

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of PPL Electric Utilities Corporation :  
Filed Pursuant to 52 Pa. Code Chapter 57, : A-2009-2082652  
Subchapter G, for Approval of the Siting and :  
Construction of the Pennsylvania Portion of :  
The Proposed Susquehanna-Roseland 500 kV :  
Transmission Line in Portions of Lackawanna, :  
Luzerne, Monroe, Pike and Wayne Counties, :  
Pennsylvania :

Petition of PPL Electric Utilities Corporation :  
For A Finding That A Building To Shelter : A-2009-2082832  
Equipment At The 500-230 kV Substation To :  
Be Constructed In The Borough of Blakely, :  
Lackawanna County, Pennsylvania is :  
Reasonably Necessary For the Convenience :  
Or Welfare Of the Public :

Application of PPL Electric Utilities Corporation :  
Under 15 Pa. C.S. §§1511(c) for a Finding and :  
Determination That The Service To Be Furnished :  
By The Applicant Through Its Proposed Exercise :  
Of The Power Of Eminent Domain To Acquire :  
A Right-Of-Way And Easement Over And Across :  
The Lands Of The Property Owners Listed Below :  
For The Proposed Susquehanna-Roseland 500 kV :  
Transmission Line in Portions of Lackawanna, :  
Luzerne, Monroe, Pike and Wayne Counties, :  
Pennsylvania Is Necessary or Proper For The :  
Service, Accommodation, Convenience Or :  
Safety Of The Public: :

Chaudari Family Limited Partnership, David: A-2009-2088297  
Murphy, and Marguerite T. Kranick :

HaRa Corporation in Middle : A-2009-2088337

Max Bohleman : A-2009-2088331

Richard Coccodrilli, Jr., Jeffrey J. : A-2009-2088327  
Coccodrilli, Ryan T. Coccodrilli, and Joseph :  
Williams :

D&L Realty Company	:	A-2009-2088340
Randal W. Rowe, Sandy K. Rowe, and Germaine Michele Cole	: :	A-2009-2088357
Kenneth Powell and Linda Powell	:	A-2009-2088359
Frank C. Bonacci and Marie E. Bonacci	: :	A-2009-2088315
Rudolph Saporito and Maria Saporito	:	A-2009-2088312
David Murphy	:	A-2009-2088360
Anthony R. Domiano, Sr. and Anthony R. Domiano, Jr.	: :	A-2009-2088307
Stafursky Properties, Ltd.	:	A-2009-2088310
Charles Coccodrilli	:	A-2009-2088353

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**PROTEST OF THE  
ENERGY CONSERVATION COUNCIL**

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The Energy Conservation Council of Pennsylvania (“Energy Conservation Council”) hereby files this Protest in the above-captioned consolidated proceedings pursuant to the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (“Commission” or “PUC”), 52 Pa. Code § 5.51 *et seq.*

**I. INTRODUCTION**

On January 6, 2009, PPL Electric Utilities, Inc. filed an Application, Docket Nos. A-2009-2082652, A-2009-2082832 with the Pennsylvania Public Utility Commission requesting authority to locate and construct the Pennsylvania portion of the 500 kV Susquehanna Roseland electric transmission line (“Susquehanna-Roseland Line”). On January 28, 2009, PPL Electric

filed thirteen applications for a determination that the proposed exercise of eminent domain over thirteen specific properties is necessary or proper for the service, accommodation, convenience or safety of the public. The Pennsylvania portion of the Susquehanna Roseland line includes approximately 101 miles of 500 kV transmission line and related 230 kV transmission lines, originating in Salem Township, Luzerne County, proceeding through portions of Luzerne, Lackawanna, Wayne, Pike and Monroe Counties, and crossing into New Jersey at the Delaware River at the Delaware Water Gap National Recreation Area. The estimated cost of the proposed Susquehanna-Roseland line is \$510 million and PPL claims that the line is needed to resolve numerous violations of NERC reliability standards on critical 230 kV circuits in eastern Pennsylvania and northern new Jersey.

The Energy Conservation Council now files this Protest objecting to the transmission line project because the project will damage the environment, endanger the health and safety of the public, increase local and regional air pollution, increase electric rates and costs, and is or may not be necessary to meet energy demands.

Further, the power of eminent domain should be used sparingly - *only* if there is a clear need that requires the sacrifice of individual property rights for the public good. Because the 500,000 kilovolt power line and related 230 kV facilities may not be needed, the use of eminent domain - and the exposure of Pennsylvania's residents and businesses to health risks, environmental damage, lower property values, and higher electric rates – should be avoided.

## **II. ENERGY CONSERVATION COUNCIL'S INTEREST AND STANDING TO PROTEST PPL'S APPLICATION**

1. This Protest is filed in the name of the Energy Conservation Council, by and through its undersigned attorney, BERGER LAW FIRM, P.C.

2. Protestant is a non-profit association comprised of a cross-section of residents of Pennsylvania concerned about the manner in which the energy needs of Pennsylvanians will continue to be met in the 21<sup>st</sup> century. In particular, ECC seeks to ensure that the energy needs of Pennsylvanians are met through means which minimize harm to the environment, do not endanger the health of residents, minimize increases in electric rates and costs, prevent adverse effects on property values, and recognize that the growth of local generation should primarily be driven by local demand.

3. The business address of ECC is:

Laurie Nicholl, President  
Energy Conservation Council  
189 Hoge Summit Road  
Eighty Four, PA 15330

4. ECC files this Protest to ensure that the interests of its members are protected. More specifically, some members of the Energy Conservation Council have a direct, immediate, and substantial interest in PPL's Application for the Pennsylvania portion of the 500 kV Susquehanna-Roseland Transmission line because they are directly affected by the construction of the proposed transmission line, either because they are residents or business owners in the area served by the transmission line or because they own property adjacent to the location of the transmission line. Because they are property owners, residents, or business owners in the area, their energy rates and costs, property values, and the environment in which they live and work will be adversely affected if the Commission grants PPL's request to locate, construct, and operate the proposed transmission line.

5. ECC's membership specifically includes the following individuals located in the affected area:

Al Spinelli (owns property at 1637 Glasgow Drive, Saw Creek Estates,  
249 At The Falls Bushkill, PA within transmission line right of way)  
Bushkill, PA 18324

Jordan Lewis  
601 Saw Creek Estates  
Bushkill, PA 18324

Robert Long (owns property within transmission line right of way)  
1176 Saw Creek Estates  
Bushkill, PA 18324

Albert McQueen  
1029 Saw Creek Estates  
Bushkill, PA 18324

William A. Hopkins  
1007 Saw Creek Estates  
Bushkill, PA 18324

Anthony Provenzano  
315 Saw Creek Estates  
Bushkill, PA 18324

Peter Derrenbacher  
927 Saw Creek Estates  
Bushkill, PA 18324

Rodney Haas (owns property within transmission line right of way)  
20 Payne Road  
Bethel, CT 06801

Rocco PannoZZo  
223 Wickes Road  
Bushkill, PA 18324

Mariella Coleman  
52 Wickes Road  
Bushkill, PA 18324

Preston Fucci  
52 Wickes Road  
Bushkill, PA 18324

Alix M. Mariette  
63 Wickes Road  
Bushkill, PA 18324

Adel S. Mariette  
63 Wickes Road  
Bushkill, PA 18324

Barbara Derenbacher  
927 Saw Creek Road  
Bushkill, PA 18324

Robert Harter (owns property at 1636 Glasgow Drive, Saw Creek  
23 At The Falls Estates, Bushkill, PA within transmission line right of way)  
Bushkill, PA 18324

6. The Energy Conservation Council, on behalf of these members, opposes the proposed transmission line project because the project will harm the environment, endanger health, increase local and regional air pollution, increase electric rates and costs, adversely affect property values, and is or may not be necessary to meet local energy demands of Pennsylvania residents.

7. The Energy Conservation Council has representational standing to assert this Protest. *See Pa. Natural Gas Ass'n v. TW Phillips Gas & Oil Co.*, 1991 WL 474870, 75 Pa. P.U.R. 598 (Pa. P.U.C. 1991); *Tripps Parc Civic Ass'n v. PUC*, 415 A.2d 967, 970 (Pa. Cmwth. Ct. 1980) (both establishing that an association has representational standing to assert the interests and rights of its individual members in a PUC proceeding). The Energy Conservation Council represents members who have a direct, immediate and substantial interest in the subject matter of this proceeding.

8. A protestant's interest in the subject matter of a proceeding "is direct if the protestant's interest is adversely affected by the actions challenged in the protest, is immediate if there is a close causal nexus between the protestant's asserted injury and the actions challenged

in the protest, and is substantial if the protestant has a discernible interest other than the general interest of all citizens in seeking compliance with the law.” *In re Consumers Pennsylvania Water Company-Shenango Valley Div.*, 2001 WL 1542265, at \*8 (Pa. P.U.C. 2001); *see Ken R. ex rel. C.R. v. Arthur Z.*, 682 A.2d 1267 (Pa. 1996); *William Penn Parking Garage, Inc. et al. v. City of Pittsburgh*, 346 A.2d 269 (Pa. 1975).

9. Energy Conservation Council members have a direct, immediate, and substantial interest in PPL’s Application because they are property owners, residents, and owners of local businesses whose energy rates and costs, property values, health, and the environment in which they live and work will be adversely affected if the Commission grants PPL authority to locate, construct and operate the proposed transmission lines.

### **III. GROUNDS FOR PROTEST**

#### **A. Legal Framework**

10. The Application must be examined pursuant to Sections 1102-1103 and 1504-1505 of the Public Utility Code, Section 1511 of the Business Corporation Law, and Sections 57.71-57.76 of the Commission’s Regulations.

11. Section 1102 of the Public Utility Code requires that the Commission issue a certificate of public convenience as a legal prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interests. 66 Pa. C.S. §1102(a)(1)-(3). The statute provides, in pertinent part, as follows:

Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful:

(1) For any public utility to begin to offer, render, furnish or supply within this Commonwealth service of a different

nature or to a different territory than that authorized by . . .  
[a] certificate of public convenience granted under this part.

66 Pa.C.S. § 1102(a)(1).

12. Section 1103 provides: “[a] certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103(a).

13. This mandate requires a utility to demonstrate a public need or demand for the proposed service, the inadequacy of existing facilities for service in the proposed service territory, and the applicant’s fitness to provide the service. *Application of Evansburg Water Co.*, 1994 Pa. PUC LEXIS 53 (Pa. PUC 1994); *Application of Newtown Artesian Water Co.*, 2003 Pa. PUC LEXIS 40, at \*17 (Pa. PUC 2003); see *Seaboard Tank Lines, Inc. v. Pa. Public Utility Commission*, 502 A.2d 762, 764 (Pa. Cmwth. Ct. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Com.*, 138 A.2d 240, 243 (Pa. Super. Ct. 1958).

14. The “need” required to issue a certificate of public convenience “means a need in existence at the time of the grant of authority and one which will continue in the reasonably foreseeable future.” *Id.* at 244.

15. Similarly, section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, provides that “[e]very public utility shall ... make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.”

16. Section 1504 gives the Commission authority to prescribe standards, regulations, and practices that public utilities must follow, as well as standards by which the services provided by utilities are measured. 66 Pa. C.S. § 1504.

17. In addition, if the Commission finds that the service or facilities of any public utility are unreasonable, unsafe, inadequate, insufficient, or otherwise in violation of Code, the Commission maintains the authority to order alternative relief, 66 Pa. C.S. § 1505(a), including the power to establish a conservation or load management program. 66 Pa. C.S. § 1505(b).

18. Furthermore, the Commission has adopted regulations regarding the siting of high voltage electric transmission lines. 52 Pa. Code §§ 57.71-57.76. The Commission's regulations at 52 Pa. Code § 57.71 require prior approval before a public utility may locate and construct a high voltage (i.e., greater than 100 kV) transmission line. Section 57.72(c) delineates the information that the Commission requires a public utility to submit with its application for such approval.

19. In determining whether to approve a proposed high voltage transmission line, the Commission must make four principal findings, outlined at 52 Pa. Code § 57.76(a):

(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.

52 Pa. Code § 57.76(a) (emphasis added). The Commission must establish that each criteria is present—not simply some. See *Application of Pennsylvania Power & Light Co.*, 1994 WL 932344 (Pa. P.U.C. 1994) (“In determining whether to approve a proposed high voltage transmission line, the Commission ***must make four principal findings*** outlined at 52 Pa. Code § 57.76(a).”) (emphasis added).

20. In considering whether an electric utility has met the above-quoted criteria, the Commission will accept evidence upon and consider the following matters pursuant to 52 Pa. Code § 57.75(e):

- (1) The present and future necessity of the proposed 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) Archaeologic areas.
  - (viii) Geologic areas.
  - (ix) Historic areas.
  - (x) Scenic areas.
  - (xi) Wilderness areas.
  - (xii) Scenic rivers.
- (4) The availability of reasonable alternative routes.

21. In addition to seeking siting approval of the PPL transmission line, PPL has filed thirteen applications seeking certificates of public convenience authorizing use of the power of eminent domain to acquire the rights-of-way required to install the proposed lines.

Consequently, the PUC will be required to determine if the requested exercise of the power of eminent domain by PPL is “necessary or proper for the service, accommodation, convenience, or safety of the public.” 15 Pa. C.S. § 1511(c).

22. This section has been interpreted to impose upon the utility seeking to use the power of eminent domain the burden of proving that the proposed transmission line is necessary and that, in selecting the proposed right-of-way, the utility has not acted wantonly, capriciously, or arbitrarily. *Pa. Dep’t of Envtl. Res. v. Pa. Pub. Utils. Comm’n*, 335 A.2d 860 (Pa. Cmwlth. Ct. 1975).

**B. PPL’S Application Is Lacking In Support and Must Be Scrutinized**

23. While Exhibit A to the Application, based on PJM’s Regional Transmission Expansion Planning, purports to provide support for the claim that the proposed facilities are necessary, no testimony has been filed in support of the proposed plan, and ECC submits that the claims in Exhibit A, together with any testimony and other information subsequently filed in this proceeding, must be carefully scrutinized, measured against alternatives, and balanced with the risks posed to the health and safety of the public and any harm to the environment resulting from the siting and construction of the proposed transmission lines.

24. Furthermore, while PPL claims to have conducted an “extensive, multi-faceted analysis to determine the preferred route for the Pennsylvania portion” of the line, selecting 1 of 3 routes assessed, ECC’s experience indicates that siting analysis has many complexities that are often overlooked and the Commission must, therefore, carefully review PPL’s proposed siting assessment and conclusions.

#### **IV. PRAYER FOR RELIEF**

**WHEREFORE**, for all of the reasons stated herein, the Energy Conservation Council respectfully requests that the Pennsylvania Public Utility Commission:

A. Prior to placing any burden on other parties to produce evidence, require PPL to file additional supportive information and testimony to meet its evidentiary burden;

B. Provide ample time for the review of the Application, including time to perform thorough discovery, including, if necessary, depositions.

C. Fully evaluate PPL's Application on the merits, including a thorough evaluation of:

(1) Whether there is a need for the transmission line;

(2) Whether PPL's proposal creates an unreasonable risk of danger to the health and safety of the public;

(3) Whether PPL's proposal minimizes adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives;

(4) Whether PPL's proposal creates potential increases in local and regional air pollution;

(5) The effect of the Application on electric rates and costs;

(6) Whether PPL is in compliance with all applicable regulations and statutes, including the National Environmental Policy Act.

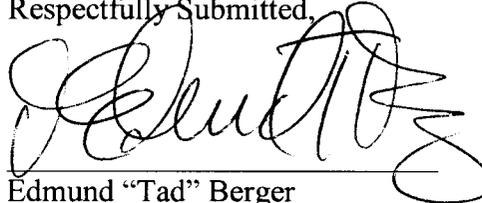
D. Deny and dismiss PPL's Application to the extent that it is not supported by substantial evidence;

E. Order alternative relief, including requiring PPL to establish a conservation or load management program pursuant to 66 Pa. C.S. § 1505.

F. Order such other relief as the Commission deems appropriate after performing a thorough review of the Application.

Dated: February 27, 2009

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Edmund Berger', written over a horizontal line.

Edmund "Tad" Berger

Berger Law Firm, P.C.

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Camp Hill, PA 17011

Phone: (717) 920-8900

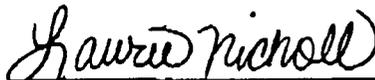
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## VERIFICATION

I, Laurie Nicholl, affirm that I am President of Energy Conservation Council of Pennsylvania., Protestant, and that the statements of fact made in the foregoing Protest are true and correct to the best of my knowledge, information and belief. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa. Cons. Stat. Ann. § 4904 relating to unsworn falsification to authorities.

Date: February 27, 2009

  
Laurie Nicholl

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, **Protest of the Energy Conservation Council**, upon the participants, listed below, in accordance with the requirements of § 1.54 (relating to service by a participant):

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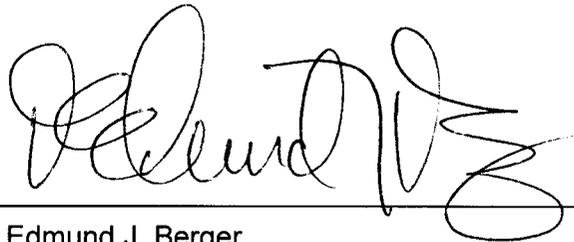
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**Dated** this 27<sup>th</sup> day of February, 2009.



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