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File #: 150995

November 20, 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.**

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Dear Secretary Chiavetta:

Enclosed for filing is the Reply of PPL Electric Utilities Corporation to the Exceptions of Donald Januszewski in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Christopher T. Wright

CTW/skr  
Enclosures

cc: Honorable David A. Salapa  
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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Date: November 20, 2013

  
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Christopher T. Wright

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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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 :

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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 :

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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 :

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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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|--|---|---------------------------|
| Margaret G. Arthur and Barbara A. Saurman, Trustees of the Residuary Trust of James C. Arthur                              | : | Docket No. A-2012-2341115 |
|  | : |                           |
| Clifton Acres, Inc.  | : | Docket No. A-2013-2341236 |
|  | : |                           |
| Sylvester J. Coccia  | : | Docket No. A-2013-2341267 |
|  | : |                           |
| Dietrich Hunting Club  | : | Docket No. A-2013-2341237 |
|  | : |                           |
| Lawrence Duda  | : | Docket No. A-2013-2341271 |
|  | : |                           |
| Fr E2 Property Holding LP  | : | Docket No. A-2013-2341263 |
|  | : |                           |
| FR First Avenue Property Holding, LP   | : | Docket No. A-2012-2341123 |
|  | : |                           |
| Donald W. Henderson and Louis V. Bellucci  | : | Docket No. A-2013-2341262 |
|  | : |                           |
| Bradley D. Hummel  | : | Docket No. A-2013-2341220 |
|  | : |                           |
| International Consolidated Investment Company  | : | Docket No. A-2013-2341216 |
|  | : |                           |
| John F. and Veronica B. Iskra  | : | Docket No. A-2013-2341233 |
|  | : |                           |
| Donald Januszewski   | : | Docket No. A-2013-2341215 |
|  | : |                           |
| John C. Justice and Linda S. Justice   | : | Docket No. A-2012-2341107 |
|  | : |                           |
| Anthony J. Lupas, Jr. and Lillian Lupas, John Lupas and Judy Lupas, Grace Lupas, Eugene A. Bartoli and Robert J. Frankelli | : | Docket No. A-2012-2341118 |
|  | : |                           |
| Michael A. Mitch and Sue K. Mitch  | : | Docket No. A-2013-2341234 |
|  | : |                           |
| NLMS, Inc.   | : | Docket No. A-2013-2341239 |
|  | : |                           |
| Michael Palermo and Joanne Palermo   | : | Docket No. A-2013-2341221 |
|  | : |                           |
| Peter Palermo and Francine Palermo   | : | Docket No. A-2013-2341211 |
|  | : |                           |
| William Petrouleas and Joanna Petrouleas   | : | Docket No. A-2013-2341209 |
|  | : |                           |
| Edward R. Schultz  | : | Docket No. A-2013-2341253 |
|  | : |                           |

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| Roberta Searfoss a/k/a Judy Searfoss,<br>Executrix of the Estate of Euylla Hughes<br>a/k/a Eylla Hughes | : | Docket No. A-2013-2341232 |
|   | : |                           |
|   | : |                           |
| Ronald G. Sidovar and Gloria J. Sidovar   | : | Docket No. A-2012-2341120 |
|   | : |                           |
| Ronald Solt   | : | Docket No. A-2013-2341249 |
|   | : |                           |
| Transcontinental Gas Pipe Line<br>Corporation   | : | Docket No. A-2013-2341208 |
|   | : |                           |
| Duke Realty 400 First Avenue Gouldsboro<br>Holding, LLC   | : | Docket No. A-2013-2341241 |
|   | : |                           |
| Grumble Knot LLC,   | : | Docket No. A-2013-2344612 |
|   | : |                           |
| Pennsylvania Glacial Till LLC, and  | : | Docket No. A-2013-2344616 |
|   | : |                           |
| Blueberry Mountain Realty LLC.  | : | Docket No. A-2013-2344605 |

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

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**REPLY OF PPL ELECTRIC UTILITIES CORPORATION  
TO THE EXCEPTIONS OF DONALD JANUSZEWSKI**

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**I. INTRODUCTION AND BACKGROUND**

PPL Electric Utilities Corporation (“PPL Electric”) herein files this Reply to the Exceptions filed by Donald Januszewski (“Mr. Januszewski”) pursuant to the Secretarial Letter dated October 21, 2013, and Section 5.535 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.535. In Recommended Decision (“R.D.”) dated October 8, 2013, Administrative Law Judge David A. Salapa (“ALJ”) concluded, *inter alia*, that

the siting and construction of the proposed Northeast Pocono Reliability Project is necessary or proper for the service, accommodation, convenience or safety of the public, and that the service to be furnished by PPL Electric through its proposed exercise of the power of eminent domain to acquire rights-of-way and easements over certain portions of lands, including a certain portion of land owned by Mr. Januszewski, for the 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 pursuant to 15 Pa.C.S. § 1511. (R.D. pp. 205-10) Mr. Januszewski takes exception to certain findings and conclusions reached in the R.D.

This proceeding was initiated on December 28, 2013, when PPL Electric filed the “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” (“Siting Application”), which was docketed at Docket No. A-2012-2340872. (PPL Electric Ex. 1)

On December 28, 2013, PPL Electric filed the “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 Donald Januszewski In Salem Township, Wayne County, Pennsylvania 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,” which was docketed at Docket No. A-2013-2341215 (“Januszewski

Application”).<sup>1</sup> On January 29, 2013, the ALJ issued Prehearing Order No. 2 that, *inter alia*, consolidated the Januszewski Application with the above-captioned matters.

To resolve reliability and planning violations and to reinforce the 138/69 kV systems serving the Northeast Pocono region, PPL Electric proposes to construct a new 230 kV network of transmission facilities. This new 230 kV network will be created by strategically locating the new West Pocono and North Pocono 230-69 kV Substations central to the loads they will serve and extending the existing 230 kV system into the Northeast Pocono region. (PPL Electric Statement 2, p. 22) The two new substations and associated new transmission lines will reduce the distance between the supply of power and the homes and businesses that use the electricity. This proposed arrangement also will provide an alternative source of power to the Northeast Pocono region in the event that normal sources of supply are interrupted, which will improve power restoration times and provide operating flexibility and improved reliability for customers in the region. 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. (PPL Electric Statement 2, pp. 3-4)

The proposed new West Pocono and North Pocono Substations will be connected to the existing 230 kV transmission systems by a new 58-mile 230 kV transmission line. The proposed 230 kV transmission line will extend approximately 15 miles between the existing Jenkins 230-69 kV Substation and the proposed new West Pocono 230-69 kV Substation (“Jenkins-West Pocono Segment”), approximately 21 miles between the new West Pocono 230-69 kV Substation and the new North Pocono 230-69 kV Substation (“West Pocono-North Pocono Segment”), and approximately 22 miles between the new North Pocono 230-69 kV Substation

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<sup>1</sup> The parcel that is the subject of the Januszewski Application is Parcel No. 124. (See PPL Electric Ex. 1, Siting Application, Attachment 4 Figures, Map Extent 6)

and the Paupack 230-69 kV Substation (“North Pocono-Paupack Segment”). (PPL Electric Ex. 1, Attachment 5, pp. 2-7)

The proposed new West Pocono and North Pocono Substations will be connected to the existing 69 kV system by five new 138/69 kV transmission lines that will bifurcate and reduce the length of the existing 69 kV transmission lines. (PPL Electric Statement 2-R, p. 39) Collectively, these five new 138/69 kV transmission lines will be approximately 11.3 miles in length: two new double-circuit 138/69 kV transmission lines, each approximately 3 miles, to connect the new West Pocono 230-69 kV Substation to the existing 138/69 kV system; and three new 138/69 kV transmission lines, collectively approximately 5.3 miles, to connect the new North Pocono 230-69 kV Substation to the existing Blooming Grove-Jackson and Peckville-Jackson 138/69 kV Transmission Lines. (PPL Electric Ex. 1, Attachment 5, pp. 7-13)

Timely protests, petitions to intervene, and/or notices of appearance were entered by the Office of Consumer Advocate (“OCA”), Covington Township, North Pocono Citizens Alert Regarding the Environment, and several affected landowners. Mr. Januszewski did not intervene or otherwise participate in this proceeding. The active parties to this proceeding fully litigated their respective issues. Two public input hearings were held on May 2, 2013, in Thornhurst Township. Evidentiary hearings were held before the ALJ on July 24 and 26, 2013. The record closed on October 7, 2013, and the active parties submitted initial and reply briefs in support of their respective positions.

The R.D. was issued by Secretarial Letter dated October 21, 2013. In the 218-page R.D., the ALJ concluded 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 certain tracts of land for the Northeast-Pocono Reliability Project, including a certain portion of land owned by Mr. Januszewski, is necessary or proper for the service, accommodation, convenience or safety of the public. The R.D. therefore concluded that the proposed Northeast-Pocono Reliability Project is needed, satisfies the requirements of the applicable statutes and regulations, and should be approved. (R.D. pp. 205-10)

Importantly, no active parties filed exceptions to the R.D. The fact that this matter was fully litigated and that *none* of the active parties took any exception to the R.D. strongly suggests that the R.D. is well-researched, well-reasoned, and fully supported by the evidentiary record.

Despite the fact that he did not actively participate in the proceedings below, Mr. Januszewski now takes exception to the findings and conclusions reached in the R.D. (“Januszewski Exceptions”). Mr. Januszewski’s Exceptions appear to be limited to two issues. First, Mr. Januszewski appears to assert that he did not have a meaningful opportunity to participate in the proceedings before the ALJ. Second, Mr. Januszewski also appears to assert that the R.D. erred in approving the selected route for the Northeast-Pocono Reliability Project because it would potentially interfere with the use of his property as farmland.

Mr. Januszewski’s Exceptions are without merit and should be denied. Mr. Januszewski had notice and the opportunity to fully participate and raise any issues or concerns he had prior to the record being closed. Mr. Januszewski’s attempt to raise issues and concerns for the first

time in his Exceptions is procedurally improper and amounts to a denial of due process for those parties that actively participated in this proceeding. Furthermore, the record evidence in this proceeding supports the R.D.'s conclusion that PPL Electric's route-selection process for the Northeast-Pocono Reliability Project was reasonable, and that PPL Electric properly considered the factors relevant to siting a transmission line. Finally, the proposed Northeast-Pocono Reliability Project will not have any material negative impact on Mr. Januszewski's property or its use as a farm.

For the reasons explained below, as well as those more fully explained in the R.D. and in PPL Electric's Initial Brief, the Commission should deny Mr. Januszewski's Exceptions and adopt the findings and conclusions of the R.D.

## **II. REPLIES TO EXCEPTIONS**

### **A. Reply to Exception No. 1 – Mr. Januszewski had Notice and the Opportunity to Fully Participate in this Proceeding**

In his Exceptions, Mr. Januszewski appears to assert that he did not have a meaningful opportunity to participate in the proceedings before the ALJ. Specifically, Mr. Januszewski states that, although he attended the public input hearings held on May 2, 2013, in Thornhurst Township, he left because "it was time for an overdue lunch [sic] and cattle-calving check." (Januszewski Exceptions p. 2) Mr. Januszewski also appears to assert that he was unable to attend the evidentiary hearings on July 24 and 26, 2013 in Harrisburg because he did not have a "second back up driver." (Januszewski Exceptions p. 3) Mr. Januszewski Exceptions are without merit and should be denied.

Mr. Januszewski's Exceptions appear to suggest that he was denied due process during the proceedings before the ALJ. Administrative agencies, such as the Commission, are required

to provide due process to the parties appearing before them. *Schneider v. Pennsylvania Public Utility Commission*, 479 A.2d 10 (Pa. Cmwlth. 1984). In administrative proceedings, this due process requirement is satisfied if the parties are accorded notice and the opportunity to appear and be heard. *Id.* Here, Mr. Januszewski was afforded both notice and the opportunity to fully participate in this proceeding, but declined to do so.

Mr. Januszewski was served with the Siting Application and the Januszewski Application on December 28, 2013. (PPL Electric Exs. 1 and 17) Pursuant to Prehearing Order No. 1, protests and petitions to intervene were required to be filed on or before February 27, 2013. Mr. Januszewski did not file a protest, petition to intervene, or notice of appearance.

A prehearing conference was held on March 6, 2013. The Commission's Notice scheduling the prehearing conference was served on all landowners, including Mr. Januszewski. However, Mr. Januszewski did not participate in the prehearing conference. Following the prehearing conference, a scheduling order was issued on March 13, 2013. The scheduling order was served on all parties and landowners, including Mr. Januszewski. Mr. Januszewski's failure to participate in the prehearing conference and to raise any concerns regarding the schedule amounts to a waiver of any objections to the procedural schedule adopted at the prehearing conference.

Two public input hearings were held on May 2, 2013, in Thornhurst Township. PPL Electric published notice of the public input hearings in two newspapers of general circulation once per week for two consecutive weeks prior to the date of the public input hearings. It is clear that Mr. Januszewski received and reviewed the notice of the public input hearings because his Exceptions indicated that he attended the public input hearings. (Januszewski Exceptions, p. 2) Although he attended the public input hearing, Mr. Januszewski did not testify at the public input

hearings. (Tr. 39-40, 163-64) Neither the ALJ nor PPL Electric was made aware that Mr. Januszewski had a conflict as alleged for the first time in his Exceptions.

The active parties to the proceeding served written testimony and exhibits in support of their respective positions. Mr. Januszewski was served with the scheduling order and had the opportunity to submit testimony and/or exhibits in support of his position. However, Mr. Januszewski declined to do so.

Evidentiary hearings were held before the ALJ on July 24 and 26, 2013. Mr. Januszewski was served with the Commission's notice scheduling the evidentiary hearings. It is clear that Mr. Januszewski received and reviewed the notice of the evidentiary hearings because his Exceptions indicated that he planned to attend the evidentiary hearings. (Januszewski Exceptions, p. 3) However, Mr. Januszewski did not participate during the evidentiary hearings.

The record closed on October 7, 2013, and the active parties submitted initial and reply briefs in support of their respective positions. Mr. Januszewski had the opportunity to submit briefs in support of his position, but declined to do so.

Under these circumstances, it cannot reasonably be maintained that Mr. Januszewski was somehow denied due process. Mr. Januszewski was served with every filing, discovery response, testimony, brief, and order in this case. Importantly, Mr. Januszewski was served with the scheduling order that established the procedural schedule, including the dates for the public input and evidentiary hearings. Clearly, Mr. Januszewski had notice and the opportunity to fully participate at every stage of this proceeding as required by due process. Mr. Januszewski's failure to participate in this proceeding is attributable solely to his own inaction.

For these reasons, as well as for the reasons more fully explained in the R.D. and PPL Electric's Initial and Reply Briefs, the R.D. correctly determined that the siting and construction

of the proposed Northeast Pocono Reliability Project is necessary or proper for the service, accommodation, convenience or safety of the public. Therefore, Mr. Januszewski's Exceptions should be denied.

**B. Reply to Exception No. 2 – The R.D. Properly Concluded that the Selection of the Preferred Route for the Northeast-Pocono Reliability Project was Reasonable**

In his Exceptions, Mr. Januszewski appears to argue that the R.D. erred in approving the selected route for the Northeast-Pocono Reliability Project. It appears that Mr. Januszewski contends that public utilities, such as PPL Electric, are not permitted to site and construct high voltage transmission lines across farm lands. (Exceptions, pp. 1-2) Mr. Januszewski's Exceptions appear to focus exclusively on the potential impacts to his property, while ignoring the substantial evidence of record that clearly supports the R.D.'s conclusion that the routes selected for the Northeast-Pocono Reliability Project will have the least overall social and environmental impacts as compared to the available alternatives. For these reasons, Mr. Januszewski's Exceptions are without merit and should be denied.

As an initial matter, it must be noted that Mr. Januszewski did not actively participate in this proceeding as explained above. To permit Mr. Januszewski to raise his issues for the first time in his Exceptions is procedurally improper and clearly would deprive PPL Electric, and others, any opportunity to respond. Indeed, it is well settled that arguments raised for the first time in exceptions cannot be considered by the Commission. *Application of West Penn Power Company for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code*, Docket No. R-00973981, 1998 Pa. PUC LEXIS 168 (Opinion and Order entered May 29, 1998) (granting OCA's Motion to Strike extra-record evidence raised in Exceptions); *Manu, et. al., v. AT&T Communications of Pennsylvania, Inc.*, Docket Nos. F-09029141, et al., 1994 Pa. PUC LEXIS 25 (May 4, 1994) (holding that due process requires the Commission to refuse to

consider allegations raised for the first time in exception); *Pa. P.U.C. v. Duquesne Light Company*, Docket Nos. R-860378, et al., 1987 Pa. PUC LEXIS 342; 63 Pa. PUC 337 (Mar. 10, 1987) (holding that the Commission does not entertain issues raised for the first time in exceptions). For this reason alone, Mr. Januszewski's arguments raised for the first time on Exceptions should be denied.

Notwithstanding, Mr. Januszewski overlooks that, as found by the R.D., PPL Electric undertook an extensive evaluation of the environmental and social impacts of the available alternative routes. The evidence of record clearly supports the R.D.'s conclusion that the routes selected by PPL Electric will have significantly less overall impacts to the natural and human environment than the other feasible alternative routes.

The route selected for the North Pocono-Paupack Segment of the Northeast-Pocono Reliability Project crosses a certain portion of Mr. Januszewski's property, Parcel No. 124, located in Salem Township, Wayne County. (PPL Electric Ex. 1, Siting Application, Attachment 4 Figures, Map Extent 6) According to Mr. Januszewski, the R.D. erred in approving the selected route because it would potentially impact the use of his property has farmland. Mr. Januszewski disregards the substantial evidence of record supporting the R.D.'s conclusion and, instead, focuses exclusively on the impacts to his property. Mr. Januszewski's exception is flawed for several reasons.

The Commonwealth Court has 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.

*Energy Conservation Council of Pennsylvania v. Pa. PUC*, 25 A.3d 440, 449-50 (Pa. Cmwlth. 2011) (quoting *Energy Conservation Council of Pennsylvania v. Pa. PUC*, 995 A.2d 465, 479-80 (Pa. Cmwlth. 2010)). Here, the record evidence clearly supports the R.D.'s conclusion that PPL Electric's route-selection process was reasonable and that PPL Electric properly considered the factors relevant to siting a transmission line.

There is no perfect route and all transmission lines will have some impact to the natural and/or human environment. The extensive record evidence in this case demonstrates that PPL Electric undertook a highly detailed and extensive evaluation of the environmental and social impacts of the available alternative routes for the Northeast-Pocono Reliability Project, and that PPL Electric selected preferred routes that will minimize these impacts when compared to all the other feasible alternatives. (See PPL Electric Main Brief Section VI.E; see also PPL Electric Ex. 1, Atts. 3 and 4; PPL Electric Statements 4, 4-R, and 4-R-2)

With respect to the North Pocono-Paupack Segment that traverses a portion of the property owned by Mr. Januszewski, PPL Electric identified three feasible alternative routes (Alternative Route E, Alternative Route F, and Alternative Route F-1) within the North Pocono-Paupack Segment after carefully analyzing and evaluating the potential routes. Alternative Routes E, F, and F-1 were evaluated and compared against each other, using a quantitative analysis and qualitative review to determine the selected route for the North Pocono-Paupack Segment. (R.D. pp. 110-14)

The quantitative review of the alternative routes demonstrated that Alternative Route F-1 would have the overall combined lowest impacts to the built, natural and engineering environments. (PPL Electric Ex. 1, Attachment 4, pp. 80-83) The qualitative review of the alternative routes demonstrated that Alternative Route F-1 would have the overall combined fewest visual, community, permit, construction/maintenance, and delay concerns. (PPL Electric Ex. 1, Attachment 4, pp. 83-90) Based on the quantitative assessment and qualitative review of the Alternative Routes, PPL Electric selected Alternative Route F-1 for the North Pocono-Paupack Segment of the Northeast-Pocono Reliability Project. (PPL Electric Ex. 1, Attachment 4, p. 91)

Based on the foregoing, the R.D. concluded as follows:

19. PPL has met its burden to prove that the siting and construction of the Northeast-Pocono Reliability Project North Pocono-Paupack segment in the Alternative Route F-1 is in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth.

20. PPL has met its burden to prove that the siting and construction of the Northeast-Pocono Reliability Project North Pocono-Paupack segment in the Alternative Route F-1 would have a minimum adverse environmental impact, considering the electric power needs of the public and the available alternatives.

21. PPL has met its burden to prove that the selection of the Alternative Route F-1 for the Northeast-Pocono Reliability Project North Pocono-Paupack segment was reasonable and not selected wantonly, capriciously, or arbitrarily.

22. PPL has demonstrated that the Alternative Route F-1 is superior to the Alternative Routes E and F for the North Pocono-Paupack segment.

(R.D. pp. 208-07) Importantly, no active parties opposed the selection of Route F-1 as the preferred route for the North Pocono-Paupack Segment. Therefore, the only evidence of record supports the R.D.'s conclusion that PPL Electric's route-selection process was reasonable and

that PPL Electric properly considered the factors relevant to siting a transmission line. For this reason alone, the Commission should deny Mr. Januszewski's Exceptions and adopt the R.D.

Mr. Januszewski ignores these unrefuted findings and conclusions and asserts that the R.D. erred in approving the selected route for the North Pocono-Paupack Segment of the Northeast-Pocono Reliability Project. According to Mr. Januszewski, public utilities, such as PPL Electric, are not permitted to site and construct high voltage transmission lines across farm lands. (Exceptions, pp. 1-2)

In support of his argument, Mr. Januszewski cites to an Initial Decision issued by ALJ Morris J. Solomon in 1979 at Docket No. C-00970172. According to Mr. Januszewski, ALJ Solomon ordered that all public utility facilities be removed from his property, and that no utility rights-of-way shall be allowed to traverse his farm. (Januszewski Exceptions p. 1) Despite Mr. Januszewski's assertion to the contrary, the Initial Decision of ALJ Solomon did not order that the public utility facilities be removed from his property, or that no utility rights-of-way are allowed to traverse his farm. Although Mr. Januszewski filed a formal complaint with the Commission alleging that Bell Atlantic-Pennsylvania, Inc. ("Bell Atlantic") failed to remove poles and wires from his property, and failed to return the right-of-way to Mr. Januszewski, the complaint was subsequently dismissed for lack of jurisdiction over right-of-way, land-use, and contract disputes. *See Don Januszewski v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00970172 (Order Concerning Motion to Dismiss entered April 9, 1997 and Initial Decision entered May 12, 1997). Clearly, Mr. Januszewski's reliance on the Initial Decision issued by ALJ Solomon is misplaced.

Mr. Januszewski does not cite any precedent or legal authority to support his contention that public utilities are not permitted to site and construct high voltage transmission lines across

farm lands. Moreover, Mr. Januszewski has failed to cite any evidence of record or any other factual basis to support his contention that the R.D. erred in approving the preferred routes for the Northeast-Pocono Reliability Project.

Mr. Januszewski simply ignores the substantial evidence of record demonstrating that the routes selected by PPL Electric, including Route F-1, 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. Instead, Mr. Januszewski's Exceptions focuses exclusively on the potential impacts to his property.

Mr. Januszewski's failure to compare the impacts of Route F-1 with the other available alternatives is contrary to requirements of Section 57.76(a)(4), which clearly requires the impacts of a proposed route to be compared to the impacts of the available alternative routes. *Energy Conservation Council of Pennsylvania v. Pa. PUC*, 25 A.3d 440, 448-49 (Pa. Cmwlth. 2011). Indeed, the requirement to consider the other alternative routes is consistent with Section 57.75(e)(4), which provides that the Commission will consider, among other things, the "availability of reasonable alternative routes." 52 Pa. Code § 57.75(e)(4).<sup>2</sup> Mr. Januszewski cannot simply ignore this requirement by focusing exclusively on the potential impacts to Mr. Januszewski's property.<sup>3</sup> *See Stone v. Pa. PUC*, 162 A.2d 18 (Pa. Super. 1960) (while the route selection must be reasonable, it need not be the "best alternative" in terms of reducing or eliminating inconvenience to particular landowners).

PPL Electric further notes that the potential impacts to farms and agricultural uses were addressed on the record and fully considered by the R.D. PPL did not dispute that the proposed

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<sup>2</sup> *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 material* when they relate to the same persons or things and must be construed together if possible) (citing 1 Pa.C.S. § 1932).

<sup>3</sup> Clear and unambiguous words in statutes and regulations must not be disregarded. *Middletown Township v. Lands of Stone*, 959 Pa. 607, 616, 939 A.2d 331, 337 (2007) (citing 1 Pa.C.S. § 1921).

transmission lines will cross certain lands used for agricultural purposes. Rather, PPL Electric explained that it in selecting the routes for the Northeast-Pocono Reliability Project it evaluated and considered the potential impacts to land use, including farming and other agricultural uses.<sup>4</sup> (PPL Electric Ex. 1, Attachment 3, pp. 40-53; PPL Electric Ex. 1, Attachment 4, pp. 92-139)

There is no perfect route and all transmission lines will have some impact on the natural, social, and human environments. PPL Electric explained that it selected preferred routes for the Northeast-Pocono Reliability Project that will minimize these impacts when compared to all the other feasible alternatives. (See PPL Electric Initial Brief, Section VI.E; see also PPL Electric Ex. 1, Atts. 3 and 4; PPL Electric Statements 4, 4-R, and 4-R-2)

Although it is unclear whether Mr. Januszewski's Exceptions are trying to raise the issue, PPL Electric does note that Mr. Januszewski's property is subject to an agricultural conservation easement granted to the Commonwealth and Wayne County. (Tr. 147-48; PPL Electric Ex. 17, Ex. CK- Januszewski -2) To the extent that Mr. Januszewski's Exceptions are to be construed as a challenge to PPL Electric's authority to condemn the proposed route across his property because it will violate the covenants of the agricultural conservation easement, this issue is not properly before the Commission.<sup>5</sup> In any event, the agricultural conservation easement expressly

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<sup>4</sup> For example, PPL Electric explained that it selected the preferred route through southern Lackawanna County to avoid crossing any actively farmed parcels of land. (PPL Statement 4-R, p. 22) Further, the preferred route was selected to avoid farms in Lackawanna County that are protected by agricultural conservation easements. (PPL Statement 4-R, p. 22) Clearly, the foregoing example demonstrates that PPL Electric took reasonable efforts to minimize the impacts to farmlands.

<sup>5</sup> The Commonwealth Court has explained that the Commission's only role under 15 Pa.C.S. § 1511 is to consider if the project is necessary or proper for the benefit of the public, and that the Commission is expressly barred from considering the power of the utility to condemn. *SEPTA v. Pa. PUC*, 991 A.2d 1021, 1023 (Pa. Cmwlth. 2010). "Once there has been a determination by the [Commission] that the proposed service is necessary and proper, the issues of scope and validity and damages must be determined by a Court of Common Pleas exercising equity jurisdiction." *Fairview Water Co. v. Pa. PUC*, 509 Pa. 384, 393, 502 A.2d 162, 167 (1985). Whether PPL Electric has the authority to condemn property subject to an agricultural conservation easement is an issue that is beyond the Commission's jurisdiction under Section 1511.

provides that the construction and installation of electric utility lines is “permitted” within the easement. (PPL Electric Ex. 17, Ex. CK-Januszewski-2)

Finally, the proposed Northeast-Pocono Reliability Project will not have any material negative impact on Mr. Januszewski’s property or its use as a farm. Mr. Januszewski’s property is approximately 100.47 acres of hilly land with several pastures and wooded areas around the edges. (PPL Electric Ex. 17, Statement No. Januszewski-1, p. 6) PPL Electric is seeking an aerial right-of-way and easement across the property of Mr. Januszewski. (PPL Electric Ex. 17, Ex. CK-Januszewski-3) If granted, the right-of-way and easement will be approximately 2.12 acres and will cross a portion of Mr. Januszewski’s property that currently is used as a pasture and wooded area. Although there will be one mono-pole angle structure installed on an approximately 10-foot diameter foundation, farming and other agricultural activities will continue to be permitted within the right-of-way and easement. (PPL Electric Ex. 17, Ex. CK-Januszewski-5; PPL Electric Ex. 1, Siting Application, Attachment 4 Figures, Map Extent 6; PPL Electric Ex. 1, Siting Application , Attachment 5, pp. 19-20) Under these circumstances, the easement sought by PPL Electric will not materially interfere with any use of Mr. Januszewski’s property as farmland.<sup>6</sup>

Based on the foregoing, and for the reasons more fully explained in the R.D. and PPL Electric’s Initial Brief, the R.D. correctly determined that PPL Electric’s route-selection process was reasonable and that PPL Electric properly considered the factors relevant to siting a transmission line. For these reasons, Mr. Januszewski’s Exceptions should be rejected.

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<sup>6</sup> This is further demonstrated by the fact that other owners of nearby farmlands subject to agricultural conservation easements have entered into right-of-way and easement agreements for the Northeast-Pocono Reliability Project. (Tr. 148) This fact clearly suggests that an aerial right-of-way across a property subject to an agricultural conservation easement, such as Mr. Januszewski’s property, does not invalidate the agricultural conservation easement and will not materially interfere with the use of the property as farmland.

### III. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission reject the Exceptions of Donald Januszewski, adopt the finding of Administrative Law Judge David A. Salapa, find that the proposed Northeast-Pocono Reliability Project satisfies the requirements of the applicable statutes and regulations, and approve the pending Siting Application, Zoning Petitions, and remaining Eminent Domain Applications.

Respectfully submitted,

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Dated: November 20, 2013

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