**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held January 9, 2014 |
| Commissioners Present:  Robert F. Powelson, Chairman  John F. Coleman, Jr., Vice Chairman  James H. Cawley  Pamela A. Witmer  Gladys M. Brown |  |
| 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 | A-2012-2340872 |
| Petition of PPL Electric Utilities Corporation for a finding that a building to shelter control Equipment at the North Pocono 230-69 kV Substation in Covington Township, Lackawanna County, Pennsylvania is reasonably necessary for the convenience or welfare of the public | P-2012-2340871 |
| Petition of PPL Electric Utilities Corporation 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 | P-2012-2341105 |
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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 a certain portion of the lands of the property owners listed below for siting and construction of transmission lines associated with the proposed Northeast-Pocono Reliability Project in Portions of Luzerne, Lackawanna, Monroe, and Wayne Counties, Pennsylvania is necessary or proper for the service, accommodation, convenience or safety of the public |  |
| John C. Justice and Linda S. Justice | A-2012-2341107 |
| Margaret G. Arthur and Barbara A. Saurman, Trustees of the Residuary Trust of James C. Arthur | A-2012-2341115 |
| Anthony J. Lupas, Jr. and Lillian Lupas, John Lupas and Judy Lupas, Grace Lupas, Eugene A. Bartoli and Robert J. Frankelli | A-2012-2341118 |
| Ronald G. Sidovar and Gloria J. Sidovar | A-2012-2341120 |
| FR First Avenue Property Holding, LP | A-2012-2341123 |
| Transcontinental Gas Pipe Line Company, LLC | A-2013-2341208 |
| William Petrouleas and Joanna Petrouleas | A-2013-2341209 |
| Peter Palermo and Francine Palermo | A-2013-2341211 |
| Donald Januszewski | A-2013-2341215 |
| International Consolidated Investment Company | A-2013-2341216 |
| Bradley D. Hummel | A-2013-2341220 |
| Michael Palermo and Joanne Palermo | A-2013-2341221 |
| John F. and Veronica B. Iskra | A-2013-2341233 |
| Michael A. Mitch and Sue K. Mitch | A-2013-2341234 |
| 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 |
| Blueberry Mountain Realty, LLC | A-2013-2344605 |
| Grumble Knot, LLC | A-2013-2344612 |
| Pennsylvania Glacial Till, LLC | A-2013-2344616 |
| Joe and Vanessa Caparo  v.    PPL Electric Utilities Corporation | C-2011-2276731 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Donald Januszewski, filed on November 7, 2013, to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) David A. Salapa issued October 21, 2013, in the above-captioned consolidated proceedings. Replies to Exceptions were filed by PPL Electric Utilities Corporation (PPL or the Company) on November 30, 2013.

**I. HISTORY OF THE PROCEEDING[[1]](#footnote-1)**

On December 28, 2012, PPL filed an Application pursuant to 52 Pa. Code Chapter 57, Subchapter G, seeking approval for the siting and construction of transmission lines in portions of Luzerne, Lackawanna, Monroe, and Wayne Counties, Pennsylvania, in connection with its Northeast-Pocono Reliability Project (Application). Also on December 28, 2012, in conjunction with its Application, PPL filed two Petitions, pursuant to 52 Pa. Code § 5.41 and 53 P.S. § 10619, requesting that the Commission find that the buildings to shelter control equipment at the proposed North Pocono and West Pocono Substations are reasonably necessary for the convenience or welfare of the public, and therefore, exempt from any local zoning ordinance. These Petitions were docketed at P-2012-2340871 and P-2012-2341105, respectively. By Prehearing Order dated January 8, 2013, ALJ Salapa consolidated the Application and two Petitions for the purposes of discovery, litigation and decision.

Also on December 28, 2012, PPL filed thirty-two applications requesting that the Commission make a finding and determination, pursuant to 15 Pa.C.S. § 1511(c), that the service to be furnished by PPL, through its proposed exercise of eminent domain to acquire portions of the lands of various property owners for the siting and construction of the Northeast-Pocono Reliability Project, is necessary or proper for the service, accommodation, convenience or safety of the public.[[2]](#footnote-2)

Notice of PPL’s Application, two Petitions and thirty-two eminent domain applications was published in the January 19, 2013 *Pennsylvania Bulletin* at 43 *Pa. B.* 397, specifying a deadline of February 27, 2013, for filing protests to the applications or petitions to intervene in the proceeding.

On January 18, 2013, PPL filed five more eminent domain applications.[[3]](#footnote-3) Notice of PPL’s five additional eminent domain applications was published in the February 9, 2013 *Pennsylvania Bulletin* at 43 *Pa. B.* 944, specifying a deadline of February 27, 2013, for filing protests to the applications or petitions to intervene in the proceeding.

Prior to the filing of PPL’s Application for authority to construct transmission lines as part of its Northeast-Pocono Reliability Project, PPL was served with a complaint by Secretarial Letter dated December 7, 2011. The complaint was filed by Joe & Vanessa Caparo at Docket No. C-2011-2276731 (Caparo Complaint). The Caparo Complaint raised issues related to the siting and route selection of the proposed transmission lines, including the adverse effect on real estate values, the risk of danger to the health and safety of the public, and adverse effect on the aesthetics of the Caparo’s property. The Caparo Complaint requested that PPL select an alternative route and/or that the proposed transmission line be constructed underground. The Caparo Complaint sought, among other relief, monetary compensation for the alleged future loss of property value.

PPL was also served with a complaint by Secretarial Letter dated May 18, 2012. The complaint was filed by Christopher and Melinda Maros at Docket No. C‑2012-2305047 (Maros Complaint). The Maros Complaint raised issues related to the siting and route selection of the proposed transmission lines, including the adverse effect on real estate values, the risk of danger to the health and safety of the public, and issues related to eminent domain. The Maros Complaint requested that PPL select an alternative route.

By Prehearing Order, dated January 29, 2013, the ALJ consolidated the thirty-seven eminent domain proceedings and two complaints with the Application and Petitions filed on December 28, 2012, for purposes of discovery, litigation and decision.

On February 13, 2013, Bradley D. Hummel filed a motion to intervene in the proceeding, and on February 21, 2013, Blue Ridge Real Estate Company (Blue Ridge) filed a petition to intervene. in the proceeding. On February 22, 2013, Covington Township (Covington) filed a petition to intervene, a request for waiver to file an answer and new matter to PPL’s Petition filed at Docket No. P-2012-2340871, and an answer and new matter to PPL’s Petition filed at Docket No. P-2012-2340871.

On February 27, 2013, the Office of Consumer Advocate (OCA) filed a Notice of Intervention and Public Statement. Also on February 27, 2013, petitions to intervene were filed by North Pocono Citizens Alert Regarding the Environment (NP CARE), Transcontinental Gas Pipe Line Company, LLC (Transco), US Industrial REIT II (US Industrial), FR E2 Property Holding, LP (FR E2), FR First Avenue Property Holding, LP (FR First), Pennsylvania Glacial Till, LLC (Glacial Till). In addition, on February 27, 2013, John C. Justice and Linda S. Justice and Ronald G. Sidovar and Gloria Sidovar, represented by the same counsel, filed protests in the proceeding. On March 1, 2013, PPL filed a certificate of satisfaction regarding the Maros Complaint at C-2012-2305047.

Public input hearings were convened as scheduled on May 2, 2012. Twenty-five individuals testified under oath at the 2 p.m. hearing. Tr. at 35-158. Twenty-five individuals testified under oath at the 6 p.m. hearing. Tr. at 158-273.

On June 5, 2013, counsel for US Industrial contacted the ALJ to inform him that she had been contacted on June 4, 2013 by a representative of Duke Realty Limited Partnership to inform her that it had purchased the property of US Industrial on May 31, 2013. US Industrial’s property is the subject of PPL’s eminent domain Application at A-2013-2341241. On June 28, 2013, Duke Realty 400 First Avenue Gouldsboro Holding, LLC (Duke Realty) filed a motion to substitute as a party for US Industrial. The motion requested that the Commission substitute Duke Realty for US Industrial in the eminent domain Application at A-2013-2341241. In a Prehearing Order, dated July 9, 2013, the ALJ granted Duke Realty’s request.

Evidentiary hearings were convened as scheduled on July 24 and 26, 2013. The evidentiary hearings resulted in a transcript of 214 pages, consisting of pages 274 through 488. On August 22, 2013, Covington filed its Main Brief, and on August 26, 2013, Main Briefs were filed by PPL, the OCA and NP CARE. On September 9, 2013, Reply Briefs were filed by PPL, the OCA, NP CARE and Transco. FR E2 and FR First filed a joint Reply Brief. The record closed on October 7, 2013.

The ALJ’s Recommended Decision was issued on October 21, 2013, as noted above. Exceptions and Replies to Exceptions were filed as noted above.

We note that, during the course of this proceeding, and before the ALJ’s Recommended Decision had been issued, PPL filed petitions to withdraw ten of the thirty-seven eminent domain applications because PPL and the subject property owners had executed agreements by which the property owners conveyed rights of way and easements to PPL, or otherwise rendered the applications unnecessary. The ALJ granted these Petitions in Interim Orders issued on various dates. The ten eminent domain applications that were withdrawn are as follows:

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| Three Griffins Enterprises, Inc | A-2012-2341114 |
| Christopher Maros and Melinda Maros | A-2013-2341213 |
| Dianne L. Doss | A-2013-2341214 |
| Roberta Searfoss a/k/a Judy Searfoss Executrix of the Estate of Euylla Hughes a/k/a Eylla Hughes | A-2013-2341232 |
| Art Mortgage Borrower Propco 2010-5 LLC | A-2013-2341238 |
| Merel J. and Arlene J. Swingle | A-2013-2341250 |
| Mark M. Mack, J. Dean Mack and  Heather K. Mack | A-2013-2341272 |
| Blue Ridge Real Estate | A-2013-2341277 |
| James L. and Michaelene J. Butler | A-2013-2344353 |
| Susan Butler Reigeluth Living Trust | A-2013-2344604 |

Subsequent to the Commission’s issuance of the Recommended Decision in this case, PPL filed petitions to withdraw four more of the remaining twenty-seven eminent domain applications. The remaining eminent domain applications, as well as the four additional petitions for withdrawal, will be discussed more fully below.

**II. OVERVIEW OF THE NORTHEAST-POCONO RELIABILITY PROJECT**

As noted above, PPL is seeking authorization for the siting and construction of transmission lines associated with its Northeast-Pocono Reliability Project, and for the construction of control equipment buildings at the proposed West Pocono and North Pocono 230-69 kV Substations. PPL further described its proposed Northeast-Pocono Reliability Project as follows:

Specifically, 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)

The Northeast-Pocono Reliability Project is required to resolve violations of PPL Electric’s “Reliability Principles & Practices” (“RP&P”) and to reinforce the existing 69 kV systems in Monroe, Carbon, Wayne, Lackawanna, Luzerne, and Pike Counties by bringing a new source [of] 230 kV supply into the area. Currently, the only source of supply to the Northeast Pocono region is provided by 138/69 kV transmission lines. It has been approximately 30 years since the last major regional transmission reinforcement in the Northeast Pocono region. There has been substantial load growth in the area since that time, which is expected to continue. The existing 138/69 kV transmission lines serving the Northeast Pocono region are long and serve a significant number of customers who are exposed to prolonged outages in the event of the loss of one of these transmission lines. The ability to restore service to these customers is limited due to the lack of 230 kV transmission sources in the area. (PPL Electric St. 2, p. 3)

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. The 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 St. 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 St. 2, pp. 3-4)

PPL M.B. at 1-2.

As PPL explained, its proposed new West Pocono and North Pocono 230-69 kV Substations will be connected to the existing 230 kV transmission system by a new fifty-eight-mile 230 kV transmission line. *Id*. at 2. The proposed line will consist of three segments: (1) an approximate fifteen-mile segment extending between PPL’s existing Jenkins 230-69 kV Substation located in Plains Township, Luzerne County, and the proposed new West Pocono 230-69 kV Substation located in Buck Township, Luzerne County; (2) an approximate twenty-one-mile segment extending between the proposed West Pocono 230-69 kV Substation and the proposed new North Pocono 230-69 kV Substation located in Covington Township, Lackawanna County; and (3) an approximate twenty-two-mile segment extending between the proposed North Pocono 230-69 kV Substation and the Paupack 230-69 kV Substation located in Paupack Township, Wayne County. *Id*. at 2, 53-54, 96; PPL St. 4 at 5, 10-11, 16.

PPL’s proposed new West Pocono and North Pocono 230-69 kV Substations will also 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 lines. PPL M.B. at 2-3. Collectively, these five new 138/69 kV transmission lines will be approximately 11.3 miles in length, and will consist of: (1) two new double-circuit 138/69 kV transmission lines, each approximately three miles, to connect the new West Pocono 230-69 kV Substation to the existing 138/69 kV system; and (2) 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. *Id*. at 2-3, 54-56. PPL stated that the connection of the new West and North Pocono 230-69 kV Substations to the existing 69 kV system will allow for a system configuration with shorter 138/69 kV transmission circuit lengths, and improved ability to transfer load from one source to another in the event of a facility outage. *Id*. at 54.

PPL asserted that its most current cost estimate for the Northeast-Pocono Reliability Project is $247 million. *Id*. at 3, 53. PPL stated that, conditioned upon Commission approval, the construction and permitting for the Northeast-Reliability Project will be completed in a staged manner, with a scheduled construction start date of Spring 2014 to meet staged in-service dates from November 2015 to November 2017. *Id*.

**III. DISCUSSION**

**A. Legal Standards**

**1. Burden of Proof**

As the Applicant in this proceeding, PPL bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, PPL must establish that it is entitled to the relief it is seeking by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied,* 529 Pa. 654, 602 A.2d 863 (1992). That is, PPL’s evidence must be more convincing, by even the smallest amount, than that presented by any opposing Party. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

**2. Standards for Approval of the Siting and Construction of High Voltage Transmission Lines**

The Commission has promulgated Regulations regarding the siting and construction of high voltage transmission lines at 52 Pa. Code §§ 57.71-57.77. These Regulations provide that a public utility must obtain Commission approval to locate and construct a high voltage transmission line. 52 Pa. Code § 57.71. The siting Regulations set forth what the Commission must consider when deciding to approve or deny an application for the siting of a high voltage transmission line. 52 Pa. Code § 57.76. The Commission Regulation at 52 Pa. Code § 57.76 states the following:

**§ 57.76.  Determination and order.**

(a) The Commission will issue its order, with its opinion, if any, either granting or denying the application, in whole or in part, as filed or upon the terms, conditions or modifications, of the location, construction, operation or maintenance of the line as the Commission may deem appropriate. The Commission will not grant the application, either as proposed or as modified, unless it finds and determines as to the proposed HV line:

(1) That there is a need for it.

(2) That it will not create an unreasonable risk of danger to the health and safety of the public.

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

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

(b) A Commission order granting a siting application will be deemed to include a grant of authority, subject to the provisions of law, to locate and construct the proposed HV transmission line within a corridor consisting of the area of 500 feet on each side of the centerline of the proposed HV transmission line unless the applicant requests and the Commission approves a corridor of a different size. A proposed HV transmission line may not be constructed outside the corridor, except upon petition to and approval by the Commission.

The four prongs in Section 57.76 provide the structure for the Commission’s evaluation. In determining whether PPL has satisfied the four prongs, the Commission may consider evidence on the matters set forth in Section 57.75 of the Commission’s Regulations, as follows:

**§ 57.75.  Hearing and notice.**

**\* \* \***

(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:

(1) The present and future necessity of the proposed HV line in furnishing service to the public.

(2) The safety of the proposed HV line.

(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 § 57.75(e).

This Regulation enumerates the information which is considered to be relevant in evaluating the standard set forth in 52 Pa. Code § 57.76(a). In addition, case law has evaluated this standard. The Commission’s siting Regulations apply the three-part test set forth in *Payne v. Kassab*, 312 A.2d 86 (Pa. Cmwlth. 1973). The three-part test requires the consideration of the following: (1) Was there compliance with all applicable statutes and regulations relevant to the protection of the Commonwealth’s environment; (2) Does the record demonstrate a reasonable effort to reduce the environmental incursion to a minimum; (3) Does the environmental harm which would 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*, 312 A.2d at 94.The Commission uses this test to determine whether a proposed transmission line having environmental impacts should be approved.

The Commonwealth Court has determined that the Commission should not approve a transmission line unless the electric utility demonstrates that the line is necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public, pursuant to 66 Pa. C.S. § 1501. *Pa. Power & Light Co. v. Pa. Pub. Util. Comm’n*, 696 A.2d 248, 250 (Pa. Cmwlth. 1997). In applying this standard, the Commonwealth Court held that the Commission should consider the electric power needs of the public, the state of the available technology and the available alternatives, pursuant to 52 Pa. Code § 57.76. *Id*.

The Superior Court explained the selection of a route for electric transmission lines as follows:

[T]he selection of routes for transmission lines is a matter for the utility in the first instance and, unless it is shown that it proposes to exercise the powers conferred upon it wantonly or capriciously, or that the rights of the landowner have been unreasonably disregarded, the Commission is not required to withhold its approval merely because another route might have been adopted.

*Laird v. Pa. Pub. Util. Comm’n*, 133 A.2d. 579, 581 (Pa. Super. Ct. 1957).

**3. Standards for Approval of the Siting of Substation Control Equipment Buildings**

The Pennsylvania Supreme Court has long held that municipalities have no power to zone with respect to utility facilities. *Duquesne Light Co. v. Upper St. Clair Twp.*, 105 A.2d 287 (Pa. 1954); *Duquesne Light Co. v. Monroeville Borough*, 298 A.2d 252, 256 (Pa. 1972) (the PUC has exclusive regulatory jurisdiction over the implementation of public utility facilities).

The statute at 53 P.S. § 10619, Section 619 of the Municipalities Planning Code (MPC), provides a limited exception to this general rule. Section 619 of the MPC states 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.

Therefore, a municipality may zone a public utility building unless the Commission determines that the building is reasonably necessary for the convenience or welfare of the public. If the Commission finds that the building is reasonably necessary, the building is exempt from a local zoning ordinance under the MPC. *Del-AWARE Unlimited, Inc. v. Pa. Pub. Util. Comm’n*, 513 A.2d 593 (Pa. Cmwlth. 1986). Section 619 of the MPC does not require a utility to prove that the site it has selected is absolutely necessary or that it is the best possible site, it need only show that the building is reasonably necessary. *O’Connor v. Pa. Pub. Util. Comm’n*, 582 A.2d 427 (Pa. Cmwlth. 1990).

The Commission adopted a policy statement, set forth at 52 Pa. Code § 69.1101, to further the Commonwealth’s goal of making agency actions consistent with sound land use planning by considering the impact of its decision upon local comprehensive plans and zoning ordinances. The policy statement at 52 Pa. Code § 69.1101 states as follows:

To further the State’s goal of making State agency actions consistent with sound land-use planning and under the act of June 22, 2000 (P.L. 483, No. 67) and the act of June 23, 2000(P.L. 495, No. 68), the Commission will consider the impact of its decisions upon local comprehensive plans and zoning ordinances. This will include reviewing applications for:

(1) Certificates of public convenience.

(2) Siting electric transmission lines.

(3) Siting a public utility “building” under section 619 of the Municipalities Planning Code (53 P.S. § 10619).

(4) Other Commission decisions.

**4. Standards for Approval to Exercise the Power of Eminent Domain**

Section 1511 of the Business Corporation Law of 1988 (BCL), 15 Pa. C.S. § 1511, grants a public utility, such as PPL, the power or authority to condemn property to provide electricity to the public, stating, in part:

(a) General Rule. -- A public utility corporation shall … have the right to take, occupy and condemn property for one or more of the following principal purposes and ancillary purposes reasonably necessary or appropriate for the accomplishment of the principal purposes:

\* \* \*

(3) The … transmission … distribution or furnishing of … electricity … to or for the public.

15 Pa. C.S. § 1511(a)(3).

However, Section 1511(b) of the BCL restricts the authority of a public utility to take and condemn property for the purpose of providing electricity to the public, stating, in part, as follows:

The powers conferred by subsection (a) shall not be exercised:

(1) To condemn for the purpose of constructing … aerial electric transmission … lines:

(i) Any dwelling house or, except in the case of any condemnation for petroleum or petroleum products transportation lines, any part of the reasonable curtilage of a dwelling house within 100 meters therefrom and not within the limits of any street, highway, water or other public way or place.

(ii) Any place of public worship or burying ground.

15 Pa. C.S. § 1511(b)(1)(i),(ii).

Before a public utility may exercise its statutorily granted authority to condemn property for the purposes of constructing aerial electric transmission facilities, it must obtain approval from the Commission. Section 1511(c) of the BCL states, in part:

(c) The powers conferred by subsection (a) [for the running of aerial electric facilities] may be exercised to condemn property … only after the Pennsylvania Public Utility 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).

On an application for condemnation, the Commission must determine whether the transmission or distribution of electricity to or for the public that will be provided if the subject property is condemned is necessary for the service, accommodation, convenience or safety of the public. If the record establishes that the public utility’s route selection was reasonable, considering all of the factors involved in the selection of a line, the degree of inconvenience to a landowner does not constitute grounds for withholding the exercise of the power to condemn the easement. *Paxtowne v. Pa. Pub. Util. Comm’n*, 398 A.2d 254, 256 (Pa. Cmwlth. 1979).

**B. ALJ’s Recommended Decision**

The ALJ made 365 Findings of Fact and reached forty-one Conclusions of Law. R.D. at 13-57, 204-210. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

**1. Findings Pursuant to 52 Pa. Code § 57.76(a)**

As set forth above, Commission Regulations at 52 Pa. Code § 57.76(a) require the Commission to make certain findings before it can approve an application for the siting and construction of an electric transmission line. Specifically, the Commission must find and determine: (1) that there is a need for the proposed line; (2) that the proposed line will not create an unreasonable risk of danger to the health and safety of the public; (3) that the proposed line is in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth; and (4) that the proposed line will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives. After reviewing the evidence presented in this proceeding, the ALJ found that PPL met its burden to prove that the proposed Northeast-Pocono Reliability Project meets the requirements of 52 Pa. Code § 57.76(a).

With regard to the question of the need for the transmission lines, the ALJ found the PPL’s proposed Northeast-Pocono Reliability Project will address increasing load growth and reliability concerns in the Northeast-Pocono area, and will provide needed reinforcement to PPL’s existing transmission line system. Thus, the ALJ concluded that PPL has met its burden to prove that the proposed Northeast-Pocono Reliability Project is necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public, pursuant to 52 Pa. Code § 57.76(a), and will allow PPL to meet its obligations to provide adequate, reasonable and reliable service under 66 Pa. C.S. § 1501. R.D. at 105-110.

1. With regard to certain health and safety issues raised in this proceeding, the ALJ dismissed concerns relating to electric and magnetic fields (EMFs), the proximity of the proposed transmission lines to Transco’s natural gas pipeline facilities, and the question of whether the proposed transmission lines would interfere with access to Covington Industrial Park. The ALJ concluded that PPL met its burden to prove that the proposed Northeast-Pocono Reliability Project will not create an unreasonable risk of danger to the health and safety of the public, pursuant to 52 Pa. Code § 57.76(a)(2). *Id*. at 126-128, 132-133, 136-137.

With regard to the matter of PPL’s compliance with statutes and regulations regarding the protection of natural resources, the ALJ noted that PPL has agreed to obtain any and all necessary environmental permits, and to comply with any conditions on those permits during construction. The ALJ stated that the Commission has previously ruled that this is sufficient to establish compliance with applicable environmental statutes and regulations. Thus, the ALJ concluded that the proposed Northeast-Pocono Reliability Project complies with applicable statutes and regulations providing for the protection of natural resources of the Commonwealth, pursuant to 52 Pa. Code § 57.76(a)(3). *Id*. at 139-140.

With regard to the matter of environmental impact, the ALJ dismissed concerns relating to the potential negative effects of the transmission lines on property values, local tourism, farmland, and natural areas. *Id*. at 151-152. In addition, the ALJ found that the proposed transmission lines would have minimal adverse impact on threatened and endangered species, on Species of Special Concern, and on water quality within the project area. *Id*. at 163-165, 182-185. The ALJ also found that PPL’s proposed initial clearing of the vegetation along the project right-of-way would result in minimal environmental impact. *Id*. at 165-182. Finally, the ALJ rejected any contention that PPL should be required to delay initiating construction of the proposed transmission lines until all environmental impact studies, plans, and permits have been acquired and submitted to the Commission. *Id*. at 185-187. In summary, the ALJ concluded that PPL has established, by a preponderance of the evidence, that the proposed Northeast-Pocono Reliability Project will have minimum adverse environmental impact, considering the electric needs of the public, the state of available technology and the available alternatives, pursuant to 52 Pa. Code § 57.76(a)(4). *Id*. at 187.

**2. Zoning Petitions**

As noted above, in conjunction with its Application for authority to construct the transmission lines associated with the Northeast-Pocono Reliability Project, PPL also filed two Petitions, pursuant to 52 Pa. Code § 5.41 and 53 P.S. § 10619, requesting that the Commission find that the buildings to shelter control equipment at the proposed West Pocono and North Pocono 230-69 kV Substations are reasonably necessary for the convenience or welfare of the public, and therefore exempt from any local zoning ordinance. These Petitions were docketed at P-2012-2341105 and P‑2012‑2340871, respectively.

After reviewing the evidence presented in this proceeding regarding the proposed substations, the ALJ found that PPL met its burden to prove that the control equipment building at the proposed West Pocono Substation site in Buck Township, Luzerne County, Pennsylvania, as well as the control equipment building at the proposed North Pocono Substation site in Covington Township, Lackawanna County, Pennsylvania, are reasonably necessary for the convenience or welfare of the public. Thus, the ALJ concluded that the control equipment buildings related to the respective substations are exempt from any local zoning ordinances. *Id*. at 187-196.

**3. Eminent Domain Applications**

As noted above, PPL filed a total of thirty-seven applications requesting that the Commission make a finding and determination, pursuant to 15 Pa. C.S. § 1511(c), that the service to be furnished by PPL through its proposed exercise of eminent domain to acquire portions of the lands of various property owners for the siting and construction of the Northeast-Pocono Reliability Project is necessary or proper for the service, accommodation, convenience or safety of the public. The ALJ consolidated these individual eminent domain proceedings with PPL’s siting Application and the zoning Petitions on January 29, 2013. Also, as noted above, PPL subsequently filed petitions to withdraw ten of the thirty-seven eminent domain applications because PPL and the subject property owners had executed agreements by which the property owners conveyed rights of way and easements to PPL, or otherwise rendered the applications unnecessary. The ALJ granted these petitions in Interim Orders issued on various dates.

With regard to the remaining twenty-seven eminent domain applications, the ALJ found that PPL’s proposed exercise of the power of eminent domain to acquire a right-of-way and easement for the construction, operation, and maintenance of the proposed Northeast-Pocono Reliability Project over the lands of the respective property owners is necessary for the service, accommodation, convenience, or safety of the public.[[4]](#footnote-4) In support of this finding, the ALJ stated that PPL’s proposed Northeast-Pocono Reliability Project is required to relieve existing and projected overloaded conditions on transmission lines and transformers serving the Northeast-Pocono area. The ALJ asserted that PPL must be able to route the Northeast-Pocono Reliability Project over and across all of the twenty-seven properties in order to site, construct, and operate the line over the selected route. The ALJ found that the proposed right-of-way and easement over these properties will not cross any place of public worship, burying ground, dwelling, or its reasonable curtilage. *Id*. at 196-203.

**C. Exceptions of Donald Januszewski and PPL’s Replies[[5]](#footnote-5)**

Before we address the merits of the Exceptions to the Recommended Decision, we note, as a preliminary matter, that any issue or Exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that the Commission is not required to consider, expressly or at length, each contention or argument raised by the Parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Donald Januszewski is the owner of the property that is subject to the eminent domain Application filed by PPL at Docket No. A-2013-2341215. As noted above, Mr. Januszewski filed Exceptions to the Recommended Decision on November 7, 2013. In his Exceptions, Mr. Januszewski appears to contend that the Recommended Decision overrides a 1979 “mandate” issued by former Commission ALJ Morris J. Solomon in a case docketed at C-00970172, which prohibited utilities from siting and constructing facilities on farm land, according to Mr. Januszewski. Exc. at 1. In addition, Mr. Januszewski relates certain details regarding his experience at the May 2, 2013 public input hearing that appear to suggest that he was unable to participate in that hearing as he had hoped, raising the possibility that his due process rights may have been violated. *Id*. at 2.

In response, PPL contends that Mr. Januszewski’s Exceptions are without merit. PPL notes that Mr. Januszewski was not an active participant in this proceeding, and contends that his 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 the proceeding. R. Exc. at 7-8, 11-12. In addition, PPL asserts that the record evidence supports the Recommended Decision’s conclusions, and that its proposed Northeast-Pocono Reliability Project will not have any material negative impact on Mr. Januszewski’s property or its use as a farm. *Id*. at 8.

With regard to any suggestion in the Exceptions that Mr. Januszewski was not given a meaningful opportunity to participate in this proceeding, PPL contends that Mr. Januszewski was afforded both notice and the opportunity to fully participate, but declined to do so. *Id*. at 9. PPL states that Mr. Januszewski was served with the siting Application and the eminent domain Application on December 28, 2012. *Id*. In addition, PPL asserts that Mr. Januszewski was provided with notice of the prehearing conference and evidentiary hearings, was provided the opportunity to participate in the public input hearings, and “was served with every filing, discovery response, testimony, brief, and order in this case.” *Id*. at 9-10. PPL concludes that it cannot be reasonably maintained that Mr. Januszewski was denied due process, and asserts that his failure to participate in this proceeding was due to his own inaction. *Id*. at 10.

With regard to Mr. Januszewski’s contention that utilities are not permitted to site and construct transmission lines across farm land, PPL asserts that Mr. Januszewski appears to be concerned mainly with the impact of PPL’s proposed transmission lines on his own property. *Id*. at 11. PPL argues that Mr. Januszewski’s contentions ignore the substantial evidence of record that clearly supports the ALJ’s conclusion that the routes selected by PPL for the Northeast-Pocono Reliability Project will have the least overall social and environmental impacts as compared to the available alternatives. *Id*. at 11-17.

With regard to the case cited by Mr. Januszewski in his Exceptions, PPL states that, contrary to Mr. Januszewski’s assertion, ALJ Solomon did not order that public utility facilities be removed from his property, or that no utility rights-of-way are allowed to traverse his farm. *Id*. at 15. PPL asserts that, although Mr. Januszewski filed a formal complaint with the Commission in that proceeding alleging that Bell Atlantic-Pennsylvania, Inc. 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. *Id*., citing *Don Januszewski v. Bell Atlantic-Pennsylvania, Inc*., Docket No. C-00970172 (Order Concerning Motion to Dismiss entered April 9, 1997).

PPL notes that Mr. Januszewski’s property is subject to an agricultural conservation easement granted to the Commonwealth and Wayne County. PPL argues that, to the extent that Mr. Januszewski’s Exceptions are to be construed as a challenge to PPL’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. *Id*. at 17. However, PPL contends that the agricultural conservation easement expressly provides that the construction and installation of electric utility lines is permitted within the easement. *Id*. at 17-18.

Finally, PPL argues that its proposed Northeast-Pocono Reliability Project will not have any material effect on Mr. Januszewski’s property, or its use as a farm. PPL states that the right-of-way and easement that it seeks on Mr. Januszewski’s property will be approximately 2.12 acres, and will cross a portion of the property currently used as a pasture and wooded area. PPL asserts that, although there will be one monopole angle structure installed on an approximately ten-foot diameter foundation, farming and other agricultural activities will continue to be permitted within the right-of-way and easement. *Id*. at 18.

For all the reasons discussed above, PPL requests that the Commission deny Mr. Januszewski’s Exceptions, adopt the ALJ’s finding that the proposed Northeast-Pocono Reliability Project satisfies the requirements of the applicable statutes and regulations, and approve its siting Application, zoning Petitions, and remaining eminent domain Applications. *Id*. at 19.

**D. Disposition**

Upon our review of the record evidence and the arguments presented in this proceeding, we will deny the Exceptions of Donald Januszewski, and will adopt the Recommended Decision of ALJ Salapa. We agree with the ALJ that PPL has met its burden to prove that the proposed Northeast-Pocono Reliability Project: (1) is necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public, pursuant to 52 Pa. Code § 57.76(a); (2) will not create an unreasonable risk of danger to the health and safety of the public, pursuant to 52 Pa. Code § 57.76(a)(2); (3) complies with applicable statutes and regulations providing for the protection of natural resources of the Commonwealth, pursuant to 52 Pa. Code § 57.76(a)(3); and (4) will have minimum adverse environmental impact, considering the electric needs of the public, the state of available technology and the available alternatives, pursuant to 52 Pa. Code § 57.76(a)(4). Accordingly, we will approve PPL’s Application for approval of the siting and construction of transmission lines associated with the Northeast-Pocono Reliability Project.

With regard to PPL’s Petitions relating to the control equipment buildings at the proposed West Pocono Substation in Buck Township, Luzerne County, Pennsylvania, and at the proposed North Pocono Substation site in Covington Township, Lackawanna County, we agree with the ALJ that PPL met its burden to prove that the buildings are reasonably necessary for the convenience or welfare of the public, and thus, should be exempt from any local zoning ordinance. Accordingly, we will grant the Petitions.

With regard to PPL’s pending eminent domain applications, we agree with the ALJ’s conclusion that PPL’s proposed exercise of the power of eminent domain to acquire a right-of-way and easement for the construction, operation, and maintenance of the proposed Northeast-Pocono Reliability Project over the lands of the respective property owners is necessary for the service, accommodation, convenience, or safety of the public. Accordingly, we will approve the applications.

As for the Exceptions filed by Donald Januszewski, we agree with PPL that Mr. Januszewski was not an active participant in this proceeding, and that his attempt to raise issues and concerns for the first time in his Exceptions was procedurally improper. It is axiomatic that this Commission must base its decisions on the evidence in the record, and we are prohibited from looking beyond the record for evidence not previously supplied to support a desired finding of fact or conclusion of law. 52 Pa. Code § 5.431. New arguments may not be raised at the exception stage of a proceeding as it deprives parties of the opportunity to respond. *See*, *Barbara Pezzuto v. Metropolitan Edison Co*., Docket No. F-2012-2309903, at 12 (Order entered December 19, 2013); *Application of PPL Electric Utilities Corporation*, Docket No. A‑2011‑2267349, *et al.*, at 25 (Order entered July 16, 2013).

While it may be argued that Mr. Januszewski is an interested party in this proceeding by virtue of the fact that his property is subject to an eminent domain Application filed by PPL, we agree with PPL that Mr. Januszewski was given the opportunity to participate as an active party, and chose not to do so. As an administrative agency, we are required to provide due process to parties appearing before us. Such due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. PUC*, 479 A.2d 10, 12 (Pa. Cmwlth. 1984). In this case, we note that Mr. Januszewski was served with PPL’s siting Application as well as the eminent domain Application relating to his property on December 28, 2012. In addition, Mr. Januszewski was provided with notice of the prehearing conference and the evidentiary hearings, and was served with every prehearing and interim order issued by the ALJ, as well as with all other pertinent documents filed by the Parties in this proceeding. Mr. Januszewski did not file a petition to intervene, did not present testimony at the public input hearings,[[6]](#footnote-6) and did not otherwise participate in this proceeding prior to his filing Exceptions on November 7, 2013. Thus, we find no reason to conclude that Mr. Januszewski’s due process rights were violated at any time throughout this proceeding.

Finally, we find that the arguments set forth in Mr. Januszewski’s Exceptions lack merit and do not support a conclusion that PPL is prohibited from siting its proposed transmission lines across Mr. Januszewski’s property in particular, or across farm land in general. In the context of addressing the environmental impact of the Northeast-Pocono Reliability Project pursuant to 52 Pa. Code § 57.76(a)(4), the ALJ addressed the testimony of the Wayne County Agricultural Land Preservation Board (Wayne Ag Board) regarding the impact that the Project would have on the farms in Wayne County, including the farm owned by Mr. Januszewski. R.D. at 147. The ALJ also addressed PPL’s response to the Wayne Ag Board, as follows:

In response to the Wayne Ag Board’s testimony, PPL did not dispute that the proposed transmission lines cross farms in Wayne County which are subject to Agricultural Conservation Easements. PPL St. 4-R, p. 21-22. Rather, PPL points out that its preferred route through southern Lackawanna County does not cross any actively farmed parcels of land. PPL St. 4-R, p. 22. According to the Lackawanna County Conservation District, no farms in this portion of Lackawanna County are protected by an Agricultural Conservation Easement. PPL St. 4-R, p. 22. The closest preserved farms in Lackawanna County are located near Moscow, approximately a mile north of the proposed alignment. PPL St. 4-R, p. 22, PPL M.B. p. 120-121.

R.D. at 150. We do not believe that under applicable law,[[7]](#footnote-7) the existence of an Agricultural Conservation Easement on a farm precludes a transmission line from crossing a property, and no specific evidence was provided that the Wayne County Agricultural Conservation Easements at issue here preclude the proposed lines from crossing the relevant properties.  Moreover, Mr. Januszewski did not present any evidence specifying how the proposed lines would interfere with farming activities on the relevant properties or regarding any rights or duties held under the relevant Agricultural Conservation Easements.

Based on the evidence presented, we agree with the ALJ’s overall conclusion that PPL established, by a preponderance of the evidence, that the Northeast-Pocono Reliability Project will have minimum adverse environmental impact, considering the electric needs of the public, the state of available technology, and the available alternatives. R.D. at 187. We also note that when the record establishes that the public utility’s route selection is reasonable, considering all of the factors involved in the selection of a line, as is the case here, the degree of inconvenience to a landowner does not constitute grounds for withholding the exercise of the power to condemn the easement. *Paxtowne v. Pa. Pub. Util. Comm’n*, 398 A.2d 254, 256 (Pa. Cmwlth. 1979).

We also conclude that the Order of ALJ Solomon in *Don Januszewski v. Bell Atlantic-Pennsylvania, Inc*., *supra,* does not support Mr. Januszewski’s position that utilities are prohibited from siting and constructing facilities on farm land. In that case, Mr. Januszewski filed a complaint against Bell Atlantic-Pennsylvania, Inc. (Bell), regarding the removal of Bell’s facilities from his property. The complaint raised issues concerning contract law and the use of an easement. ALJ Solomon dismissed the complaint for lack of subject matter jurisdiction over the right-of way or contract issues regarding the Bell facilities located on Mr. Januszewski’s property; however, the ALJ did not make any specific findings or conclusions pertaining to utility facilities located on farm land. That issue was simply not addressed. For all these reasons, we will deny Mr. Januszewski’s Exceptions.

**E. Petitions to Withdraw Eminent Domain Applications**

On October 23, 2013, PPL filed a Petition to Withdraw the Eminent Domain Application at Docket No. A-2013-2341234 regarding the property owned by Michael A. Mitch and Sue K. Mitch (Mitch Application). Also on October 23, 2013, PPL filed a Petition to Withdraw the Eminent Domain Application at Docket No. A‑2013-2344612 regarding the property owned by Grumble Knot, LLC (Grumble Knot Application). On December 2, 2013, PPL filed a Petition to Withdraw the Eminent Domain Application at Docket No. A-2013-2341249 regarding the property owned by Ronald Solt (Solt Application). Each of these three Petitions stated that the respective property owners conveyed a public utility easement and right-of-way across the subject property to PPL, and that the Eminent Domain Application regarding the respective property was no longer necessary.

The Commission’s Rules of Practice and Procedure permit withdrawal of a pleading in an uncontested matter. 52 Pa. Code §§1.82 and 5.94(c). As of the date of this Opinion and Order, no party has filed any document opposing the Mitch Application, the Grumble Knot Application, or the Solt Application. Furthermore, no party has filed any document opposing PPL’s respective Petitions to Withdraw these Applications. We will, therefore, grant the Petitions.

On November 13, 2013, PPL filed a Petition to Withdraw the Eminent Domain Application at Docket No. A-2013-2341241 regarding the property owned by Duke Realty 400 First Ave Gouldsboro LLC (Duke Realty) (Duke Realty Application). The Petition stated that Duke Realty conveyed a public utility easement and right-of-way across the subject property to PPL, and that the Eminent Domain Application regarding the respective property was no longer necessary.

The Commission’s Rules of Practice and Procedure permit withdrawal of a pleading in a contested matter, after considering any objections and the public interest. 52 Pa. Code § 5.94(a). In its Petition, PPL stated that it was authorized by Duke Realty to represent that Duke Realty had no objection to the withdrawal and termination of the Eminent Domain Application, and that Duke Realty waives the objection period under 52 Pa. Code § 5.94(a). As of the date of this Opinion and Order, no party has filed any document opposing PPL’s Petition to Withdraw the Duke Realty Application. We will, therefore, grant the Petition, consistent with the public interest.

**IV. CONCLUSION**

Based on the foregoing discussion, we shall: (1) deny the Exceptions to the Recommended Decision filed by Donald Januszewski; (2) adopt the Recommended Decision, consistent with this Opinion and Order; and (3) grant PPL’s Petitions to withdraw the eminent domain applications filed at Docket Nos. A-2013-2341234, A‑2013-2344612, A-2013-2341249, and A-2013-2341241; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions filed on November 7, 2013, by Donald Januszewski, to the Recommended Decision of Administrative Law Judge David A. Salapa, issued on October 21, 2013, are denied, consistent with this Opinion and Order.

2. That the Recommended Decision of Administrative Law Judge David A. Salapa, issued on October 21, 2013, is adopted, consistent with this Opinion and Order.

3. That the Application filed by PPL Electric Utilities Corporation 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, at Docket Number A-2012-2340872, is approved, consistent with this Opinion and Order.

4. That the Petition filed by PPL Electric Utilities Corporation for a finding that a building to shelter control equipment at the North Pocono 230-69 kV Substation in Covington Township, Lackawanna County, Pennsylvania is reasonably necessary for the convenience or welfare of the public, at Docket Number P‑2012‑2340871, is granted, consistent with this Opinion and Order.

5. That the Petition filed by PPL Electric Utilities Corporation 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, at Docket Number P-2012-2341105, is granted, consistent with this Opinion and Order.

6. That the Application filed by 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 certain portion of the lands of John C. Justice and Linda S. Justice 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, at Docket Number A-2012-2341107, is approved.

7. That the Application filed by 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 certain portion of the lands of Margaret G. Arthur and Barbara A. Saurman, Trustees of the Residuary Trust of James C. Arthur in Sterling 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, at Docket Number A‑2012‑2341115, is approved.

8. That the Application filed by 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 certain portion of the lands of Anthony J. Lupas, Jr. and Lillian Lupas, John Lupas and Judy Lupas, Grace Lupas, Eugene A. Bartoli and Robert J. Frankelli in Bear Creek Township, Luzerne 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, at Docket Number A-2012-2341118, is approved.

9. That the Application filed by 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 certain portion of the lands of Ronald G. Sidovar and Gloria J. Sidovar in Salem Township, Luzerne 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, at Docket Number A-2012-2341120, is approved.

10. That the Application filed by 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 certain portion of the lands of FR First Avenue Property Holding, LP in Covington Township, Lackawanna, 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, at Docket Number A-2012-2341123, is approved.

11. That the Application filed by 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 certain portion of the lands of Transcontinental Gas Pipe Line Company, LLC in Buck Township, Luzerne 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, at Docket Number A-2013-2341208, is approved.

12. That the Application filed by 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 certain portion of the lands of William Petrouleas and Joanna Petrouleas in Clifton Township, Lackawanna 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, at Docket Number A-2013-2341209, is approved.

13. That the Application filed by 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 certain portion of the lands of Peter Palermo and Francine Palermo 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, at Docket Number A-2013-2341211, is approved.

14. That the Application filed by 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 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, at Docket Number A‑2013‑2341215, is approved.

15. That the Application filed by 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 certain portion of the lands of International Consolidated Investment Company in Clifton Township, Lackawanna 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, at Docket Number A-2013-2341216, is approved.

16. That the Application filed by 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 certain portion of the lands of Bradley D. Hummel 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, at Docket Number A‑2013‑2341220, is approved.

17. That the Application filed by 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 certain portion of the lands of Michael Palermo and Joanne Palermo 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, at Docket Number A-2013-2341221, is approved.

18. That the Application filed by 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 certain portion of the lands of John F. and Veronica Iskra in Bear Creek Township, Luzerne 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, at Docket Number A-2013-2341233, is approved.

19. That the Application filed by 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 certain portion of the lands of Clifton Acres, Inc. in Clifton Township, Lackawanna 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, at Docket Number A-2013-2341236, is approved.

20. That the Application filed by 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 certain portion of the lands of Dietrich Hunting Club in Lehigh Township, Lackawanna 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, at Docket Number A-2013-2341237, is approved.

21. That the Application filed by 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 certain portion of the lands of NLMS, Inc. in Clifton Township, Lackawanna 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, at Docket Number A‑2013‑2341239, is approved.

22. That the Application filed by 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 certain portion of the lands of Edward R. Schultz in Covington Township, Lackawanna 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, at Docket Number A-2013-2341253, is approved.

23. That the Application filed by 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 certain portion of the lands of Donald W. Henderson and Louis Bellucci in Paupack 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, at Docket Number A-2013-2341262, is approved.

24. That the Application filed by 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 certain portion of the lands of FR E2 Property Holding LP in Covington Township, Lackawanna 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, at Docket Number A-2013-2341263, is approved.

25. That the Application filed by 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 certain portion of the lands of Sylvester J. Coccia in Clifton Township, Lackawanna 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, at Docket Number A-2013-2341267, is approved.

26. That the Application filed by 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 certain portion of the lands of Lawrence Duda 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, at Docket Number A‑2013‑2341271, is approved.

27. That the Application filed by 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 certain portion of the lands of Blueberry Mountain Realty, LLC in Tobyhanna Township, Monroe 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, at Docket Number A-2013-2344605, is approved.

28. That the Application filed by 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 certain portion of the lands of Pennsylvania Glacial Till, LLC in Tobyhanna Township, Monroe 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, at Docket Number A-2013-2344616, is approved.

29. That the Petition filed by PPL Electric Utilities Corporation to Withdraw the Eminent Domain Application at Docket No. A-2013-2341234 regarding the property owned by Michael A. Mitch and Sue K. Mitch is granted.

30. That the Petition filed by PPL Electric Utilities Corporation to Withdraw the Eminent Domain Application at Docket No. A-2013-2344612 regarding the property owned by Grumble Knot, LLC is granted.

31. That the Petition filed by PPL Electric Utilities Corporation to Withdraw the Eminent Domain Application at Docket No. A-2013-2341249 regarding the property owned by Ronald Solt is granted.

32. That the Petition filed by PPL Electric Utilities Corporation to Withdraw the Eminent Domain Application at Docket No. A-2013-2341241 regarding the property owned by Duke Realty 400 First Ave Gouldsboro LLC is granted.

33. That the Complaint of Joe and Vanessa Caparo against PPL Electric Utilities Corporation at Docket Number C-2011-2276731 is dismissed, with prejudice.

34. That the proceedings at Docket Nos. A-2012-2340872, P‑2012‑2340871, P-2012-2341105, A-2012-2341107, A-2012-2341115, A‑2012‑2341118, A-2012-2341120, A-2012-2341123, A-2013-2341208, A‑2013‑2341209, A-2013-2341211, A-2013-2341215, A-2013-2341216, A‑2013‑2341220, A-2013-2341221, A-2013-2341233, A-2013-2341236, A‑2013‑2341237, A-2013-2341239, A-2013-2341253, A-2013-2341262, A‑2013‑2341263, A-2013-2341267, A-2013-2341271, A-2013-2344605, A‑2013‑2344616 and C-2011-2276731 be marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: January 9, 2014

ORDER ENTERED: January 9, 2014

1. A more detailed history of this proceeding is set forth on pages one through thirteen of the Recommended Decision. [↑](#footnote-ref-1)
2. The docket numbers for the applications are listed on pages two through three of the Recommended Decision. [↑](#footnote-ref-2)
3. The docket numbers for the applications are listed on page three of the Recommended Decision. [↑](#footnote-ref-3)
4. Although the ALJ recommended approval of the twenty-seven eminent domain applications that were pending at the time the Recommended Decision was issued, we note that PPL has since filed petitions for the withdrawal of four more of those pending applications. These will be addressed below. [↑](#footnote-ref-4)
5. We note that, on November 27, 2013, Donald Januszewski filed what appears to be a response to PPL’s Replies to the Exceptions. With regard to Formal Proceedings, our Regulations at 52 Pa. Code §§ 5.533 and 5.535 allow for the filing of Exceptions and Replies to Exceptions when an ALJ issues a Recommended Decision. However, there is no provision in our Regulations that allows a party to file a Response to Replies to Exceptions. Consequently, we will not consider Mr. Januszewski’s response to PPL’s Replies to Exceptions. [↑](#footnote-ref-5)
6. In his Exceptions, Mr. Januszewski indicates that he arrived early at the May 2, 2013 public input hearing, but chose to leave early to take care of personal business. Exceptions at 2. [↑](#footnote-ref-6)
7. *See*, the Agricultural Area Security Law, 3 P.S. §§ 901, *et seq*. [↑](#footnote-ref-7)