provide other parties with a meaningful opportunity to respond. *See Petition of PPL Electric Utilities Corporation For Approval of a Competitive Bridge Plan*, Docket No. P-00062227, 2007 Pa. PUC LEXIS 38 at *110-11 (May 17, 2007) (holding that the ALJ acted properly in granting a motion to strike where the party's position was raised for the first time in its reply brief). This is particularly problematic where an applicant, such as PPL Electric, has the ultimate burden of persuasion but is without any meaningful opportunity to respond to arguments raised for the first time in reply briefs.

To the extent that Transco and FR First seek to assert their safety arguments and proposals for the first time in their response briefs, such arguments should be disregarded.¹² To permit Transco and FR First to assert such arguments and proposals in their response briefs would clearly deprive PPL Electric, and others, any meaningful opportunity to respond. Transco's and FR First's attempt to "sandbag" this proceeding by not filing initial briefs on their issues is procedurally inappropriate and has serious due process implications.

ALJ held that, as the proponent of a Commission order with respect to the offered proposals, the party bears the burden of proof as to proposals that are not included in the companies' filings. The Commission agreed and adopted the ALJ's conclusion that the Public Utility Code cannot reasonably be read to place the burden of proof on the utility with respect to an issue the utility did not include in its filing and which, frequently, the utility would oppose. *Id.* at *184-87. *See also Joint Default Service Plan for Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company for the Period of June 1, 2010 through May 31, 2013*, Docket Nos. P-2009-2110798, *et al.*, 2010 WL 1259684 at *2, 19-20 (Feb. 25, 2010) (the companies had the burden of proof as to the proposed plan, but other parties that had submitted their own proposals bore the burden of proof with respect to their proposals).

¹¹ *Pa. PUC v. Metropolitan Edison Company*, Docket Nos. R-00061366 *et al.*, 2006 Pa. PUC LEXIS 116 (Recommended Decision Oct. 31, 2006) (citing *Jackson v. Kassab*, 812 A.2d 1233 (2002), *appeal denied*, 573 Pa. 698, 825 A.2d 1261 (Pa. Super. 2003)); *see also Pa. PUC v. Columbia Gas of Pennsylvania*, Docket Nos. R-00049783, 2005 Pa. PUC LEXIS 14 at *165-66; 245 P.U.R.4th 1 (Nov. 4, 2005) (concluding as reasonable the ALJ's recommendation that when parties have been directed to file briefs and fail to include an issue in their briefs, the un-briefed issues may properly be viewed as having been waived) (citing *Jackson v. Kassab*).

¹² Further, to the extent that such safety arguments and proposals are raised in the response briefs of FR First and Transco, PPL Electric will consider filing a motion to strike as appropriate.

The only party to brief any health or safety issues related to the Northeast-Pocono Reliability Project was the OCA. Although the OCA did not present any testimony or exhibits regarding the safety of the Northeast-Pocono Reliability Project, the OCA nonetheless notes that Transco raised concerns regarding potential current induction and electromagnetic interference of the proposed transmission lines with Transco's existing and future natural gas pipelines. (OCA Initial Brief, p. 25)

Notwithstanding and without waiver of any objection, PPL Electric has fully addressed the safety concerns raised by both Transco and FR First in its Initial Brief. PPL Electric explained that there simply is no basis to suggest any conflicts or issues between electric facilities and pipeline facilities, and that PPL Electric has agreed to fund an impact study to determine what, if any, impact the proposed transmission lines may have on Transco's facilities. However, it would not be reasonable or prudent for PPL Electric to blindly agree to fund any and all mitigation measures identified by the study without knowing what measures will be required and the estimated costs.¹³ (See PPL Electric Initial Brief, VI.C.3) PPL Electric also explained that the aerial right-of-way across the FR First property will not create traffic obstructions or interfere with access to the Covington Industrial Park. (See PPL Electric Initial Brief, VI.C.4)

Based on the foregoing, the ALJ and Commission should disregard any health or safety arguments or proposals raised for the first time in the response briefs of Transco and FR First. Further, the ALJ and Commission should find that the design, construction, and operation of the proposed Northeast-Pocono Reliability Project will not create an unreasonable risk of danger to the health and safety of the public.

¹³ Nor would it be appropriate for the Commission to impose such a condition. It must be noted that the costs for such measures would be paid by ratepayers through transmission rates.

E. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS PROVIDING FOR THE PROTECTION OF NATURAL RESOURCES

In its Initial Brief, PPL Electric explained that it has committed to obtain all required permits for construction of the Northeast-Pocono Reliability Project and will comply with any and all conditions placed on such permits by those agencies that have appropriate jurisdiction over environmental matters. No party has asserted and nothing in the record suggests that PPL Electric will not be able to secure the necessary permits or that those permits will be inadequate to prevent compliance with applicable statutes and regulations. (See PPL Electric Initial Brief, Section VI.D) For this reason, the ALJ and Commission should find that the proposed Northeast-Pocono Reliability Project is in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth.

NPCARE does not dispute that PPL Electric will be able to obtain the permits required by the applicable environmental statutes and regulations. However, NPCARE contends that the Northeast-Pocono Reliability Project also must achieve compliance with environmental standards that “are not governed by existing statutes and regulations.” (NPCARE Initial Brief, pp. 14 (emphasis added)) NPCARE also recommends that the Commission prohibit construction on any portion of the Northeast-Pocono Reliability Project until all permits are obtained and filed with the Commission. (NPCARE Initial Brief, p. 38) NPCARE’s arguments and recommendations are contrary to law and must be rejected.

1. NPCARE Applies an Incorrect Legal Standard

NPCARE asserts that PPL Electric “has a separate obligation to minimize impacts which are outside the jurisdiction (outside the statutes and regulations) of other agencies, and to the extent that the requirements of those agencies are insufficient to minimize impacts.” (NPCARE Initial Brief, p. 10 (emphasis added)) NPCARE’s assertion applies an incorrect legal standard

that is beyond the scope of the Commission’s jurisdiction and which would be unduly discriminatory to applicants seeking approval of the siting of transmission lines.

Not surprisingly, NPCARE has cited no case law, statutes, regulations, or other legal authority to support its position. Indeed, there is nothing in the Public Utility Code, Commission’s regulations, or any other applicable environmental statute or regulation that requires the Northeast-Pocono Reliability Project to achieve compliance with standards that are above and beyond those required by the applicable environmental agencies.

Further, NPCARE’s position is contrary to the rules of statutory construction.¹⁴ As NPCARE recognizes, “[w]hen the words of a regulation are clear and free from ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” *Trailco*, 995 A.2d 465, 483 (Pa. Cmwlth. 2010) (citing 1 Pa.C.S. § 1921(b)). (See also NPCARE Initial Brief, p. 13)

Here, the Commission’s siting regulations provide, in pertinent part, as follows:

The Commission will not grant the application, either as proposed or as modified, unless it finds and determines as to the proposed HV line:

* * *

(3) That it is in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth.

52 Pa. Code § 57.76(a)(3). Under the plain language of Section 57.76(a)(3), PPL Electric is only required to demonstrate that the proposed Project will comply with the requirements of the applicable environmental statutes and regulations. This is precisely what PPL Electric has done in this case and no party, including NPCARE, has refuted PPL Electric’s efforts.

¹⁴ See *Wheeling-Pittsburgh Steel Corp. v. Department of Environmental Protection*, 979 A.2d 931, 937 (Pa. Cmwlth. 2009) (“Statutory construction rules apply equally to the interpretation of administrative regulations.”).

In essence, NPCARE requests this Commission to do something it cannot, read an additional, heightened legal obligation into the applicable statutory and regulatory scheme that was not provided by the General Assembly or the Commission. *See Melmark Home v. Workers' Compensation Appeal Board (Rosenberg)*, 946 A.2d 159, 162 (Pa. Cmwlth. 2008) (courts have “no power to insert words into statutory provisions where the legislature has failed to supply them”); *Kmonk-Sullivan v. State Farm Mutual Automobile Insurance Co.*, 567 Pa. 514, 525, 788 A.2d 955, 962 (2001) (although a court must listen to what a statute or regulation says, it must also listen attentively to what it does not say). Nothing in the applicable statutes or regulations require the Northeast-Pocono Reliability Project to achieve standards that are above and beyond those properly promulgated by those agencies with the statutory authority to do so.

It also should be noted that, under NPCARE's theory, an applicant for approval of the siting of a transmission line, such as PPL Electric, would be required to meet a separate, heightened environmental compliance standard that would not apply to other entities. Such a result would be unduly discriminatory because applicants for transmission lines would be required to undertake extraordinary and costly efforts to achieve compliance with environmental standards that are above and beyond those required by the applicable environmental agencies, while every other entity, corporation, and person would only have to meet the minimum requirements of the applicable environmental statutes and regulations.

The legislature has delegated the authority to protect, conserve, and preserve Pennsylvania's environment to the Pennsylvania Department of Environmental Protection (“DEP”), Department of Conservation and Natural Resources (“DCNR”), the Pennsylvania Game Commission (“PGC”), the Pennsylvania Fish & Boat Commission (“PFBC”), the U.S. Fish & Wildlife Service, and the various bureaus and boards operating under the auspices of

these agencies. It is not the responsibility of the Commission to second guess the authority and expertise of these agencies over environmental issues. Indeed, it is well settled that the Commission lacks jurisdiction to regulate environmental impacts and, instead, must defer to those agencies that have appropriate jurisdiction over those matters. (See PPL Electric Initial Brief, Section VI.F.3.b) To the extent that NPCARE believes that the existing environmental regulations and standards are inadequate to protect the environment, such broad concerns should be directed to state and federal policy makers having the authority to address them.

2. PPL Electric is Not Required to Obtain All Permits Prior to Commission Approval of the Project

NPCARE also recommends that the Commission prohibit construction on any portion of the Northeast-Pocono Reliability Project until all permits are obtained and filed with the Commission. NPCARE argues that initiating construction prior to having completed all studies and obtaining all permits creates a risk of locking in an adjacent route that would have otherwise been modified during the permitting process. (NPCARE Initial Brief, p. 38) NPCARE’s argument has recently been considered and rejected by the Commonwealth Court.

In *Susquehanna-Roseland*, 25 A.3d 440 (Pa. Cmwlth. 2011), the petitioners argued that the Commission abused its discretion in determining that PPL Electric could begin construction on any portion of the Susquehanna-Roseland Line prior to receiving the required permits from the National Park Service (“NPS”) to cross the Delaware Water Gap. In support, the petitioners argued that, if the NPS denied the permit or rerouted the Susquehanna-Roseland Line through the Delaware Water Gap, then any constructed portion of the Line would be a “line to nowhere” and a waste of resources. The petitioners also argued that allowing PPL Electric to begin construction on other portions of the Susquehanna-Roseland Line would influence the decision-

making of the NPS through the permitting process. *Id.* at 452. The Commonwealth Court accepted the Commission reasoning and rejected the petitioners' arguments:

ECC and OCA argue that the PUC erred by granting approval of PPL's application without requiring that all federal and state approvals be obtained prior to beginning construction. However, there is nothing in the PUC's siting regulations that requires the receipt of all necessary permits before construction of the proposed line begins. Moreover, the PUC fully examined the evidence presented on this issue, the ALJ's recommendation, and the parties' exceptions. Ultimately, the PUC disagreed with the ALJ's condition that PPL obtain all necessary permits prior to commencing construction of the proposed line. The PUC agreed with PPL that there is no record to support such a condition; the line must be replaced in that area regardless of the construction of the proposed line since it is 80 years old and in a greatly deteriorated condition; and, construction of the proposed line must commence as soon as possible in order to meet the June 1, 2012 in service deadline. The PUC also agreed with PPL that requiring PPL to wait for the National Park Service permit improperly injects the PUC into managing utility planning and construction of transmission projects, particularly since the PUC has no jurisdiction over lands within a national park. In addition, the PUC determined that, even if the subject permit were not obtained, no portion of that segment of the proposed line will have to be modified and no investment will have been wasted. Finally, the PUC stated that prior PUC proceedings for the siting and construction of transmission lines do not support a condition that construction may not commence until all permits for the line are obtained.

* * *

Because there was substantial evidence to support the PUC's finding on this issue, the PUC did not commit errors of law, act arbitrarily and capriciously, and/or abuse its discretion by allowing construction to begin on the proposed line before a permit is received from the National Park Service....

Id. at 452-53.

The arguments made here by NPCARE are the very same arguments fully considered and rejected by the Commonwealth Court in *Susquehanna-Roseland*. For the reasons explained

therein, NPCARE's request that the Commission prohibit construction on any portion of the Northeast-Pocono Reliability Project until all permits are obtained must be rejected.

Similarly, NPCARE's request that all permits be filed with the Commission should be rejected. As explained in PPL Electric's Initial Brief, the Commission is without authority to develop or enforce environmental regulations, standards, or permits. (See PPL Electric Initial Brief, Section VI.F.3.b) NPCARE's request would serve no useful purpose because PPL Electric will apply for and obtain all required permits for construction of the Northeast-Pocono Reliability Project and will comply with any and all conditions placed on such permits by those agencies that have appropriate jurisdiction over environmental matters.

F. MINIMUM ADVERSE ENVIRONMENTAL IMPACT, CONSIDERING THE POWER NEEDS OF THE PUBLIC, THE STATE OF AVAILABLE TECHNOLOGY, AND THE AVAILABLE ALTERNATIVES

The fourth requirement under Section 57.76 of the Commission's regulations for approval of the siting and construction of transmission lines is that the project will have minimum adverse environmental impact, considering the electric power needs of the public, the state of the available technology and the available alternatives. In applying this standard, it must be recognized that there is no perfect route. All transmission lines will have some impact to the natural and/or human environment. (PPL Electric St. 4-R-2, p. 3) Selecting a route for a high voltage transmission line is a complex, multi-faceted analysis that requires the careful balancing of functional requirements, environmental factors, social factors, and cost considerations. (PPL Electric St. 1-R-2, p. 2)

PPL Electric has undertaken an extensive evaluation of the environmental and social impacts of the available alternative routes. The unrefuted record evidence demonstrates that the routes selected by PPL Electric will have significantly less impact to the natural and human environment than the other feasible alternative routes. (See PPL Electric Initial Brief, Section

VI.E.2) Further, the record evidence demonstrates that PPL Electric has undertaken and will undertake significant efforts to minimize the impacts of transmission lines upon property owners and the environment. (See PPL Electric Initial Brief, Section VI.E.3)

The OCA and NPCARE both filed briefs regarding the environmental impacts of the proposed Northeast-Pocono Reliability Project. The OCA did not undertake any analysis of the environmental impact of the proposed Northeast-Pocono Reliability Project, nor did it introduce any evidence of record regarding the potential environmental impacts of the Project. Notwithstanding, it now appears, for the first time, that the OCA supports the rejected 138 kV alternative electrical solution from an environmental perspective. However, as explained below, the environmental impacts of the rejected 138 kV alternative electrical solution are not properly before the Commission.

NPCARE was the only active party to oppose any of the routes selected for the Northeast-Pocono Reliability Project. NPCARE only challenges the route selected for the West Pocono-North Pocono Segment, Route D-1, and the associated North Pocono 138 kV connecting lines.¹⁵ (Tr. 482; NPCARE St. 2-R, p. 1) Thus, NPCARE's opposition and proposals are not applicable to any other portion of the proposed Northeast-Pocono Reliability Project. NPCARE argues that PPL Electric has failed to meet its burden to demonstrate that the Northeast-Pocono Reliability Project will have minimum adverse environmental impacts under 52 Pa. Code § 57.76(a)(4) because there are other alternative methods available that would minimize or eliminate the environmental impacts. NPCARE also recommends that the Commission impose

¹⁵ In its Initial Brief, NPCARE states that it also is opposing the 138 kV connecting lines associated with the West Pocono 230-138 kV Substation. (NPCARE Initial Brief, p. 9) This statement is inconsistent with the testimony provided by Ms. Smith, the President of NPCARE, which states that NPCARE's challenge is limited to the West Pocono-North Pocono Segment and the North Pocono 138 kV Connecting Lines. (Tr. 482; NPCARE St. 2-R, p. 1)

conditions, above and beyond those required by the applicable environmental agencies, to reduce the environmental impacts of the project.

As explained below, NPCARE's opposition to the Northeast-Pocono Reliability Project is based on an incorrect application of Section 57.76(a)(4). Further, NPCARE disregards that the Commission lacks jurisdiction to regulate environmental impacts and, instead, must defer to those agencies that have appropriate jurisdiction over those matters. Finally, PPL Electric fully considered each of NPCARE's proposals and has either accepted the proposals or fully explained why they are not reasonable and should not be adopted. For the reasons explained below, as well as those more fully explained in PPL Electric's Initial Brief, NPCARE's proposals are without merit and should be rejected.

1. The Environmental Impacts of the Rejected 138 kV Alternative Electrical Solution are Not Properly before the Commission

The OCA did not undertake any analysis of the environmental impact of the proposed Northeast-Pocono Reliability Project, nor did it introduce any evidence of record regarding the potential environmental impacts of the Project. Notwithstanding, the OCA asserts that "the environmental factors in this case should be given particular attention, as an alternative solution exists [referring to the rejected 138 kV alternative electrical solution] that would avoid the need for 58-miles of new [right-of-way], and would tend to mitigate the associated environmental impacts that would occur from such a large-scale project." (OCA Initial Brief, p. 29) Thus, it now appears, for the first time, that the OCA supports the rejected 138 kV alternative electrical solution from an environmental perspective. The OCA's position is fundamentally flawed, applies an incorrect legal standard, and lacks evidentiary support. For these reasons, as more fully explained below, the OCA's support for the rejected 138 kV alternative electrical solution from an environmental perspective is without merit and must be rejected.

The OCA's support for the rejected 138 kV alternative electrical solution is based on the premise that "where two alternatives exist that would correct the reliability violations, all other factors must be weighed to determine which alternative would best serve the public interest." (OCA Initial Brief, p. 27) Although, there are many factors that must be evaluated and compared in order to select the best overall alternative electric solutions, these factors are only relevant if two or more different solutions are both viable and able to resolve the underlying problems or need for the project. (PPL Electric St. 2, pp. 5-6; PPL Electric St. 2-R, pp. 22; PPL Electric St. 2-RJ, p. 4)

The OCA's conclusion regarding the environmental impacts of the 138 kV alternative electrical solution is fundamentally flawed because it assumes that both the Northeast-Pocono Reliability Project and the 138 kV alternative electrical solution will fully resolve the reliability issues with the system serving the Northeast Pocono areas. In reaching this conclusion, the OCA again improperly focuses exclusively on the identified violations of the RP&P. *See Richfield-Dalmatia*. As explained above, it is unrefuted that there is a need to reinforce the Northeast-Pocono region to not only resolve projected violations of the RP&P, but also to address the long, heavily loaded 69 kV transmission lines serving the area and the lack of a 230 kV source of power within area. Accordingly, the rejected 138 kV alternative electrical solution is not a viable option to address all the reliability concerns in the Northeast Pocono region, as the OCA suggests. For this reason alone, the OCA's support for the 138 kV alternative electrical solution from an environmental perspective must be rejected.

Further, the OCA's position regarding the environmental impacts of a rejected alternative electrical solution was recently rejected by the Commonwealth Court. In *Coopersburg*, 41 A.3d 142 (Pa. Cmwlth. 2012), PPL Electric initially studied two alternative electrical solutions and

selected the “PPL Solution” as the best overall solution to solve the original reliability problem and the ability and flexibility to meet future system needs. A township opposed the “PPL Solution” and argued that the Commission should approve the rejected “Township Solution” because, according to the township, it would not have an adverse environmental impact. The Commission rejected the township’s argument, concluding that the Township Solution was far inferior to the PPL Solution in meeting the power needs of the public and, therefore, the Township Solution was not a realistic alternative. *Id.* at 146.

On appeal, the township argued that the Commission was obligated to address the environmental impacts of the other alternative electrical solutions, even if they were rejected, before it decided the transmission line route for the project. *Id.* at 148. The Commonwealth Court rejected the township’s argument, noting that the “Commission’s siting regulations apply to and require the satisfaction of criteria related to the ‘*proposed HV line*’ and the *alternate routes* for the high voltage transmission line. No requirements exist to rejected functional configurations.” *Id.* at 149-50 (emphasis in original). The Commonwealth Court therefore concluded that, because PPL Electric “was only required to present to the Commission an application for a proposed line and alternate routes and not a rejected configuration,” the Commission properly followed its regulations and did not err when it failed to address the environmental impacts of the rejected Township Solution. *Id.* at 150.

Here, the OCA asks the ALJ and the Commission to do precisely what the Commonwealth Court rejected in *Coopersburg* -- consider the environmental impacts of the rejected 138 kV alternative electrical solution. Clearly, PPL Electric is not required to present, nor are the ALJ and Commission required to consider, the environmental impacts of rejected

alternative electrical solutions.¹⁶ Rather, as explained by the Commonwealth Court, the Commission's siting regulations apply to and require satisfaction of environmental criteria related to the proposed route and the alternative routes for the transmission line. No such requirements exist as to rejected alternative electrical solutions, such as the rejected 138 kV alternative electrical solution. *Id.* 149-50. For this reason, the OCA's support for the rejected 138 kV alternative electrical solution from an environmental impact perspective is contrary to recent case law and, moreover, not properly before the ALJ and Commission.

In addition, even assuming, *arguendo*, that the environmental impacts of the rejected 138 kV alternative electrical solution were relevant, the OCA's support for the rejected 138 kV alternative electrical solution from an environmental impact perspective lacks evidentiary support. The only support for the rejected 138 kV alternative electrical solution from an environmental impact perspective cited by the OCA is a statement from its direct testimony that the 138 kV alternative electrical solution will significantly reduce the environmental impacts because it involves the rebuild of existing lines in in existing rights-of-way. (OCA Initial Brief, p. 27) Importantly, however, no environmental assessment or analysis of the 138 kV alternative electrical solution has been prepared by any party, including PPL Electric and the OCA.

As explained in detail in PPL Electric's Initial Brief, selecting a route for a proposed transmission lines requires a wide variety of data to be identified and evaluated consistent with 52 Pa. Code § 57.75(d)(3), including an inventory of the following natural environment factors and impacts: physiographic provinces and terrain; geologic areas; soil characteristics; hydrology, including streams, 100-year floodplains, lakes, and wetlands; plant and wildlife

¹⁶ PPL Electric is not proposing, nor is it seeking Commission approval of the rejected 138 kV alternative electrical solution. (*See* Section III.B.2, *supra*) Indeed, PPL Electric has no plans to build the 138 kV alternative electrical solution for the many reasons stated its Initial Brief and, moreover, has not presented it in its filing for the Commission's review. (*See* PPL Electric Initial Brief, Section VI.B)

habitats; vegetation; wildlife, including rare, threatened, and endangered species; and special use areas. (See PPL Electric Initial Brief, Section VI.A) The impact that the 138 kV alternative electrical solution may have on these many factors is entirely unknown and not properly before the ALJ and the Commission.¹⁷ Simply stated, the record does not support the OCA's contention that the rejected 138 kV alternative electrical solution will significantly reduce the environmental impacts.¹⁸

Based on the foregoing, the OCA's support for the rejected 138 kV alternative electrical solution from an environmental perspective must be rejected. The 138 kV alternative electrical solution is not a realistic alternative because it does not resolve the underlying reliability issues. PPL Electric is not required to present, nor is the ALJ or Commission required to consider, the environmental impacts of a rejected alternative electrical solution. Finally, there is nothing in the record to support the OCA's contention that the rejected 138 kV alternative electrical solution will significantly reduce the environmental impacts.

2. PPL Electric Addressed the Concerns Raised during the Public Input Hearings

The OCA does not oppose any specific route selected for the Northeast-Pocono Reliability Project. Instead, the OCA cites to the testimony from the public input hearings expressing concerns with the construction of the proposed Northeast-Pocono Reliability Project. (OCA Initial Brief, pp. 28-29) However, the OCA overlooks that PPL Electric addressed the concerns raised by witnesses that testified at the public input hearings.

¹⁷ Further, it should be noted that the OCA concedes that it is likely that the 138 kV alternative electrical solution could not be constructed entirely within the existing rights-of-way and, therefore, could require the existing rights-of-way to be expanded in order to construct the rejected alternative solution. (OCA Initial Brief, p. 27)

¹⁸ It is well-settled that the findings and determinations of the Commission must be based on the substantial evidence of record. *Met-Ed Indus. Users Group v. Pa. PUC*, 960 A.2d 189, 193, n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704).

The construction of any new high voltage transmission line undoubtedly will have some impact on the human and natural environments and likely will be opposed by those living in close proximity to the proposed line. (PPL Electric St. 4-R-2, p. 3) However, the Commonwealth Court recently held that a utility's route for a proposed high voltage transmission line should be approved where the record evidence shows that the utility's route-selection process was reasonable and that the utility properly considered the factors relevant to siting a transmission line:

[I]t is settled law that the designation of the route for a HV line is a matter for determination by [a utility's] management in the first instance, and the utility's conclusion will be upheld unless shown to be wanton or capricious. Thus, where the record establishes that the utility's route selection was reasonable, considering all the factors, its route will be upheld. The mere existence of an alternative route does not invalidate the utility's judgment. This reasoning is equally sound when considering whether a utility has complied with 52 Pa. Code § 57.72(c)(10), as the information required by this section goes towards establishing the reasonableness of the utility's route selection.

Susquehanna-Roseland, at 449-50 (quoting *Trailco*, 995 A.2d 465, 479-80). Further, while the route selection must be reasonable, it need not be the "best alternative" in terms of reducing or eliminating inconvenience to particular landowners. *Stone v. Pa. PUC*, 162 A.2d 18 (Pa. Super. 1960).

PPL Electric has undertaken an extensive evaluation of the environmental and social impacts of the available alternative routes. The unrefuted record evidence demonstrates that the routes selected by PPL Electric will have significantly less impact to the natural and human environment than the other feasible alternative routes. (See PPL Electric Initial Brief, Section VI.E.2) Notably, the OCA does not dispute that the routes selected by PPL Electric will have the lowest overall combined impacts to the built, natural and engineering environments and the fewest overall combined visual, community, permit, construction/maintenance, and delay

concerns when compared to the other available alternatives for the West Pocono-North Pocono Segment.

In citing to the testimony from the public input hearing, the OCA fails to take into account PPL Electric's efforts to minimize the impacts of transmission lines upon property owners and the environment. Mitigation efforts begin in the siting stage when efforts were made to minimize impacts on existing and future land uses, as well as avoid sensitive natural resources such as wetlands and streams. Where potential impacts are unavoidable, PPL Electric has taken extensive measures to mitigate the impacts of the selected routes. (See PPL Electric Brief, Sections VI.E.3 and VI.F.5)

The OCA also disregards that, in an effort to further mitigate the impacts of the proposed routes, PPL Electric undertook an extensive public outreach program to provide information and seek input on the Project from the public and government officials. (See PPL Electric Initial Brief, Section VI.E.1) In fact, specific adjustments to the alternative routes for the Northeast-Pocono Reliability Project were made as a direct result of PPL Electric's public outreach efforts. (PPL Electric St. 1, pp. 23-25; PPL Electric Ex. 1, Att. 4, pp. 23-24)

The OCA also overlooks that PPL Electric fully addressed the concerns raised during the public input hearings, including: load growth in the Northeast Pocono region, the poor economy, improving existing structures, better vegetation management, undergrounding the transmission lines, the impact to Big Bass Lake Private Community and Elm Park, the impact to Choke Creek Falls, the impact on tourism and outdoor activities in the area, the impact to property values, impacts to streams, wetlands, and vernal pools, impacts to the local trout population, and vegetation management. (See PPL Electric Initial Brief, Sections VI.B.1.c, VI.B.5, VI.E.4, VI.F.4, VI.F.5)

Further, there is nothing of record to suggest that relocating the routes or using alternative routes for the Northeast-Pocono Reliability Project would resolve the concerns raised by the witnesses at the public input hearing; it would just move the problem to someone else's property. For example, certain witnesses that testified at the public input hearing opposed the selected route for the West Pocono-North Pocono Segment and requested that the Commission adopt the "Citizens Route" alternative. However, as explained in PPL Electric's Initial Brief, the Citizens Route does not accomplish the same objectives as the Northeast-Pocono Reliability Project and, moreover, it would have its own additional impacts on the natural and built environments. (See PPL Electric Initial Brief, Section VI.E.4.a)

The OCA does not propose that the Commission adopt any of the available alternative routes for the Northeast-Pocono Reliability Project, nor does the OCA assert that any of the alternative routes would address the concerns of witnesses that testified at the public input hearing. The OCA's failure to offer any feasible alternative for PPL Electric and the Commission to consider is particularly problematic where the OCA in fact agrees that the transmission system in the Northeast Pocono region needs to be reinforced.

3. NPCARE's Opposition to the Northeast-Pocono Reliability Project is Based on an Incorrect Application of Section 57.76(a)(4)

NPCARE argues that PPL Electric has failed to meet its burden to demonstrate that the Northeast-Pocono Reliability Project will have minimum adverse environmental impacts under 52 Pa. Code § 57.76(a)(4) because there are other alternative methods available that would minimize or eliminate the environmental impacts. (NPCARE Initial Brief, p. 14) According to NPCARE, the term "available alternatives" in Section 57.76(a)(4) means any and all available methods or approaches to minimize the adverse environmental impact of the proposed transmission line. Based on this interpretation, NPCARE asserts that a siting application cannot

be approved under Section 57.76(a)(4) if there are other alternative efforts or methods that could possibly minimize the impact of the proposed transmission line. (NPCARE Initial Brief, p. 24, 27, 30, 32, 33, 34, 37) NPCARE’s interpretation of Section 57.76(a)(4) must be rejected for several reasons.

Section 57.76(a)(4) of the Commission’s siting regulations provide as follows:

The Commission will not grant the application, either as proposed or as modified, unless it finds and determines as to the *proposed HV line*:

* * *

(4) That it will have minimum adverse environmental impact, considering the electric power needs of the public, the state of the available technology and the *available alternatives*.

52 Pa. Code § 57.76(a)(4) (emphasis added). It is well-settled that the term “available alternatives” in Section 57.76(a)(4) refers to alternative routes to the “proposed HV line.” *See, e.g., Coopersburg*, 41 A.3d 142, 148-50 (Pa. Cmwlth. 2012) (finding that the “available alternatives” language in the regulation applies to “alternate routes for the high voltage transmission line” and not to alternative electrical solutions); *Application of Pennsylvania Electric Company For Approval to Locate and Construct the Bedford North-Osterburg East 115 kV HV Transmission Line Project Situated in Bedford and East St. Clair Townships, Bedford County, Pennsylvania*, Docket Nos. A-2011-2247862, et al., 2012 Pa. PUC LEXIS 298 at *45 (Initial Decision Feb. 9, 2012) (holding that a “utility is required to consider available alternative routes”); *Application of Pennsylvania Electric Company For Approval to Locate and Construct the Bedford North-Osterburg East 115 kV HV Transmission Line Project Situated in Bedford and East St. Clair Townships, Bedford County, Pennsylvania*, Docket Nos. A-2011-2247862, et al. (Opinion and Order June 7, 2012) (adopting the Initial Decision and holding that Penelec satisfied the Commission’s applicable requirements for the siting and construction of the

proposed line by conducting “a reasonable and thorough study of alternative routes”). Indeed, even the OCA, which has been involved in many transmission siting proceedings, notes that the Commission must consider the availability of reasonable alternative routes. (*See* OCA Initial Brief, p. 26)

Consistent therewith, the siting regulations require an application to include:

(10) A general description of *reasonable alternative routes* to the proposed HV line, including a description of the corridor planning methodology, *a comparison of the merits and detriments of each route*, and a statement of the reasons for selecting the proposed HV line route.

52 Pa. Code § 57.72(c)(10). The siting regulations also provide that the Commission will accept and consider the following evidence:

(e) At hearings held under this section, the Commission will accept evidence upon, and in its determination of the application it will consider, *inter alia*, the following matters:

(4) The availability of reasonable *alternative routes*.

52 Pa. Code § 57.75(e)(4) (emphasis added). Thus, when read together, these sections of the siting regulations clearly indicate that the “available alternatives” considered by the Commission are the “alternative routes” for the transmission line. *See Wheeling-Pittsburgh Steel Corp. v. Department of Environmental Protection*, 979 A.2d 931, 937 (Pa. Cmwlth. 2009) (regulations or parts of regulations are *in pari materia* when they relate to the same persons or things or to the same class of persons or things and must be construed together, if possible) (citing 1 Pa.C.S. § 1932). Clearly, Section 57.76(a)(4) requires the applicant to demonstrate reasonable efforts to minimize adverse environmental impacts of the proposed route when compared to the “available alternative routes.”

Further, unlike the requirement for the applicant to present and the Commission to consider alternative routes, nothing in the Commission's siting regulations require an applicant to describe all the alternative methods available to minimize the impacts of a proposed transmission line. Section 57.72 of the siting regulations requires an application to include:

(7) A description of studies which had been made as to the projected environmental impact of the HV line as proposed and *of the efforts which have been and which will be made to minimize the impact* of the HV line upon the environment and upon scenic and historic areas, including but not limited to impacts, where applicable, upon land use, soil and sedimentation, plant and wildlife habitats, terrain, hydrology and landscape.

52 Pa. Code § 57.72(c)(7). The siting regulations also provide that the Commission will accept and consider the following evidence:

(e) At hearings held under this section, the Commission will accept evidence upon, and in its determination of the application it will consider, inter alia, the following matters:

* * *

(3) The impact and the *efforts which have been made and will be made to minimize the impact*, if any, of the proposed HV line upon the following:

- (i) Land use.
- (ii) Soil and sedimentation.
- (iii) Plant and wildlife habitats.
- (iv) Terrain.
- (v) Hydrology.
- (vi) Landscape.
- (vii) Archeologic areas.
- (viii) Geologic areas.
- (ix) Historic areas.

(x) Scenic areas.

(xi) Wilderness areas.

(xii) Scenic rivers.

52 Pa. Code § 57.75(e)(3) (emphasis added). Importantly, there is no mention in the Commission's siting regulations of "alternative efforts" or "alternative methods" that could possibly minimize the impact of the proposed transmission line. Rather, the Commission's regulations merely require the applicant to present and the Commission to consider the "efforts which have been made and will be made to minimize the impact" of the proposed transmission line. *Trailco*, 995 A.2d 465, 479 (Pa. Cmwlth. 2010).

Further, NPCARE's interpretation of Section 57.76(a)(4) -- that an application cannot be approved if there are other alternative efforts or methods that could possibly minimize the impact of the proposed transmission line -- focuses exclusively on the environmental impact and ignores the many, many other factors that must be considered by the Commission. NPCARE's interpretation would allow environmental impacts to "trump" all other valid siting issues. The Commission is required to balance many different issues and concerns in reviewing a siting application, including, but not limited to, environmental concerns. *See Re: Interim Guidelines for the Filing of Electric Transmission Line Siting Applications*, Docket No. M-2009-2141293, 2010 Pa. PUC LEXIS 2069 at *48 (Nov. 5, 2010) (the "Commission recognizes that transmission route selection is a complicated process involving many factors and requiring expensive and time-consuming surveys and analyses"). NPCARE's sole focus on environmental issues is inconsistent with the Commission's siting regulations, all relevant precedent, and, for all practical purposes, would preclude the construction of new transmission lines. This clearly is not the intent of the Section 57.76(a)(4) and, moreover, would lead to absurd results, particularly where the need for a project is unrefuted, as is the case here.

In essence, NPCARE contends that the Commission cannot approve a siting application unless it finds that the applicant has adopted the construction and maintenance methods that have the “least” adverse environmental impact. However, there is nothing in the Public Utility Code, the Commission’s siting regulations, Article I, Section 27 of the Pennsylvania Constitution, or *Payne v. Kassab* that requires an applicant to implement the construction and maintenance methods that would have the “least” adverse environmental impact. Rather, the applicant is merely required to demonstrate “a reasonable effort to reduce the environmental incursion to a minimum.” *Susquehanna-Roseland*, 25 A.3d 440, 452 (Pa. Cmwlth. 2011) (citing *Payne v. Kassab*, 312 A.2d 86 (Pa. Cmwlth. 1973), *aff’d*, 468 Pa. 226, 361 A.2d 263 (1976)).

It cannot reasonably be disputed that PPL Electric has made substantial efforts to minimize and mitigate the impacts of the proposed route. Through the siting process, PPL Electric identified alternative routes that would avoid or minimize impacts to environmentally sensitive areas. The routes selected by PPL Electric have the lowest overall combined impacts to the built, natural and engineering environments and the fewest overall combined visual, community, permit, construction/maintenance, and delay concerns. (See PPL Electric Initial Brief, Section VI.E.2) Further, where potential impacts are unavoidable, PPL Electric will implement mitigation measures to minimize the impact of the proposed route. (See PPL Electric Initial Brief, Section VI.E.3)

Notwithstanding the foregoing, PPL Electric fully considered each of NPCARE’s proposals and has either accepted the proposals or fully explained why they are not reasonable. For the reasons fully explained in PPL Electric’s Initial Brief, NPCARE’s remaining proposals should be rejected. (See PPL Electric Initial Brief, Section VI.F)

In summary, NPCARE's opposition to the Northeast-Pocono Reliability Project is based on an incorrect application of Section 57.76(a)(4). PPL Electric is not required to identify and evaluate every possible "alternative efforts" or "alternative methods" that could possibly minimize the impact of the proposed transmission line, nor is PPL Electric required to implement efforts or methods that would have the "least" adverse environmental impact. Rather, the Commission's regulations require PPL Electric to identify and compare the merits and detriments of the reasonable "alternative routes," and to demonstrate a reasonable effort to reduce the environmental incursion to a minimum. The Commission must consider and balance many, and often competing, factors in determining whether the utility's route-selection process was reasonable and that the utility properly considered the factors relevant to siting a transmission line. Environmental impacts of a proposed project cannot be a veto or trump card under the balancing requirement of Section 57.76(a)(4).

For the reasons fully explained in PPL Electric's Initial Brief, PPL Electric has met its burden to demonstrate that the route selection process was reasonable, and that the preferred routes for the 230 kV transmission line and 138/69 kV connecting lines will have minimum adverse environmental impacts, considering the electric power needs of the public, the state of the available technology, and the available alternative routes.

4. PPL Electric's Selection of the Proposed Routes Satisfies the Requirements of the Payne v. Kassab Test

NPCARE asserts that PPL Electric must satisfy the three-part test developed in *Payne v. Kassab*, 312 A.2d 86 (Pa. Cmwlth. 1973) (the "Payne v. Kassab test") in order to show that the proposed Northeast-Pocono Reliability Project will have minimum adverse environmental impacts. (NPCARE Initial Brief, p. 12) The substantial evidence of record demonstrates that PPL Electric's selection of the proposed routes for the Northeast-Pocono Reliability Project was

reasonable, consistent with the Commission's siting regulations, and consistent with the Payne v. Kassab test.

To meet the requirement for a consideration of environmental impacts mandated by Article I, Section 27 of the Pennsylvania Constitution, the Commonwealth Court enunciated the three-part Payne v. Kassab test to determine whether a proposal having environmental impacts should be approved. The Payne v. Kassab test requires consideration of the following questions:

1. Was there compliance with all applicable statutes and regulations relevant to the protection of the Commonwealth's public natural resources?
2. Does the record demonstrate a reasonable effort to reduce the environmental incursion to a minimum?
3. Does the environmental harm which will result from the challenged decision or action so clearly outweigh the benefits to be derived therefrom that to proceed further would be an abuse of discretion?

Payne v. Kassab, at 94. The Court explained a public utility's obligation under the Payne v. Kassab test as follows:

We hold to the view that the burden to affirmatively support an application for a certificate of public convenience rests upon the applicant. Since the adoption of Article I, Section 27 [of the Pennsylvania Constitution], that burden has not shifted but, once the adverse impact of the certificate of public convenience sought by applicant upon the interests of Article I, Section 27, is raised by a protestant or intervenor, then the applicant's burden is intensified, and the Commission, in the first instance, and, in the event of appeal, the review court, must be satisfied that the threefold standard enunciated in *Payne v. Kassab, supra*, is met.

Department of Environmental Resources v. Pennsylvania Public Utility Commission, 335 A.2d 860, 865 (Pa. Cmwlth. 1975), *aff'd.*, 473 Pa. 378, 374 A.2d 693 (1977). Thus, the Payne v. Kassab test provides the standard for reviewing the Commission's approval of the siting and construction of a high voltage transmission line with respect to environmental issues. However,

the Court cautioned that “[j]udicial review of the endless decisions that will result from such a balancing of environmental and social concerns must be realistic and not merely legalistic.” *Payne v. Kassab*, at 94.

As a preliminary matter, it must be noted that the Commission’s siting regulations were promulgated to meet the requirement for a consideration of environmental impacts mandated by Article I, Section 27 of the Pennsylvania Constitution, and to apply the *Payne v. Kassab* test. *See Trailco*, 995 A.2d at 477-78 (“These regulations, and 52 Pa. Code § 57.76 in particular, represent a codification of the review required by article I, section 27 of the Pennsylvania Constitution.”); *see also Re Proposed Electric Regulation*, 1976 Pa. PUC LEXIS 114, 49 Pa. P.U.C. 709, 712 (Mar. 2, 1976) (stating that the “review required by article I, section 27 is being incorporated into our siting regulations”).¹⁹ Because the siting regulations were adopted to meet Article I, Section 27 of the Pennsylvania Constitution, and to apply the *Payne v. Kassab* test, by complying with the Commission’s siting regulations PPL Electric has satisfied the *Payne v. Kassab* test. Notwithstanding, for the reasons that follow, the substantial evidence of record demonstrates that PPL Electric also has satisfied its burden under the *Payne v. Kassab* test.

The first prong of the *Payne v. Kassab* test requires that a public utility company, seeking approval of the siting and construction of aerial high voltage transmission lines, demonstrate compliance with all applicable statutes and regulations relevant to the protection of the Commonwealth’s public natural resources. *Payne v. Kassab*, at 94. As explained above and in PPL Electric’s Initial Brief, PPL Electric has committed to obtain all required permits for construction of the Northeast-Pocono Reliability Project and will comply with any and all conditions placed on such permits by those agencies that have appropriate jurisdiction over

¹⁹ Importantly, NPCARE has not asserted that the Commission’s siting regulations violate Article I, Section 27 of Pennsylvania Constitution, or that they are inconsistent with the requirements of the three-part test enunciated in *Payne v. Kassab*. Thus, NPCARE is not challenging the validity of the Commission’s siting regulations.

environmental matters. No party has asserted and nothing in the record suggests that PPL Electric will not be able to secure the necessary permits or that those permits will be inadequate to prevent compliance with applicable statutes and regulations. (See Section III.D, *supra*; see also PPL Electric Initial Brief, Section VI.D) Clearly, PPL Electric has satisfied the first prong of the Payne v. Kassab test.

The second prong of the Payne v. Kassab test requires the public utility to demonstrate a reasonable effort to reduce any environmental incursion to a minimum. *Payne v. Kassab*, at 94. It cannot reasonably be disputed that PPL Electric has made substantial efforts to minimize and mitigate the impacts of the proposed route. Through the siting process, PPL Electric identified alternative routes that would avoid or minimize impacts to environmentally sensitive areas. The routes selected by PPL Electric have the lowest overall combined impacts to the built, natural and engineering environments and the fewest overall combined visual, community, permit, construction/maintenance, and delay concerns. (See PPL Electric Initial Brief, Section VI.E.2) Further, where potential impacts are unavoidable, PPL Electric will implement mitigation measures to minimize the impact of the proposed route. (See PPL Electric Initial Brief, Section VI.E.3) Clearly, PPL Electric has satisfied the second prong of the Payne v. Kassab test.

Finally, the third prong of the Payne v. Kassab test requires the Commission to weigh and balance the environmental harm that will result from the challenged action with the benefits to be derived therefrom. *Payne v. Kassab*, at 94. NPCARE ignores this balancing requirement and, instead, focuses exclusively on whether the proposed route will have any adverse environmental impacts. This is not the correct standard to be applied under the Payne v. Kassab test. Environmental impacts of a proposed project cannot be a veto or trump card under the balancing requirement of the Payne v. Kassab test.

PPL Electric has explained the extensive efforts it has taken and will undertake to minimize the environmental impact of the proposed Northeast-Pocono Reliability Project. (See PPL Electric Initial Brief, Sections VI.E and VI.F) Further, PPL Electric explained the need for and the many benefits from the Northeast-Pocono Reliability Project. (See PPL Electric Initial Brief, Section VI.B) For the reasons fully explained in PPL Electric's Initial Brief, the Commission should find that, on the balance of the many competing factors that must be considered in siting a high voltage transmission line, PPL Electric's selection of the proposed routes for the Northeast-Pocono Reliability Project was reasonable, consistent with the Commission's siting regulations, and consistent with the *Payne v. Kassab* test.

5. The Commission is Without Authority to Develop or Enforce Environmental Regulations and Standards

Throughout its Initial Brief, NPCARE identifies a "laundry list" of potential measures to minimize the environmental impacts of the proposed route.²⁰ NPCARE acknowledges that PPL Electric has been and is actively in the process of conducting the associated environmental studies and impact statements, and applying for and obtaining the necessary environmental permits. (Tr. 479) However, NPCARE contends that going through the federal and state review and permitting process is not sufficient to minimize the potential environmental impacts. NPCARE therefore recommends that the Commission impose conditions, above and beyond those required by the applicable environmental agencies, to reduce the environmental impacts of the Project. (NPCARE Initial Brief, pp. 10, 14, 16) For the reasons explained below, NPCARE's request should be denied.

²⁰ As an initial matter, it must be noted that NPCARE's position is based on an incorrect interpretation of Section 57.76(a)(4). As explained above, PPL Electric is not required to identify and evaluate every possible "alternative efforts" or "alternative methods" that could possibly minimize the impact of the proposed transmission line, as suggested by NPCARE. Rather, the Commission's regulations require PPL Electric to identify and compare the merits and detriments of the reasonable "alternative routes."

Citing to *Trailco*, 995 A.2d 465 (Pa. Cmwlth. 2010), NPCARE contends that the Commission has authority to impose conditions above and beyond those required by the applicable environmental agencies. According to NPCARE, the Court in *Trailco* “has made clear both that the applicant must ensure minimum impacts, that the Commission may require further studies, plans and activities to do so, and that compliance with the regulations of other agencies is not always enough.” (NPCARE Initial Brief, p. 16). NPCARE’s reliance on *Trailco* is misplaced for several reasons.

First, NPCARE overlooks that the conditions referenced by the Commonwealth Court were not developed by the Commission. These conditions were attached to the applicant’s exceptions to the recommended decision. Importantly, these conditions were voluntarily offered by the applicant to address concerns regarding the certification of the applicant as a public utility and affiliate transactions.

Second, there is nothing in the Commission’s order or the Commonwealth Court’s opinion in *Trailco* that concludes that the Commission has jurisdiction to regulate environmental impacts or develop and impose environmental conditions. Indeed, the Commonwealth Court found that the environmental conditions agreed to by the applicant are “not based on mandatory PUC regulations and would not require further approval or action by the PUC.” *Id.* at 475, n.9. The Court expressly recognized that the approval and acceptance of the environmental conditions agreed to by the applicant does not lie with the Commission, but rather with “some other administrative agency.” *Id.*

Finally, there is nothing in Commission’s order or the Commonwealth Court’s opinion in *Trailco* that supports NPCARE’s position that the Commission has the authority to impose conditions above and beyond those required by the applicable environmental agencies, to reduce

the environmental impacts of the project. Rather, the Commonwealth Court noted that the environmental conditions merely require the applicant to do what it is already required to do under separate administrative schemes. *Id.*

As explained in PPL Electric's Initial Brief, nothing in the Public Utility Code, siting regulations, Article I, Section 27 of the Pennsylvania Constitution, or case law authorizes the Commission to regulate environmental impacts or develop environmental safeguards. Although the Commission may impose terms or modifications on the location, construction, or operation of the proposed line as the Commission may deem appropriate, 52 Pa. Code § 57.76(a), it is well settled that the Commission lacks jurisdiction to regulate environmental impacts and, instead, must defer to those agencies that have appropriate jurisdiction over those matters. (*See* PPL Electric Initial Brief, Section VI.F.3.b)

Here, the unrefuted record evidence demonstrates that the routes selected by PPL Electric will have significantly less impact to the natural and human environment than the other feasible alternative routes. (*See* PPL Electric Initial Brief, Sections VI.E.1 and VI.E.2) Further, PPL Electric has agreed to undertake all environmental studies required by those agencies that have appropriate jurisdiction over such matters. Further, PPL Electric has committed to obtain all required permits for construction of the Northeast-Pocono Reliability Project and will comply with any and all conditions placed on such permits by those agencies that have appropriate jurisdiction over environmental matters. (PPL Electric St. 4-R-2, pp. 4, 24; Tr. 479) Notably, these are substantially the same conditions agreed to by the applicant in *Trailco*. *Id.* at 475, n.9.

Although NPCARE states that meeting the permitting requirements is not enough to satisfy PPL Electric's obligation to provide minimum adverse environmental impact (NPCARE St. 2-R, p. 5), nothing in the record supports NPCARE's suggestion that the existing

environmental regulations, review, and permitting processes are inadequate to prevent or mitigate harm to environmentally sensitive areas. Moreover, to the extent that NPCARE believes that the existing environmental regulations and standards are inadequate to protect the environment, such policy concerns should be directed to state and federal policy makers having the authority to address them. Finally, PPL Electric fully considered each of NPCARE's proposals and has either accepted the proposals or fully explained why they are not reasonable and should not be adopted. (See PPL Electric Initial Brief, Section VI.F)

6. Vegetation Management

The vast majority of NPCARE's concerns are related to PPL Electric's plan to initially remove the vegetation to establish the extent of the new right-of-way for the Northeast-Pocono Project and to accommodate the construction activities, as well as PPL Electric's plan to maintain the right-of-way after the initial clearing. For new rights-of-way, such as those required for the Northeast-Pocono Reliability Project, PPL Electric initially removes all vegetation except for grasses and herbaceous or non-woody plants in both the Wire and Border Zones. Clearing the entire width of a new right-of-way for the construction of a new high voltage transmission line is an industry best practice and is PPL Electric's standard practice for the construction of a new high voltage transmission line. (PPL Electric St. 7-RJ, p. 5) After the initial clearing of a new right-of-way, compatible species are allowed to grow back and PPL Electric then maintains the right-of-way by (i) selectively removing vegetation except grasses and herbaceous or non-woody plants in the Wire Zone and (ii) removing only non-compatible species in the Border Zone. (PPL Electric St. 7-R, p. 4)

According to NPCARE, PPL Electric's vegetation management plan fails to satisfy 52 Pa. Code § 57.76(a)(4) because it fails to employ an available alternative to minimize

environmental impacts.²¹ Specifically, NPCARE contends that the Commission should require PPL Electric to employ selective clearing and restrictive clearing methods throughout the entire width of the right-of-way, including both the Wire Zone and Border Zone.²² (NPCARE Initial Brief, p. 24) PPL Electric fully considered each of NPCARE's vegetation management proposals and has either accepted the proposals or fully explained why they are not reasonable and should not be adopted. (See PPL Electric Initial Brief, Sections VI.F.4, VI.F.5.a) For the reasons explained below, as well as those more fully explained in PPL Electric's Initial Brief, NPCARE's recommendation is without merit and should be rejected.

a. The Evidence of Record Demonstrates that the Initial Clearing of the Right-of-Way is Reasonably Necessary

NPCARE argues that PPL Electric has failed to demonstrate that initial clearing of all vegetation within the right-of-way is necessary or that selective or restrictive vegetation management is not a reasonable available alternative. (NPCARE Initial Brief, p. 25) NPCARE, however, has absolutely no experience in constructing or maintaining high voltage transmission lines. Moreover, no record evidence supports a finding that initially clearing the entire width of a new right-of-way is not necessary or reasonable.²³ In fact, the only evidence of record on the issue suggests to the contrary.

²¹ See Footnote 20, *supra*.

²² The "Wire Zone" is defined as the area within the right-of-way that includes the area underneath the conductor and extends ten (10) feet outward from the outer-most conductor on both sides of the transmission line. Areas within the Wire Zone are cleared of all woody vegetation leaving only grasses. Ferns and other herbaceous plants are permitted to grow back over time and remain in the Wire Zone. The "Border Zone" is defined as the "the remainder of the right-of-way," or the area within the right-of-way that extends from the edge of the Wire Zone, as defined above, to the outer-most edge of the right-of-way. In the Border Zone, vegetative species identified as compatible are permitted to grow back over time and remain in the Border Zone. (PPL Electric St. 7-R, p. 3)

²³ It is well-settled that the findings and determinations of the Commission must be based on the substantial evidence of record. *Met-Ed Indus. Users Group v. Pa. PUC*, 960 A.2d 189, 193, n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Substantial evidence must be "more than a scintilla and must do more than create a suspicion of the existence of the fact to be established." *Kyu Son Yi v. State Board of Veterinarian Medicine*, 960 A.2d 864, 874 (Pa. Cmwlth. 2008) (citation omitted).

PPL Electric explained that removal of all vegetation, except grass and herbaceous or non-woody plants, for the entire width of a new right-of-way is reasonable and necessary to establish the extent of the right-of-way. (PPL Electric St. 7-RJ, p. 4) In addition, the removal of all vegetation, except grass and herbaceous or non-woody plants, will facilitate a safer environment for the construction activities. If selective or restricted clearing was applied to a new right-of-way, this could significantly increase the cost of the project and, more importantly, could create safety hazards during construction, delay the construction activities, and jeopardize the in-service date of a project. (PPL Electric St. 7-RJ, p. 5) Importantly, no party introduced any evidence of record to refute that the removal all the vegetation within a new right-of-way is necessary to both establish the extent of the new right-of-way and to safely accommodate the many construction activities that will occur within the right-of-way to install new foundations, tower structures, and conductors.

Based on the foregoing, the unrefuted evidence of record demonstrates that the initial removal of all vegetation, except grass and herbaceous or non-woody plants, for the entire width of a new right-of-way is necessary to both establish the extent of the new right-of-way and to safely accommodate the many construction activities that will occur within the right-of-way to install new foundations, tower structures, and conductors. Clearing the entire width of a new right-of-way for the construction of a new high voltage transmission line is an industry best practice, and is PPL Electric's standard practice for the construction of a new high voltage transmission line.

b. Selective Clearing of the Wire Zone is Preempted

In addition, NPCARE's request that PPL Electric selectively clear the Wire Zone would violate the mandatory North American Electric Reliability Corporation ("NERC") Standard FAC-003-1 and the settlement with ReliabilityFirst Corporation, which would subject PPL

Electric to significant civil penalties. PPL Electric must comply with the NERC Standard FAC-003-1 - Transmission Vegetation Management Program approved by Federal Energy Regulatory Commission (“FERC”) on March 15, 2007. The NERC Standard FAC-003-1 requires that transmission facility owners, such as PPL Electric, adopt and keep current a formal transmission vegetation management program that has been reviewed and approved by NERC. The plan is required to specify clearances between vegetation and transmission conductors that must be maintained during all operating conditions. The NERC Standard FAC-003-1 is mandatory and binding on owners and operators of transmission systems, such as PPL Electric, and failure to comply can result in penalties of up to \$1 million per day per violation. (PPL Electric St. 7-R, p. 2)

As explained in PPL Electric’s Initial Brief, as part of a settlement with ReliabilityFirst Corporation, PPL Electric agreed to, among other things, revise its vegetation management plan to implement the Wire Zone/Border Zone method of managing vegetation. (PPL Electric Initial Brief, Section VI.F.4) Thus, under the terms of the NERC-approved and FERC-accepted settlement with ReliabilityFirst Corporation, in order to comply with NERC Standard FAC-003-1 and avoid significant penalties, PPL Electric must apply its Wire Zone/Border Zone vegetation management method to the entire width of the right-of-way. Areas within the Wire Zone are cleared of all woody vegetation leaving only grasses and herbaceous or non-woody plants. (PPL Electric St. 7-R, p. 3)

If the Commission ordered PPL Electric to apply selectively or restrictive clearing methods in the Wire Zone, as suggested by NPCARE, this would prevent PPL Electric from complying with the NERC Standard FAC-003-1 and the settlement with ReliabilityFirst Corporation, and could subject PPL Electric to significant civil penalties. Although the

Commission may regulate the safety, adequacy, and reliability of electric service, section 215 of the Energy Policy Act of 2005 prohibits the Commission from adopting a standard that is less restrictive, inconsistent with, or prevents PPL Electric from complying with any reliability standard adopted by NERC. *See* 16 U.S.C. § 824o(i)(3).

Based on the foregoing, the removal of all vegetation within the Wire Zone, except grass and herbaceous or non-woody plants, is required to comply with the NERC-approved and FERC-accepted settlement with ReliabilityFirst Corporation and the NERC Standard FAC-003-1.

c. NPCARE's Proposal is Overly Broad

NPCARE contends that the Commission should require PPL Electric to employ selective clearing and restrictive clearing methods throughout the entire width of the right-of-way. (NPCARE Initial Brief, p. 24) However, there is nothing in the record to support NPCARE's statement that the entire route for the West Pocono-North Pocono Segment, Route D-1, is located in special environmentally sensitive or protected areas. (*See* PPL Electric Ex. 1, Att. 4, pp. 54-55) Rather, the focus of NPCARE's concern is for EV streams, EV wetlands and vernal pools. Thus, even if the ALJ and Commission were to adopt NPCARE's proposal, and it should not be adopted, it should be limited the Border Zones of EV streams, EV wetlands and vernal pools and not the entire right-of-way as NPCARE suggests.

In an effort to address NPCARE's concerns regarding impacts to the riparian buffers of EV streams, PPL Electric agreed, to the extent practical and subject to PPL Electric's present and future obligation to comply with all applicable reliability and safety standards and other legal or regulatory requirements or industry standards, to selectively clear the Border Zone within 150 feet of any EV stream crossing located within the West Pocono-North Pocono Segment. PPL Electric also has agreed to not remove any stumps in the right-of-way that are within 150 feet of

any EV stream crossing except in those limited instances where pole structures and/or foundations are located. (PPL Electric St. 7-RJ, p. 5-6)

Based on the foregoing, NPCARE's proposal to selectively clear the entire right-of-way is overly broad and should be rejected. NPCARE's focus is on the impacts to EV streams, EV wetlands and vernal pools. PPL Electric agreed to adopt limited clearing for Border Zone around EV streams, which addresses NPCARE's primary concern. Although the Wire Zones located near stream crossings will continue to be cleared of all the vegetation, except grass and herbaceous or non-woody plants, selectively clearing the Border Zones within 150 feet of an EV stream crossing will significantly minimize the impacts to stream crossing. This is a reasonable compromise of competing interests here, but in no event should it be extended beyond NPCARE's primary concern.

7. EV Streams, EV Wetlands, and Vernal Pools

NPCARE repeatedly asserts that PPL Electric failed to satisfy 52 Pa. Code § 57.76(a)(4) because it fails to employ an available alternative to minimize environmental impacts to EV streams, EV wetlands, and vernal pools.²⁴ (NPCARE Initial Brief, pp. 27, 30, 32, 33) NPCARE raises concerns regarding the thermal impacts to EV streams, wetlands, and vernal pools. NPCARE also raises concerns regarding erosion and sedimentation due to construction related activities. NPCARE therefore contends that vegetation clearing and disturbance to vegetation within the 150 foot riparian buffer areas of all EV streams, EV wetlands, and vernal pools should be avoided. (NPCARE Initial Brief, pp. 26-32) NPCARE also is concerned about the use of herbicides, placement of poles, and use of heavy machinery within 150 feet of EV streams, EV wetlands, and vernal pools. (NPCARE Initial Brief, pp. 32-33)

²⁴ See Footnote 20, *supra*.

PPL Electric fully considered each of NPCARE's proposals related to EV streams, EV wetlands, and vernal pools, and has either accepted the proposals or fully explained why they are not reasonable and should not be adopted. (See PPL Electric Initial Brief, Section VI.F.5) For the reasons explained below, as well as those more fully explained in PPL Electric's Initial Brief, PPL Electric fully addressed NPCARE's concerns in its Initial Brief.

As explained in PPL Electric's Initial Brief, NPCARE's general statements regarding the impacts of clearing vegetation from a stream and other water bodies on long-term warming of stream temperatures and the potential impact to certain aquatic organisms must be rejected for several reasons. First, NPCARE's expert visited only 3 of the 24 streams at issue on April 11, 2013, which is before or at the very beginning of the growing season, so any observations he made on vegetation would be of limited value. Second, NPCARE relies on studies that are not appropriate for characterizing effects of overhead transmission lines, or are studies conducted in substantially different habitats located thousands of miles from the project area. Third, as part of the permitting process, the environmental agencies can, if necessary, put certain conditions on vegetation management, including mitigation measures for vegetation clearing. And fourth, NPCARE's one-sided analysis of the riparian buffers and thermal impacts is fundamentally flawed because it fails to provide a meaningful comparison as required by Section 57.76(a)(4) of the siting regulations. (See PPL Electric Initial Brief, Section VI.F.5.a)

Importantly, NPCARE ignores that PPL Electric has identified measures to minimize the impacts of temperature increases in stream and other water body crossings. With the exception of one stream crossing, all stream crossings are generally perpendicular to the alignment of the stream corridor. Further, to the extent practicable, PPL Electric has made every effort to stay outside the 150-foot buffers. The very few areas where this is not possible are related to

transmission line engineering constraints and property constraints. In these areas, however, PPL Electric will employ appropriate erosion and sedimentation best management practices to minimize impacts to these areas. (See PPL Electric Initial Brief, Section VI.F.5.a)

Finally, as explained above, PPL Electric agreed, to the extent practical, to selectively clear the Border Zone within 150 feet of any EV stream crossing, and to not remove any stumps in the right-of-way that are within 150 feet of any EV stream crossing except in those limited instances where pole structures and/or foundations are located. Although the Wire Zones located near stream crossings will continue to be cleared of all the vegetation, except grass and herbaceous or non-woody plants, selectively clearing the Border Zones within 150 feet of an EV stream crossing will significantly minimize the impacts to stream crossing.

With respect to erosion and sedimentation, PPL Electric explained that, through the siting and landowner negotiations process, it has minimized erosion and sedimentation due to construction related activities. Further, PPL Electric explained that it will prepare erosion and sedimentation control plans, which will present erosion and sedimentation best management practices that will limit the potential for erosion and sediment migration for the specific work activities, including construction of monopoles, temporary workspace requirements/dimensions, and access roads. Finally, the Project will be designed and constructed to minimize the duration of disturbance resulting from stream and wetland crossings and to satisfy any DEP timing restrictions for working in the respective streams. (See PPL Electric Initial Brief, Section VI.F.5.b)

With respect to the use of herbicides, PPL Electric explained that only those species that require control are treated, *i.e.*, non-compatible and invasive species. PPL Electric also explained that it does not apply herbicides in certain areas or situations, including on watershed

properties, or in the vicinity of springs, irrigation ditches, or other potable water sources, unless prior approval is granted by the property owner for use of a watershed/aquatic approved herbicide. PPL Electric further explained that it will only use watershed/aquatic approved herbicides near watershed areas, and will comply with all federal and state requirements regarding the use of herbicides, including in areas near EV streams, EV wetlands, and vernal pools. (See PPL Electric Initial Brief, Section VI.F.5.c)

With respect to the placement of poles, PPL Electric explained that it has gone to great efforts to minimize the impacts of the monopole locations on wetlands and around streams. For the West Pocono-North Pocono segment (including the North Pocono 138 kV Connector lines) of the 183 total poles for this Segment, only 3 poles are located in a wetland (less than 2%) and only 4 within a stream riparian area (approximately 2%).

With respect to the use of heavy machinery or equipment near EV streams and wetlands, PPL Electric explained that, prior to and during construction, PPL Electric will design the project to minimize earth disturbance associated with the project construction, including equipment operation, and its encroachment into riparian buffers to the extent practicable. In addition, appropriate erosion and sedimentation best management practices will be implemented, and temporary access roads and work areas will be restored following construction. (See PPL Electric Initial Brief, Section VI.F.5.c)

As explained above, PPL Electric is not required to identify and evaluate every possible “alternative effort” or “alternative method” that could possibly minimize the impact of the proposed transmission line, nor is PPL Electric is required to identify and implement the construction and maintenance methods that would have the “least” adverse environmental impact. Rather, the Commission’s siting regulations require PPL Electric to demonstrate a

reasonable effort to reduce the environmental incursion to a minimum. For the reasons explained above, as well as those more fully explained in its Initial Brief, PPL Electric has met its burden to demonstrate reasonable efforts to minimize the impacts that the proposed route for the West Pocono-North Pocono Segment will have on EV streams, EV wetlands, and vernal pools.

8. Species of Special Concern

NPCARE repeatedly asserts that PPL Electric failed to satisfy 52 Pa. Code § 57.76(a)(4) because it fails to employ an available alternative to minimize environmental impacts to Pennsylvania Species of Special Concern that may occur and/or may be impacted by the proposed Project.²⁵ According to NPCARE, in order to demonstrate that the proposed route will have a minimum adverse impact, PPL Electric is required to conduct an assessment and prepare a management plan for all species even if they are not protected by state or federal agencies with jurisdiction over such matters. (NPCARE Initial Brief, pp. 33-34)

PPL Electric fully considered each of NPCARE's proposals related to Species of Special Concern and has either accepted the proposals or fully explained why they are not reasonable and should not be adopted. (See PPL Electric Initial Brief, Section VI.F.6) For the reasons explained below, as well as those more fully explained in PPL Electric's Initial Brief, PPL Electric fully addressed NPCARE's concerns in its Initial Brief.

PPL Electric explained that only threatened and endangered amphibians, birds, fish (including trout), mammals, mussels, snails, reptiles and vascular plants are protected by the Commonwealth. Species of Special Concern that are not threatened or endangered are not protected by the Commonwealth. An applicant is required to survey and identify "target

²⁵ See Footnote 20, *supra*.

species,” which includes threatened or endangered species and Species of Special Concern identified by the applicable regulatory agencies as potentially occurring for a particular project area. However, the applicant is not required to survey for all Species of Special Concern. Finally, PPL Electric explained that NPCARE’s contention that it identified Species of Special Concern within the right-of-way is misleading for several reasons. (See PPL Electric Initial Brief, Section VI.F.6)

In essence, NPCARE seeks to expand the list of “target species” for the Project. However, the Species of Special Concern list and the selection of target species to be protected should be based on the best available scientific information, not unilateral decisions by NPCARE or by the Commission. (PPL Electric St. 9-RJ, pp. 2-3) To the extent that NPCARE believes additional species should be added to a specific target list, or that the existing environmental regulations and regulations are inadequate to protect certain species, such broad concerns should be directed to state and federal policy makers having the authority to address them.

As explained above, PPL Electric is not required to identify and evaluate every possible “alternative effort” or “alternative method” that could potentially minimize the impact of the proposed transmission line, nor is PPL Electric is required to identify and implement the construction and maintenance methods that would have the “least” adverse environmental impact. Rather, the Commission’s siting regulations require PPL Electric to demonstrate a reasonable effort to reduce the environmental incursion to a minimum. For the reasons explained above, as well as those more fully explained in its Initial Brief, PPL Electric has met its burden to demonstrate reasonable efforts to minimize the impacts that the proposed route for the West Pocono-North Pocono Segment will have on threatened and endangered species, as

well as Species of Special Concern that have been identified within the project area by the applicable regulatory agencies.

V. ZONING PETITIONS

A. NORTH POCONO ZONING PETITION

The North Pocono Substation will be located on PPL Electric property in Covington Township, Lackawanna County. In its Initial Brief, PPL Electric explained that, because the Northeast-Pocono Reliability Project, including the North Pocono Substation, is reasonably necessary for the public convenience and welfare and the North Pocono Substation must include certain equipment that must be protected from the elements to operate properly, the Commission should find that the Control Equipment Building is reasonably necessary and, therefore, exempt from the Covington Township's local zoning ordinance pursuant to Section 619 of the Municipalities Planning Code ("MPC"), 53 P.S. § 10619. (*See* PPL Electric Initial Brief, Section VII.A)

Covington Township was the only party to oppose the zoning exemption petition for the building to shelter control equipment at the North Pocono 230-69 kV Substation. Covington Township contends that the Northeast-Pocono Reliability Project conflicts with the Township's Comprehensive Plan. (Covington Township Initial Brief, p. 10) Covington Township also argues that PPL Electric should be required to submit a plan in accordance for the Township's Subdivision and Land Development Ordinance. (Covington Township Initial Brief, p. 11) Finally, Covington Township argues that PPL Electric should be required to apply for a building permit for the Control Equipment Building at the North Pocono 230-69 kV Substation, and that the Control Equipment Building should subject to inspection by the Township building inspector. Covington Township's arguments are without merit and should be rejected.

Section 619 of the MPC provides the standard for approval of the siting of a public utility “building,” and provides as follows:

This article shall not apply to any existing or proposed building, or extension thereof, used or to be used by a public utility corporation, if, upon petition of the corporation, the Pennsylvania Public Utility Commission shall, after a public hearing, decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public. It shall be the responsibility of the Pennsylvania Public Utility Commission to ensure that both the corporation and the municipality in which the building or proposed building is located have notice of the hearing and are granted an opportunity to appear, present witnesses, cross-examine witnesses presented by other parties and otherwise exercise the rights of a party to the proceedings.

53 P.S. § 10619. Thus, a municipality may exercise its zoning powers over a public utility building unless the Commission determines that the “site is reasonably necessary for the public convenience or welfare.” *Del-AWARE Unlimited, Inc. v. Pa. PUC*, 513 A.2d 593, 596 (Pa. Cmwlth. 1986), *appeal denied*, 515 Pa. 587, 527 A.2d 547 (1987). If the Commission finds that the location is reasonably necessary for the convenience or welfare of the public, the building is exempt from local zoning ordinances under the MPC. *Id.*

The Commonwealth Court has explained that “Section 619 only empowers the [Commission], upon petition, to decide if there is reasonable necessity for the site.” *Del-AWARE Unlimited*, at 596 fn.4 (Pa. Cmwlth. 1986). It is well settled that a public utility must decide in the first instance what facilities are needed and where to locate those facilities. Unless the public utility acted in an arbitrary or capricious manner, its decision should remain undisturbed. *See e.g., Lower Chichester Township v. Pa. PUC*, 119 A.2d 674 (Pa. Super 1956); *Abington Electric Co. v. Pa. PUC*, 198 A. 901 (Pa. Super 1938). Further, the company must only show that it has made a reasonable decision, not the best possible decision. *O’Connor v. Pa. PUC*, 582 A.2d 427, 433 (Pa. Cmwlth. 1990) (citing *Re Philadelphia Suburban Water Co.*, 54 Pa. PUC

127, 132 (1980)). Although evidence of an alternative location may be the basis for questioning the reasonableness of the company's decision, the mere existence of an alternative site does not invalidate the company's judgment. *Re Philadelphia Suburban Water Company*, Docket No. 99126, 54 Pa. PUC 127, 1980 Pa. PUC LEXIS 81 at *16 (April 3, 1980) (citing *Lower Chichester Township; Byers v. Pa. PUC*, 109 A.2d 232 (Pa. Super. 1954)).

Here, the evidence of record demonstrates that PPL Electric acted reasonably in selecting the proposed site for North Pocono Substation. The location of the proposed new North Pocono Substation was determined prior to the development of the potential corridors for the transmission line routes through a process of land use and constraint analysis. PPL Electric initially identified a strategic locations for the North Pocono Substation that would be central to the 230 kV source and within close proximity to the existing 138/69 kV network, which will minimize the length of transmission lines needed to connect the Substations to the electric grid, as well as minimize the costs and environmental impacts of the connecting the associated lines to the Substations. A functional area was established around these locations in which the existing land use and known social and environmental constraints were assessed. Key attributes of the selected substation location included accessibility from adjacent established roadways, a level topographic grade, sturdy soil conditions (no wetlands), and buffered from surrounding residential development by forest or distance to the extent practicable. (PPL Electric St. 4, pp. 13-14)

A review of the functional area for the North Pocono Substation noted the predominance of environmental constraints including Lackawanna State Forest, natural areas, state game lands, large wetland complexes, and several stream networks. The functional area includes a few residential homes located along Freytown Road, but also includes a large concentration of

residential homes located along the southwestern perimeter that are associated with the Eagle Lake and Big Bass Lake developments. The Delaware, Lackawanna, & Western Railroad, which is considered an historic alignment due to its association with the Steamtown National Historic Site, is also located in this area. Based upon these constraints, the process of determining the location of the North Pocono Substation was narrowed to the forested upland areas surrounding an isolated section of Freytown Road. Freytown Road would provide an appropriate roadway for the substation access, and the cover or buffer provided by the adjacent forest land would satisfy the need for separation from any existing and proposed residential development. Closer examination of the area noted that topography was favorable and that wetlands were generally not an issue. To determine the final substation location, PPL Electric coordinated discussions with the local landowners and eventually purchased the property identified in Figure 4-7 of Attachment 4 to the Siting Application as the location of the North Pocono Substation. (PPL Electric St. 4, pp. 15-16)

The new North Pocono Substation will be constructed and located centrally with respect to the Jackson 138-69 kV, Blooming Grove 230-69 kV, and Lackawanna 230-69 kV Substations. The proposed location for the North Pocono 230-69 kV Substation is central to the load it will serve. The North Pocono 230-69 kV Substation will tie into the Blooming Grove-Jackson and Peckville-Jackson 138/69 kV Transmission Lines, which will (1) reduce the load on these lines by providing a new 230 kV source and (2) reduce the length of each 138/69 kV line through re-sectionalizing. The North Pocono 230-69 kV Substation also will provide a backup source to the Blooming Grove 230-69 kV, Lackawanna 230-69 kV and Jackson 138-69 kV Substations using interconnected 69 kV lines. (PPL Electric St. NP-1, pp. 4-5)

Importantly, Covington Township has not challenged the need for the North Pocono Substation, or the reasonableness of PPL Electric's decision to select the substation site. For this reason alone, the ALJ and the Commission should reject Covington Township's arguments in opposition to the North Pocono Zoning Petition.

Rather than challenging the reasonableness of PPL Electric's decision to select the substation site, Covington Township focuses on the right-of-way and tower structures that will be located within the Township and argues that the Northeast-Pocono Reliability Project conflicts with the Township's Comprehensive Plan. Covington Township's reliance on the right-of-way and tower structures that will be located within the Township is misplaced.

It is well settled that public utility facilities, such as the right-of-way and tower structures, are exempt from local regulation.²⁶ The only limited exception to this general rule is that a municipality may apply local zoning rules to a public utility "building" unless the Commission finds that the location of the building is reasonably necessary for the convenience or welfare of the public. Thus, the only portion of the Northeast-Pocono Reliability Project that is possibly subject to local regulation is the proposed Control Equipment Building. If the relief requested in the North Pocono Zoning Petition is granted, then the Control Equipment Building at the North

²⁶ 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., *Newtown Township v. Philadelphia Elec. Co.*, 594 A.2d 834, 837 (Pa. Cmwlth. 1991) (noting that "it is clear that no 'implied' power exists in the MPC which would allow the Township to regulate [the Philadelphia Electric Company] through its subdivision and land development ordinance"); *Heintzel v. Zoning Hearing Board of Millcreek Township*, 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 Township 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 MPC did not authorize local governments to regulate public utilities in any manner which infringes upon the power of the Commission to so regulate).

Pocono 230-69 kV Substation would also be exempt from Covington Township's Comprehensive Plan.

Further, Covington Township's argument that PPL Electric should be required to submit a plan in accordance for the Township's Subdivision and Land Development Ordinance should be rejected. It has long been settled that the exemption under Section 619 of the MPC equally applies to subdivision and land development ordinances. *See Newtown Township v. Philadelphia Elec. Co.*, 594 A.2d 834, 837 (Pa. Cmwlth. 1991), *appeal denied by*, 529 Pa. 627, 600 A.2d 542 (1991). If the relief requested in the North Pocono Zoning Petition is granted, then the Control Equipment Building at the North Pocono 230-69 kV Substation would be exempt from Covington Township's Subdivision and Land Development Ordinance.

Covington Township's argument that PPL Electric should be required to apply for a building permit and subject to inspection by the Township building inspector also should be rejected. Covington Township's argument is flawed and illogical. PPL Electric is requesting an exemption from zoning. Covington Township suggests that PPL Electric should be required to file for and obtain the very same permits that PPL Electric is seeking an exemption from. However, Covington Township does not oppose the merits of the zoning exemption. In essence, Covington Township simply wants to regulate PPL Electric. If the relief requested in the North Pocono Zoning Petition is granted, then the Control Equipment Building at the North Pocono 230-69 kV Substation would be exempt from the need to obtain building permits or be subject to inspections under the Covington Township's zoning ordinance.

Further, if PPL Electric were required to obtain such approvals prior to the construction of the Control Equipment Building, the process, including appeals from adverse determinations, could consume substantial time, which could delay the construction of the North Pocono

Substation, which is reasonably necessary for the convenience of welfare of the public. PPL Electric operates in a certificated service territory that encompasses approximately 10,000 square miles in eastern and central Pennsylvania, including all or portions of twenty-nine counties and more than 630 cities, boroughs and townships. If PPL Electric were required to obtain building permits and pass local inspections for each municipality that it operates, it would become untenable to manage the distribution facilities and the growth of these systems. *See, 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).

Based on the foregoing, PPL Electric respectfully requests that the ALJ and the Commission find that the Control Equipment Building at the proposed North Pocono Substation is reasonably necessary for the convenience or welfare of the public and, therefore, exempt from local zoning regulations.

B. WEST POCONO ZONING PETITION

The West Pocono Substation will be located on PPL Electric property in Buck Township, Luzerne County. In its Initial Brief, PPL Electric explained that because the Northeast-Pocono Reliability Project, including the West Pocono Substation, is reasonably necessary for the public convenience and welfare, and the West Pocono Substation must include certain equipment that must be protected from the elements to operate properly, the Commission should find that the Control Equipment Building is reasonably necessary and, therefore, exempt from the Buck Township’s local zoning ordinance pursuant to Section 619 of the MPC. (*See* PPL Electric Initial Brief, Section VII.B)

No parties opposed PPL Electric’s West Pocono Zoning Petition or the reasonableness of PPL Electric’s decision to select the substation site. For the reasons fully explained in PPL

Electric's Initial Brief, PPL Electric respectfully requests that the ALJ and the Commission find that the Control Equipment Building at the proposed West Pocono Substation is reasonably necessary for the convenience or welfare of the public and, therefore, exempt from local zoning regulations.

VI. EMINENT DOMAIN APPLICATIONS

In this proceeding, PPL Electric is seeking a finding, under 15 Pa.C.S. § 1511, that the service to be provided through the acquisition of rights-of-way and easements for an aerial crossing of 29 properties is necessary or proper for the service, accommodation, convenience, or safety of the public. Pennsylvania Appellate Courts have interpreted Section 1511 as requiring a condemning utility to show that the proposed transmission line is necessary and that it has not acted wantonly, capriciously, or arbitrarily in selecting the proposed right-of-way. *Department of Environmental Resources v. Pa. PUC*, 335 A.2d 860 (Pa. Cmwlth. 1975), *aff'd*, 473 Pa. 378, 374 A.2d 693 (1977); *Dickson v. Public Service Commission*, 89 Pa. Super. 126 (1926). Further, the selection of the right-of-way is a matter for the public utility in the first instance and, while the route selection must be reasonable, it need not be the "best alternative" in terms of reducing or eliminating inconvenience to particular landowners. *Stone v. Pa. PUC*, 162 A.2d 18 (Pa. Super. 1960).

In its Initial Brief, PPL Electric explained that the Northeast-Pocono Reliability Project is necessary to resolve violations of PPL Electric's RP&P 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. (See PPL Electric Initial Brief, Section VI.B.1) PPL Electric also explained that the Northeast-Pocono Reliability Project will reduce the number of customers affected by a single facility outage, as well as the duration of the outage. (See PPL

Electric Initial Brief, Section VI.B.3) Finally, PPL Electric explained that the proposed routes for the Project were selected after extensive public input and a detailed analysis, which included consideration of the functional requirements, environmental impacts, social impacts, public input, cost, and other factors identified in the Commission's siting regulations. (*See* PPL Electric Initial Brief, VI.E) Accordingly, PPL Electric's proposed exercise of the power of eminent domain to acquire rights-of-way and easements for the proposed Northeast-Pocono Reliability Project over the lands identified in the Condemnation Applications is necessary or proper for the service, accommodation, convenience, or safety of the public and, therefore, should be approved.

The only property owners that actively participated in this proceeding and opposed the Northeast-Pocono Reliability Project were Transco, FR First, and FR E2. Notably, however, none of these parties filed initial briefs in support of their issues. As explained above, it is well settled that when parties have been ordered to file briefs and fail to include all the issues they wish to have reviewed, the issues not briefed have been waived. (*See* Section III.C, *supra*) To the extent that Transco, FR First, or FR E2 seek to assert their arguments in opposition to the eminent domain for the first time in their response briefs, such arguments should be disregarded.²⁷ To permit Transco, FR First, or FR E2 to assert such arguments in their response briefs would clearly deprive PPL Electric, and others, any opportunity to respond. These parties' attempt to "sandbag" this proceeding by not filing initial briefs on their issues is procedurally inappropriate and has serious due process implications.

Notwithstanding and without waiver of any objection, PPL Electric has fully addressed the eminent domain issues raised in the testimony submitted by Transco, FR First, and FR E2. For the reasons more fully explained in PPL Electric's Initial Brief, the ALJ and the Commission

²⁷ Further, to the extent that such arguments are raised in the response briefs of FR First, FR E2, and Transco, PPL Electric reserves the right to file a motion to strike as appropriate.

should reject the un-briefed issues raised in the testimony submitted by Transco, FR First, and FR E2 and find that PPL Electric's proposed exercise of the power of eminent domain to acquire rights-of-way and easements for the proposed Northeast-Pocono Reliability Project over the lands of Transco, FR First, and FR E2 is necessary or proper for the service, accommodation, convenience, or safety of the public.

VII. CONCLUSION

WHEREFORE, for the reasons explained above, as well as the reasons more fully explained in its Initial Brief, PPL Electric Utilities Corporation respectfully requests that Administrative Law Judge David A. Salapa and the Pennsylvania Public Utility Commission (1) approve the siting and construction of a new 58-mile 230 kV transmission line and approximately 11.3 miles of new 138/69 kV transmission lines needed to connect the new West Pocono and North Pocono 230-69 kV Substations with the existing 69 kV system as proposed in the Siting Application and as modified by the record in this proceeding, (2) find that the exercise of the power of eminent domain to acquire rights-of-way across 29 tracts of land is necessary or proper for the service, accommodation, convenience or safety of the public, (3) find that the locations of the buildings to shelter control equipment at the West Pocono and North Pocono 230-69 kV Substations are reasonably necessary for the convenience or welfare of the public, and (4) grant such other approvals as are necessary or appropriate under all of the circumstances.

Respectfully submitted,

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