

Three Griffins Enterprises, Inc.	: A-2012-2341114
	:
Margaret G. Arthur and Barbara A. Saurman	: A-2012-2341115
Trustee of the Residuary Trust of	:
James C. Arthur	:
	:
Anthony J. Lupas, Jr. and Lillian Lupas	: A-2012-2341118
John Lupas and Judy Lupas,	:
Grace Lupas, Eugene A. Bartoli and	:
Robert J. Fankelli	:
	:
	:
Ronald G. Sidovar and Gloria J. Sidovar	: A-2012-2341120
	:
FR First Avenue Property Holding, LP	: A-2012-2341123
	:
Transcontinental Gas Pipe Line Corporation	: A-2013-2341208
	:
William Petrouleas and Joanna Petrouleas	: A-2013-2341209
	:
Peter Palermo and Francine Palermo	: A-2013-2341211
	:
Dianna L. Doss	: A-2013-2341214
	:
Donald Januszewski	: A-2013-2341215
	:
International Consolidated Investment	: A-2013-2341216
Company	:
	:
Bradley D. Hummel	: A-2013-2341220
	:
Michael Palermo and Joanne Palermo	: A-2013-2341221
	:
John F. and Veronica Iskra	: A-2013-2341233
	:
Michael A. Mitch and Sue K. Mitch	: A-2013-2341234
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Clifton Acres, Inc.	: A-2013-2341236
	:
Dietrich Hunting Club	: A-2013-2341237
	:
NLMS, Inc.	: A-2013-2341239
	:
Duke Realty 400 First Avenue Gouldsboro Holding, LLC	: A-2013-2341241
	:
Ronald Solt	: A-2013-2341249

Edward R. Schultz	:	A-2013-2341253
	:	
Donald W. Henderson and Louis Bellucci	:	A-2013-2341262
	:	
Fr E2 Property Holding LP	:	A-2013-2341263
	:	
Sylvester J. Coccia	:	A-2013-2341267
	:	
Lawrence Duda	:	A-2013-2341271
	:	
Blue Ridge Real Estate	:	A-2013-2341277
	:	
James L. and Michaelene J. Butler	:	A-2013-2344353
	:	
Susan Butler Reigeluth Living Trust	:	A-2013-2344604
	:	
Blueberry Mountain Realty, LLC	:	A-2013-2344605
	:	
Grumble Knot, LLC	:	A-2013-2344612
	:	
Pennsylvania Glacial Till, LLC	:	A-2013-2344616
	:	
Chris and Melinda Maros	:	
	:	
v.	:	C-2012-2305047
	:	
PPL Electric Utilities Corporation	:	
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Joe and Vanessa Caparo	:	
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v.	:	C-2012-2276713
	:	
PPL Electric Utilities Corporation	:	

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**RESPONSE BRIEF
OF
FR FIRST AVENUE PROPERTY HOLDING, LP
AND
FR E2 PROPERTY HOLDING, LP**

FR First Avenue Property Holding, LP (“FR First”) and FR E2 Property Holding, LP (“FR E2”), by and through its undersigned attorneys, SAUL EWING LLP, hereby files this Response Brief in the above-captioned proceedings, and specifically the Eminent Domain proceedings against FR First and FR E2, pursuant to the Rules of Practice and Procedure promulgated by the Pennsylvania Public Utility Commission, 52 Pa. Code §§5.501 and 5.502, and in accordance with Prehearing Order #3 issued by Administrative Law Judge David A. Salapa on March 13, 2013.

I. INTRODUCTION

On December 28, 2012, PPL Electric Utilities Corporation (“PPL” or “applicant”) filed an Application at Docket No. A-2012-2340872 (the “Siting Application”) with the Pennsylvania Public Utility Commission (the “Commission”) requesting authority to locate and construct the Pennsylvania portion of transmission lines associated with the proposed Northeast-Pocono Reliability Project (“Northeast Pocono Line”).

Also, PPL filed 37 separate Applications (the “Eminent Domain Applications”) relating to the proposed exercise of the power of eminent domain arising from the project, and as of the filing of its Initial Brief was continuing to prosecute 29 of those Eminent Domain Applications. Specifically, the Applications at Docket Nos. A-2012-2341123 and A-2013-2341263 seek

authorization to utilize eminent domain to take very broad aerial and subsurface easements, together with unfettered rights of access and the right to remove improvements, from FR First and FR E2 on properties they own in the Covington Industrial Park.

II. COUNTERSTATEMENT OF CASE

PPL has the burden of proof in this proceeding. 66 Pa.C.S.A. §332(a). PPL may not condemn property in the Courts of Common Pleas under the Business Corporation Law, 15 Pa.C.S.A. §1511, unless it first receives the authority to condemn from this Commission. 15 Pa.C.S.A. §1511(c). “The estate in property condemned and taken by a public utility corporation shall be in fee simple absolute unless the resolution of condemnation specifies a lesser estate.” 15 Pa.C.S.A. §1511(d). Before a public utility may seek to exercise its statutorily granted authority to condemn property for the purposes of constructing aerial transmission or distribution facilities, it must obtain a finding from the Commission that the taking is “necessary”:

(c) The powers conferred by subsection (a) [for the running of aerial electric facilities] may be exercised to condemn property ... only after the Pennsylvania Utility Public Commission, upon application of the public utility corporation, has found and determined ... that the service to be furnished by the corporation through the exercise of those powers is necessary for the service, accommodation, convenience or safety of the public.

15 Pa.C.S. § 1511(c).

It therefore falls to the Commission to review and determine whether PPL has met its burden of proof in providing evidence that the condemnation is necessary for the public convenience. PPL does not discuss in its Initial Brief or in its Findings of Fact the resolutions of condemnation submitted in conjunction with its initial applications. Those extremely broad resolutions are the same but for the name of the property owner. The resolutions attached to the Applications for FR First and FR E2 are Exhibits CK – FRE2-5 and CK-FR First-5, and they provide for the condemnation of :

...appropriate rights-of-way and easements on, over, across or under the Lands to the extent required for rights-of-way to be presently used for the overhead or underground construction, operation and maintenance of the new 230 kV transmission lines associated with the Northeast Pocono Reliability Project, for the transmission and/or distribution of electric light, heat and power, or any of them, including such poles, wires, conduits, cables, manholes and all other facilities, fixtures and apparatus as may be necessary for the proper and efficient construction, operation and maintenance of such line...together with (1) the right of ingress and egress to, from, upon and over the subject properties to access the Easement Area and Electric Facilities at all times for the construction, operation, maintenance, replacement and reconstruction of the Electric Facilities and for any of the purpose aforesaid; (2) the right to cut down, trim, remove and to keep cut down and trimmed by mechanical means or otherwise, any and all trees, brush or other undergrowth now or hereafter growing on or within the Easement Area, as well as the right to cut down, trim and remove any and all trees adjoining or outside of the Easement Area which in the judgment of PPL Electric, its successors, assigns and lessees may at any time interfere with the construction, reconstruction, maintenance or operation of the Electric Facilities or menace the same....and (3) a prohibition against any buildings, swimming pools, or other improvements or structures whatsoever being built, constructed or placed within the Easement Area, as well as any inflammable or explosive materials being stored within the Easement Area, as well as the right of the Company to remove any buildings, structures or other Improvements from the Easement Area....

PPL fails to meet its burden of proof on the Eminent Domain Applications of FR First and FR E2. In the case of FR First, the breadth of the easement sought is not “necessary”, by PPL’s own testimony, and an aerial easement is sufficient, and in the case of FR E2, the route chosen was arbitrary and capricious, and violated the principles set forth for siting in 52 Pa. Code §57.75(e)(3).

III. SUMMARY OF ARGUMENT

The evidence submitted by PPL does not support the grant of the easements sought in the resolutions and Application submitted by PPL for the property of FR First and FR E2. As for FR First, PPL acknowledges that the area of its easement includes the only access road into and out of the Covington Industrial Park, but states that FR First “misunderstand[s]” the easement. In its Initial Brief, PPL states that “Importantly, if granted, **the right-of-way will be an easement only**

for the aerial crossing of the proposed transmission line across the FR First property.”

Initial Brief, p. 169. This statement contradicts the Application, which refers to the very broad easement rights sought in the resolution attached as Exhibit CK-FR First-5, quoted above. If the Application is granted, the evidence only supports the grant of an aerial easement, as testified to by PPL, not the broad easement for both aerial and underground lines, and the right to remove all improvements, which is sought in the resolution and Application.

As for FR E2’s property, the easement route proposed destroys a conservation area which is subject to a Conservation Easement granted to the North Branch Land Trust. Despite the fact that PPL’s testimony indicates that it was aware of the Conservation Easement, and the Land Trust’s ownership of easement rights in the property which would have to be condemned in order to grant to PPL the rights it seeks, PPL failed to name the Land Trust as required by 52 Pa. Code §57.72(4). Further, the selection of the route of the easement across the property of FR E2 was arbitrary and capricious, and is not supported by the evidence.

Finally, there is an alternative route along the property line of the Covington Industrial Park, as acknowledged by PPL, and the rejection of that route was arbitrary and capricious.

PPL has failed to meet its burden of proof.

IV. ARGUMENT

PPL has failed to meet its burden of proof, and the easement sought and route selected across the properties of both FR First and FR E2 is arbitrary and capricious.

A. The Scope of the Easement PPL Seeks to Condemn Across FR First is Unsupported by the Evidence

According to the Application at Docket No. A-2012-2341123, PPL seeks to condemn across the property of FR First a right of way illustrated by the plan shown in Exhibit No. CK – FR First-4, and subject to the resolution attached as Exhibit CK-FR First-5. Statement FR First-1, p. 7, lines 14-23. PPL admits that the area to be condemned “contains the access road for the industrial development.” PPL Statement FR First-1, p. 6, line 17. Jeffrey Thomas, a representative of FR First, testified that FR First owns the “only access road and entrance to the Covington Industrial Park.” FR First Statement 1, p. 1, line 20. The industrial park contains “five existing industrial buildings, four of which are occupied by industrial/storage/transportation users and an undeveloped lot that is approved for a sixth facility. The access road into the park is used by large tractor trailers and other traffic. Currently the park provides employment for approximately 700 employees.” *Id.*, pp. 1-2, lines 22-23 and 1-2. The road will eventually be dedicated to Covington Township as a condition of development approvals for the industrial park and “is the only access for vehicles, other than an emergency access lane, into and out of the industrial park.” FR E2 Statement 1SR, p. 2, lines 1-3. “The easement proposed clearly covers most, if not all, of the existing paving of First Avenue.” *Id.*, p. 2, lines 16-17.

The resolution attached to the Application, which describes the easements sought to be condemned, includes rights for both “**overhead or underground construction**, operation and maintenance of the new 230 kV transmission lines associated with the Northeast Pocono Reliability Project, for the transmission and/or distribution of electric light, heat and power, or any of them, including such poles, wires, conduits, cables, manholes and all other facilities, fixtures and apparatus as may be necessary for the proper and efficient construction, operation and maintenance of such line...” Ex. CK-FR First-5 (emphasis added) The easements sought

also include the right to remove ALL improvements and a prohibition against all improvements or structures – “**a prohibition against any buildings, ... or other improvements or structures whatsoever being built, constructed or placed within the Easement Area, ... as well as the right of the Company to remove any buildings, structures or other improvements from the Easement Area...**” *Id.* FR First cannot risk the removal of the road, or its associated structures, including signs, stormwater management, etc., since this is the only access to the industrial park, and the scope and the impact of such a taking would necessarily be very different from the taking of an aerial easement only. In its Initial Brief, PPL appears to have retreated from the scope of the easement it seeks to condemn in the Application, and now states in its Initial Brief, that “**the right-of-way will be an easement only for the aerial crossing of the proposed transmission line across the FR First property.**” Initial Brief, p. 169. This statement is consistent with the testimony offered by Mr. Douglas Haupt of PPL at the hearings in this matter. (TR 316-336; 385-390).

B. PPL’s Decision to Ignore the Alternative Alignments Suggested by FR First and FR E2 Is Arbitrary and Capricious

At most, the evidence supports a finding that an aerial easement is necessary for PPL’s proposed line across the FR First property. However, PPL also has failed to submit evidence to demonstrate that its decision not to site the line through undeveloped lands on the west side of State Route 435, so that it could cross the highway north of the industrial park, or in the alternative at the property lines at the edge of the Covington Industrial Park was not arbitrary or capricious. PPL admits that it considered routing the transmission line along the property of the industrial park. Initial Brief, p. 170. However, PPL “received concerns from several residential home owners that adjoin the Industrial Park,” and it therefore rerouted the line through the industrial park. There is no evidence in the record that a route through the “undeveloped land”

on the west of Route 435 or on the edge of the industrial park would violate any of the siting requirements in the BCL, 15 Pa.C.S.A. §1511, which forbids takings for aerial electric lines within 300 meters of residential dwellings and through cemeteries, for example. There is no evidence at all other than the unsupported statement that there were “concerns” from residential land owners. In a siting application, the Commission must consider:

(3) The impact and the efforts which have been 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.

(4) The availability of reasonable alternative routes.

52 Pa. Code 52.75(e). In this case, the elimination of the only access road into an already developed industrial park, and the destruction of a conservation easement, discussed below, should outweigh the unspecified and undocumented “concerns” of others. The Initial Brief at p. 169 states that PPL “fully addressed” these concerns earlier in the Initial Brief at Section VI.C.4, but there is no discussion in Section VI.C.4 of an alternative route across Route 435, or an alternative route at the edge of the Covington Industrial Park. Indeed, there is only a conclusory statement that “after the proposed line route was selected, PPL Electric worked with affected landowners and made adjustments to the proposed routes to address landowner concerns.” Initial Brief, p. 119. PPL has not worked with FR First or FR E2 to address their concerns. The record is devoid of evidence of anything other than an arbitrary and capricious decision by PPL to route

the line as it did across the only access road into and out of the Covington Industrial Park, and through the conservation area in the Industrial Park.

C. PPL Failed To Name All Owners of FR E2 and the Route Across FR E2 is Arbitrary and Capricious

FR E2 owns the property identified as Lot E-2 of the Covington Industrial Park, as identified in the Deed attached as Ex. CK-FR E2-2, subject to a Conservation Easement marked as FR E2 Ex. 1. The owner of the Conservation Easement, North Branch Land Trust, is the owner of a real property interest in FR E2. The Conservation Easement, which is recorded against the title of the FR E2 property, explicitly states that the “Conservation Easement gives rise to a real property right and interest immediately vested in Holder [North Branch Land Trust].” See FR E2, Exhibit 1, p. 15, Article 6.1. PPL was required to name all owners in its Application. 52 Pa. Code 57.72(c)(4). PPL’s representative Douglas Haupt testified that he was aware of the Conservation Easement, and the Initial Brief states that PPL “has been in contact with and will continue to work with the conservation easement holder...” Initial Brief, p. 172. Under the Conservation Easement, FR E2 simply does not have the right to grant the requested easement that PPL seeks in the Conservation Area, because that ownership interest is held by North Branch Land Trust. A finding that PPL may condemn an easement across the FR E2 property which is subject to the Conservation Easement is contrary to the requirement that applicants name all owners in an eminent domain application, and will deprive North Branch Land Trust of their right as an owner of a real property interest in the FR E2 property to participate in the proceeding. PPL argues that this is a question of the power of the utility to condemn, which the Commission is barred from considering. Initial Brief, p. 171. To the contrary, FR E2 does not question PPL’s right to condemn any property right which interferes with its easement, once a finding of necessity and Order has been issued by the Commission.

However, PPL has the obligation to name and give notice to all owners known to it whose property may be condemned. This is what PPL has failed to do. PPL cannot evade that requirement by failing to identify entities with a record ownership in affected properties, especially when PPL admits that they are aware of those ownership interests. Parties are barred from collateral attacks on the Commission's order, once issued, so the only opportunity that North Branch Land Trust will have to make its concerns known is by participating in this proceeding.

Further, the easement sought by PPL across FR E2 will destroy the integrity of the area set aside for conservation, and cuts a 150 foot swath directly across the middle of that area. PPL initially proposed a route across FR E2 which hugged the property line and which involved much less acreage than the current proposed easement. See Exhibit Thomas 2 versus Exhibit CK-FR E2-4. The only justification offered for the current route is the unsupported testimony of Douglas Haupt that there is an ammunition bunker of some kind on a neighboring property. Mr. Haupt was unable to identify its location, or the so-called setback required from such a facility, and acknowledged that there is no recorded restriction of the development of any area on FR E2 in favor of that property owner. (TR 316-336; 385-390). In fact, FR E2 is developed with a large industrial facility, as are the other lots in the Covington Industrial Park.

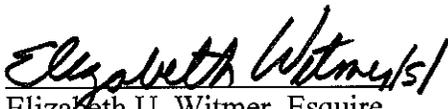
V. **CONCLUSION**

PPL has failed to meet its burden of proof and the easements sought on the properties of FR First and FR E2 may not be condemned. In the alternative, the authority to condemn an easement on the property of FR First should be conditioned as proposed by PPL and described above so that it is limited to an aerial easement with no monopole or other structures. Further, the area of the easement permitted on FR E2 should be limited to the area first proposed by PPL, as shown on Exhibit Thomas-2.

Respectfully submitted,

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Dated: September 9, 2013


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APPENDIX A

COUNTERSTATEMENT OF PROPOSED FINDINGS OF FACT

EMINENT DOMAIN APPLICATIONS - Docket Nos. A-2012-2341123 and A-2013-2341263

- I. The Applications at Docket Nos. A-2012-2341123 and A-2013-2341263 seek authorization to utilize eminent domain to take very broad aerial and subsurface easements, together with unfettered rights of access and the right to remove improvements, from FR First and FR E2 on properties they own in the Covington Industrial Park.
- II. The easements sought are described in the resolution of condemnation at Exhibits CK-First Avenue-5 and CK-FR E2-5 as follows:
- ...appropriate rights-of-way and easements on, over, across or under the Lands to the extent required for rights-of-way to be presently used for the overhead or underground construction, operation and maintenance of the new 230 kV transmission lines associated with the Northeast Pocono Reliability Project, for the transmission and/or distribution of electric light, heat and power, or any of them, including such poles, wires, conduits, cables, manholes and all other facilities, fixtures and apparatus as may be necessary for the proper and efficient construction, operation and maintenance of such line...together with: (1) the right of ingress and egress to, from, upon and over the subject properties to access the Easement Area and Electric Facilities at all times for the construction, operation, maintenance, replacement and reconstruction of the Electric Facilities and for any of the purpose aforesaid; (2) the right to cut down, trim, remove and to keep cut down and trimmed by mechanical means or otherwise, any and all trees, brush or other undergrowth nor or hereafter growing on or within the Easement Area, as well as the right to cut down, trim and remove any and all trees adjoining or outside of the Easement Area which in the judgment of PPL Electric, its successors, assigns and lessees may at any time interfere with the construction, reconstruction, maintenance or operation of the Electric Facilities or menace the same....and (3) a prohibition against any buildings, swimming pools, or other improvements or structures whatsoever being built, constructed or placed within the Easement Area, as well as any inflammable or explosive materials being stored within the Easement Area, as well as the right of the Company to remove any buildings, structures or other improvements from the Easement Area....**
- III. There is no evidence in the record that PPL reviewed or analyzed a route for the proposed HV line which would avoid any easement across the lands of FR First and possibly could have avoided the lands of FR E2 by a route through undeveloped lands to the west of Route 435 and then to the north of the Covington Industrial Park.

- IV. There is evidence that PPL considered a route along the edge of the property lines of the Covington Industrial Park.
- V. The only evidence concerning the route along the edge of the property lines of the Covington Industrial Park is that it was rejected by PPL because of “concerns” expressed by others. Those concerns are not detailed in the record, and there is no evidence that the route would be within 100 meters of a dwelling or reasonable curtilage, or that it would affect a place of worship or a burial ground.
- VI. There is no evidence that a route along the edge of the property lines of the Covington Industrial Park would have been within 100 meters of a residence or its reasonable curtilage, a place of public worship or a burial ground.
- VII. Despite the description of the easements sought in the resolution attached to the Application, the testimony and the Initial Brief support only a limited aerial easement across the lands of FR First, with no right to use, interfere with, remove or prohibit improvements associated with the access road on FR First, known as First Avenue, and further that any support structures associated with the HV line will be no closer than 36 feet to the edge of the pavement of the existing access road, and none of them will be located on the property of FR First.
- VIII. PPL testified that:
 - A. The easement on FR First “will not have any impact to the ingress or egress of the Covington Industrial Park.” Initial Brief, p. 90.
 - B. “None of the monopoles will be located on property of FR First” and “...of the three proposed monopoles, the closest pole will be 36 feet from the edge of the existing pavement of the access road to the Covington Industrial Park.” Initial Brief, pp. 91, 168; PPL St. 1-RJ, p.2.
 - C. “the right of way across the FR First Property will be an easement only for the aerial crossing.” Initial Brief, pp. 91, 169; PPL St. 1-RJ, pp. 3-4; PPL Ex. DLH-1.
- IX. PPL is and was aware of the property interest of North Branch Land Trust in the property of FR E2.
- X. PPL is and was aware of the conservation easement across a significant portion of the property of FR E2.
- XI. PPL initially proposed a route across FR E2 which had minimal, if any, impact on the conservation area on FR E2, and which involved less acreage than the route proposed in the Application.
- XII. There is no evidence in the record that PPL considered the impact on the ownership interest of North Branch Land Trust, or on the conservation easement on FR E2 in selecting the new route. The only evidence offered for the selection of the new route is an alleged need to accommodate an ammunition bunker on an adjoining property.

- XIII. The only witness to provide testimony regarding the ammunition bunker could not identify the location of the bunker, the extent of the alleged setback needed from the bunker or the source of the alleged setback. Further, the witness admitted that there is no recorded restriction on development on FR E2 held by the adjoining landowner who allegedly has an ammunition bunker. FR E2 is currently developed with a large industrial building.
- XIV. PPL did not name North Branch Land Trust as an owner in its Application, and did not provide notice of these proceedings to North Branch Land Trust.
- XV. The scope of the easement sought by PPL would require condemnation of North Branch Land Trust's property interest in FR E2.

**APPENDIX B
COUNTERSTATEMENT OF CONCLUSIONS OF LAW**

EMINENT DOMAIN APPLICATIONS - Docket Nos. A-2012-2341123 and A-2013-2341263

- I. PPL has the burden of proof in this proceeding. 66 Pa.C.S.A. §332(a).
- II. PPL may not condemn property in the Courts of Common Pleas under the Business Corporation Law, 15 Pa.C.S.A. §1511, unless it first receives the authority to condemn from this Commission. 15 Pa. C.S.A. §1511(c).
- III. “The estate in property condemned and taken by a public utility corporation shall be in fee simple absolute unless the resolution of condemnation specifies a lesser estate.” 15 Pa.C.S.A. §1511(d).
- IV. Before a public utility may seek to exercise its statutorily granted authority to condemn property for the purposes of constructing aerial transmission or distribution facilities, it must obtain a finding from the Commission that the taking is “necessary”:

(c) The powers conferred by subsection (a) [for the running of aerial electric facilities] may be exercised to condemn property ... only after the Pennsylvania Utility Public Commission, upon application of the public utility corporation, has found and determined ... that the service to be furnished by the corporation through the exercise of those powers is necessary for the service, accommodation, convenience or safety of the public.

15 Pa.C.S. § 1511(c).

- V. In a siting application for HV lines, the Commission must consider, among other things:

(3) The impact and the efforts which have been 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.

(4) The availability of reasonable alternative routes.

52 Pa. Code 52.75(e).

- VI. “It is readily apparent that the service to be furnished by a proposed power line might be necessary or proper in the public interest, but that the route selected for the line should so offend the fundamental purposes of the statute as to warrant the withholding of approval by the Commission.” *West Penn Power Co. v. Pa. Public Utility Comm'n*, 199 Pa. Super. 25, 31, 184 A.2d 143, 146 (1962).
- VII. The evidence does not support the grant of the right to condemn easements sought across the properties of FR First and FR E2 because PPL failed to consider an alternative through undeveloped property to the west of Route 435.
- VIII. The evidence does not support the grant of the right to condemn the easement described in the resolution attached to the Application for condemnation of an easement from FR First, because PPL has limited, in its testimony and Initial Easement, the scope of the easement it seeks on FR First.
- IX. The evidence does not support the grant of the right to condemn an easement across FR E2, because PPL failed to name North Branch Land Trust, an entity with a property right which must be condemned in order to allow the easement sought by PPL on FR E2, therefore depriving one of the holders of a property interest in FR E2 of due process and a right to participate in these proceedings, even though PPL had notice of and actual knowledge of the ownership interest of North Branch Land Trust.
- X. The evidence does not support the grant of the right to condemn an easement across FR E2 which is different from the initial proposed route, Ex. FR Thomas-2, because PPL’s selection of that route was arbitrary and capricious, in that PPL failed to consider the impact on an actual recorded conservation easement, and instead gave undue weight to the unsupported statement of an adjacent landowner, without a recorded interest in the FR E2 property, that there should be a setback of the line from that landowner’s property.