

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In the Matter of: Application of	:	
PPL Electric Utilities Corporation	:	
Filed Pursuant to 52 PA. Code	:	
Chapter 57, Subchapter G, for	:	
Approval of the Siting and	:	Docket No. A- 2008-2022941
Reconstruction of the Proposed	:	
Coopersburg #1 and #2 138/69 kV	:	
TAP in Upper Saucon Township,	:	
Lehigh County and Springfield	:	
and Richland Townships, Bucks	:	
County, Pennsylvania	:	
Petition of PPL Electric Utilities	:	
Corporation for a Finding that a	:	
Building to Shelter Control	:	
Equipment at the Substation to be	:	Docket No. P-2008-2038262
Constructed in Springfield	:	
Township, Bucks County,	:	
Pennsylvania is Reasonably	:	
Necessary for the Convenience	:	
or Welfare of the Public	:	

**EXCEPTIONS
OF
BOARD OF SUPERVISORS OF SPRINGFIELD TOWNSHIP,
BUCKS COUNTY, PENNSYLVANIA**

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Dated: March 2, 2009

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I. INTRODUCTION

Administrative Law Judge Angela T. Jones (“the ALJ”) has done a commendable job of distilling a large record in a complex case into an understandable Recommended Decision (“R.D.”). Unfortunately, in so doing the ALJ failed to properly frame the one critically important issue in this case. The ALJ approached this case as if it involved a determination of the best engineering solution for PPL. In fact, the issue is whether a utility should be prevented from pursuing the “best” engineering solution in order to avoid significant environmental and land use impacts.

By way of background, there is no dispute that PPL Electric Utilities Corporation (“PPL Electric”) needs to improve its regional electric transmission system in its Southern Lehigh Region, which consists of portions of southern Lehigh County and northern Bucks County. The plan proposed by PPL Electric includes the construction of a new substation in Springfield Township (Bucks County), as well as the construction of a new, seven-mile transmission line from Upper Saucon Township (Lehigh County) to Quakertown Borough (Bucks County). Approximately 2.6 miles of the proposed seven-mile line would cut through Springfield Township.

The Board of Supervisors of Springfield Township, Bucks County, Pennsylvania (“Springfield Township”) filed a Protest against the proposed transmission line, and intervened as of right in the petition concerning the proposed substation building. The township took these actions in order to protect the citizens and the natural environment of the township.

Springfield Township is a predominantly rural township in northern Bucks County. Commercial, industrial, and other high-density development is clustered in the portion of the township that has the necessary infrastructure to support that development – roads, centralized

water and wastewater service, and associated infrastructure. This area of the township is near State Route 309.

The remainder of the township is rural, consisting of farms, homes on very large lots without access to centralized water or wastewater service, and resource protection areas that are needed to preserve the township's natural resources. The significant natural resource areas in the township are the Tohickon Creek and its associated watershed, much of which is forested. These areas support fish, wildlife, and plant species that are important to the biodiversity of the region and to the health of the Tohickon Creek itself.

The citizens of Springfield Township, with the assistance of the Bucks County Planning Commission, have adopted a comprehensive plan and a zoning ordinance consistent with that plan. The zoning ordinance and comprehensive plan reflect the twin goals of the township to (1) encourage growth in the areas of the township that have the infrastructure to support growth and (2) protect, and act as a wise steward of, the beauty and natural resources of the remainder of the township, while not impeding landowners from making reasonable use of their property.

Unfortunately, PPL Electric has proposed a plan that is directly contrary to the decisions that have been made by the citizens of Springfield Township. PPL Electric proposes to construct a seven-mile transmission line, approximately 2.6 miles of which would cut through some of the most pristine areas of Springfield Township, including along and across the Tohickon Creek. PPL Electric's plan would clear dozens of acres of woodland in Springfield Township and neighboring Richland Township, irretrievably altering the ecosystem that thrives in the area today. In addition, PPL Electric proposes to build a seven-acre substation (on a tract of land that is 85 acres in size) in the Resource Protection District of Springfield Township.

Springfield Township understands the need to upgrade PPL Electric’s transmission system in the region. The township supports PPL Electric’s need to undertake significant work on the region’s transmission system. Indeed, Springfield Township recognizes and appreciates that further growth in the township, and in the region as a whole, will not be possible without a properly functioning regional transmission network.

Springfield Township went to considerable expense to retain an experienced electrical engineer to review the various options that PPL Electric considered. That electrical engineer, Peter Lanzalotta, identified a plan that PPL Electric developed that would fully meet the needs of the Southern Lehigh Region during the entire 15-year planning horizon used in PPL Electric’s study (approximately through the year 2020).¹ That plan, which the parties are calling the “Springfield Functional Configuration” would maximize the use of PPL Electric’s existing facilities in the region – improving the facilities at existing substations and upgrading existing transmission lines – while constructing only approximately three or four miles of new transmission line in the region by the year 2020. The Springfield Functional Configuration would not require the construction of a new substation and would not involve the construction of a transmission line through the Resource Protection District that protects the Tohickon Creek watershed.

¹ Mr. Lanzalotta is an electrical engineer with more than 30 years of experience in electric utility system planning and operations. He has testified as an expert witness in more than 90 proceedings throughout the United States and Canada, and has been widely recognized for his expertise in electric system planning. Springfield St. 1, pp. 1-2 and Exh. PJJ-1.

II. EXCEPTIONS

Exception 1: The ALJ Failed to Determine Whether PPL’s Selected Alternative Would Have “Minimum Environmental Impact” Given “the Available Alternatives.”

The ALJ made several findings of fact that lay the groundwork for a proper application of the law to this case. She failed, however, to properly apply that law to the facts as found.

The Commission’s regulations state that in order for the Commission to approve a new high voltage transmission line, the Commission must find that the line “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)(4).

That is the critical issue: whether PPL has met its burden of proving that its selected option minimizes the environmental impact given the available alternatives. As explained below, the ALJ failed to apply this legal standard.

On pages 18-45, the ALJ made several key findings of fact, which are set forth below. Springfield Township agrees with each of the following findings and submits that they provide the appropriate framework for the required legal analysis. Specifically, the ALJ found:

21. There is no dispute that the transmission system in the southern Lehigh Region requires reinforcement.
25. There is no dispute that PPL requires additional transformer capacity in the southern Lehigh Region.
26. PPL developed and evaluated two options to meet customer electric service needs through 2020: (1) construct a new seven-mile transmission line and a new 230 – 138/69 kV substation on about seven acres of line in Springfield Township (PPL Functional Configuration); or (2) upgrade PPL’s existing 230 – 69 kV substation in Hosensack, reconductor existing lines between Hosensack and Coopersburg and between Hosensack and Milford, and build a new three or four mile 69 kV transmission line from Milford substation to Buxmont (Springfield Functional Configuration).

28. PPL did not conduct a comparative environmental or land use analysis of the two configuration options.

29. No later than sometime in 2004, PPL decided to pursue the PPL Functional Configuration rather than the Springfield Functional Configuration.

30. PPL's decision to pursue the PPL Functional Configuration did not include analysis of the environmental and land use factors as set forth in Commission's regulations (52 Pa. Code § 57.75(e)).

31. PPL did not perform an environmental or land use analysis of the Springfield Configuration.

127. Use of any of the alternate routes [of the PPL Functional Configuration] would have similar impacts on forest fragmentation and forest habitat.

139. The environmental impact of the Springfield Functional Configuration has not been studied.

140. All of the work during the study period through 2020 for the Springfield Functional Configuration would occur in existing substations or along existing transmission ROWs except for the construction of a new transmission line from the Milford substation to the existing Coopersburg Tap north of Quakertown ("Milford-Quakertown line").

141. One likely route for the Milford-Quakertown line would generally run parallel to State Route 663 and is 4.08 miles in length.

142. Existing zoning along this portion of Route 663 is a mix of rural residential, suburban residential, commercial and light industrial.

143. There are no environmental protection zones in this portion of the Study Area and only a small portion of the route would be in a floodplain.

170. The PVRR [present value of revenue requirements] of the PPL Functional Configuration is \$36 million based on the portions to be constructed through 2011; in contrast the PVRR of the Springfield Functional Configuration is \$41 million for the same period.

193. Springfield's zoning ordinance and comprehensive land use plan are designed to preserve the township's irreplaceable natural resources.

194. Springfield's zoning ordinance and comprehensive plan are designed to preserve the rural character of most of the township, while fostering commercial and industrial growth along the area bordering Route 309.

195. Springfield does not support industrial development in portions of the township that do not have the roads to support it. Much of the township is served by two-lane country roads that are inconsistent with most industrial enterprises.

196. PPL's plans to clear acres of woodlands conflict with the purposes of the Resource Protection District.

197. PPL plans to construct portions of the transmission line along the Tohickon Creek.

198. Construction along the Tohickon Creek conflicts with the Springfield Township's zoning ordinance.

R.D. at 18-45 (emphasis added).

Two of these findings require additional explication. First, Finding 127 is based on the testimony of PPL Electric's own environmental expert, Mr. Mellon. Mr. Mellon testified that each of the implementations of the PPL Functional Configuration (the Cross Country Corridor, Route 309 Corridor, and SEPTA Corridor) would have significant environmental impacts that should be avoided, if possible. Specifically, he stated:

There does not appear to be a significant difference between the three routes from an ecological perspective. There are "good" habitats in the cross country route and in the two alternate routes. Avoidance of these routes, all things being equal, would be preferable.

PPL Electric St. 15-RJ, p. 17 (emphasis added). He then continued, stating: "All three alternatives, including the necessary Springfield substation tap line to the Route 309 and SEPTA lines, negatively impact core forest habitat to a similar degree." *Id.*, p. 18 (emphasis added).

Second, Finding 139 correctly states that there has not been a full environmental analysis of the Springfield Functional Configuration. But as noted in Findings 141-143, there is every indication that the environmental impact of the Springfield Functional Configuration would be *de minimis*. Indeed, PPL candidly acknowledged in its Initial Brief that the Springfield Functional Configuration "would not have substantial impacts on wetlands and vegetation" and

“would not have substantial impacts on plant and wildlife habitat.” PPL Initial Brief at 70

(emphasis added)

In other words, there is no dispute that PPL’s selected alternative will have a significant negative impact on the environment in Springfield Township and neighboring areas. PPL’s environmental expert stated that he was not able to identify a way to implement the PPL Functional Configuration that avoided these environmental impacts. But PPL never even studied the environmental impacts associated with the Springfield Functional Configuration – the option that maximizes the use of PPL’s existing rights-of-way and substations and completely avoids construction in the Tohickon Creek watershed and associated Resource Protection areas. There is every indication, as the ALJ found and as PPL acknowledged, that there would be little if any adverse environmental impact associated with the Springfield Functional Configuration.

While the ALJ properly made these findings, she failed to apply the relevant legal standard. Thus, she incorrectly states:

The matter is not whether one configuration is possible. It is agreed that the Springfield Functional Configuration is possible. Rather, the matter is which configuration is overall substantially superior in engineering and technical considerations.

R.D. at 78.

With all due respect, the ALJ effectively “put the rabbit in the hat” – stating the question so that only one answer is possible. There is no dispute that the PPL Functional Configuration is the preferable engineering approach, if the only thing that mattered was engineering. But neither the Commission’s regulations nor the laws of this Commonwealth elevate engineering above all other concerns.

The issue is whether PPL should be permitted to construct a new transmission line, use the power of eminent domain, and override local zoning and land use requirements when there is

an acceptable option – an option that meets all of PPL’s planning criteria and will ensure the safety and reliability of service for at least 15 years into the future (PPL’s planning horizon) – that avoids the environmental and land use impacts of the somewhat “better” engineering solution.

Springfield Township submits that the Commission’s regulations require the utility to pursue the option that solves the engineering problem (meets the need) that will have the “minimum adverse environmental impact.” 52 Pa. Code § 57.76(a)(4).

Importantly, this is not only a requirement of the Commission’s regulations. The Commission’s regulations are designed to implement the seminal decision of *Payne v. Kassab*, 11 Pa. Commw. 14, 312 A.2d 86 (1973), *aff’d*, 468 Pa. 226, 361 A.2d 263 (1976). In that case, Commonwealth Court found that the proper way for a state agency to implement the requirements of the Pennsylvania Constitution (which establishes the right of Pennsylvanians to “clean air, pure water, and to the preservation of the natural, scenic, historic, and aesthetic values of the environment;” Pa. Const. art. I, § 27) is to demonstrate that the applicant made “a reasonable effort to reduce the environmental incursion to a minimum.” *Payne v. Kassab*, 11 Pa. Commw. at 29-30, 312 A.2d at 94.

When it originally adopted its siting regulations, the Commission emphasized that a utility had a special burden under the law to show that it had minimized the environmental impacts of a proposed transmission line. Specifically, the Commission cited *Payne v. Kassab* and explained:

This means that under Pennsylvania law every applicant for a siting certificate has an intensified burden to show on the record that the environment has been considered in its planning and that every reasonable effort has been made to reduce the environmental incursion to a minimum.

Re Overhead Electric Transmission Lines, 51 Pa. PUC 682 (Mar. 1, 1978), 8 Pa. Bull. 1403 (May 19, 1978).

As the ALJ's findings establish, PPL did not consider the environment in its planning and has not made "every reasonable effort" to minimize environmental impacts. Indeed, PPL's sole justification for rejecting the Springfield Functional Configuration – and for doing so before any environmental analysis was performed – was that the option was somewhat inferior from an engineering standpoint. That critical decision to reject a perfectly adequate option was not made on the basis of any comparative environmental analysis. Incredibly, to this day PPL still has not conducted an environmental analysis of the Springfield Functional Configuration – even after PPL's own environmental expert found that it would be preferable to avoid the environmental impacts associated with PPL's selected option.

The Commission should find, therefore, that PPL has not met its burden of proving that its selected alternative will have minimum adverse environmental impact in light of the available alternative.

Exception 2: The ALJ Erred in Holding that PPL Did Not Act Arbitrarily or Capriciously in Rejecting the Springfield Functional Configuration without Conducting an Environmental Analysis

On page 83 of the Recommended Decision, the ALJ stated:

A more detailed analysis of environmental and land use assessment may be more appropriate to address the environmental concerns. However, it is not shown that PPL acted unreasonably, arbitrarily or capriciously in eliminating the Springfield Functional Configuration based on a cost analysis without a more detailed environmental or land use assessment.

She then made a similar – but even more telling – statement later in the Recommended Decision:

[T]he conduct of PPL in rejecting the Springfield Functional Configuration based upon costs, engineering and technical impacts has not been shown to be wanton, corrupt or capricious. Simply because the Springfield Functional Configuration

might have been adopted if an environmental analysis had been performed upon the route is not an appropriate rationale to withhold Commission approval for the PPL Functional Configuration.

R.D. at 105 (emphasis added).

Respectfully, the ALJ's legal analysis is incorrect. The fact that "the Springfield Functional Configuration might have been adopted if an environmental analysis had been performed" demonstrates, in and of itself, that PPL has failed to prove that its proposed alternative "will have minimum adverse environmental impact, considering the ... available alternatives." 52 Pa. Code § 57.76(a)(4). It is proof that PPL failed to meet its "intensified burden to show on the record that the environment has been considered in its planning and that every reasonable effort has been made to reduce the environmental incursion to a minimum." *Re Overhead Electric Transmission Lines*, 51 Pa. PUC 682 (Mar. 1, 1978), 8 Pa. Bull. 1403 (May 19, 1978).

Simply stated, in rejecting the Springfield Functional Configuration without conducting any environmental analysis, PPL completely ignored the requirements of the law. That is the very definition of arbitrary and capricious action. The ALJ's definition of action that is arbitrary and capricious is unduly constrained. It is not necessary for an entity to act "wantonly" or "corruptly" in order for its action to be arbitrary and capricious. Thus, for example, courts have held that the general meaning of acting arbitrarily and capriciously is to have acted "without any reasonable cause, without cause based upon the law; without reason given; in disregard of evidence." *In re Rogers*, 47 F.Supp. 265 (N.D. Tex. 1942) (emphasis added). Similarly, courts have held: "The terms 'arbitrary' and 'capricious' embrace a concept which emerges from the due process clauses of the Fifth and Fourteenth Amendments of the United States Constitution and operates to guarantee that the acts of government will be grounded on established legal principles and have a rational factual basis. A decision is arbitrary or capricious when it is not

supported by evidence or when there is no reasonable justification for the decision.” *Canty v. Board of Education*, 312 F. Supp. 254, 256 (S.D.N.Y. 1970) (emphasis added).

The Commission should find, therefore, that PPL’s rejection of a fully adequate option without consideration of environmental and land use factors was arbitrary and capricious. Such rejection is a fundamental flaw of PPL’s planning process. The Commission should find, therefore, that PPL has not met its burden of proving that its selected option will have minimum adverse environmental impact given the available alternatives.

Exception 3: The ALJ Erred in Concluding that PPL has Mitigated all Adverse Environmental Impacts.

The ALJ incorrectly states:

While it is acknowledged that there was a litany of negative environmental impacts, to species, habitat, historic sites and wooded areas, the response to these allegations were either refuted or mitigated by efforts of the Company.

R.D. at 105.

In fact, as the ALJ correctly found elsewhere, PPL’s Functional Configuration in general, and the Cross Country Route in particular, would have adverse impacts on forest fragmentation and forest habitat. R.D. at 34 (Finding 127).

PPL’s own environmental expert, Mr. Mellon, characterized the severity of these impacts, as follows: “approximately 7 acres of core forest and approximately 42 acres of edge habitat will be cleared for the proposed cross county right-of-way and an additional 48 acres of core forest habitat will become edge habitat.” PPL Electric St. 15-R, p. 20. He then acknowledged that these cleared areas “will be lost as breeding habitat for interior forest species.” *Id.*, p. 21.

As noted above, Mr. Mellon testified that these impacts will not be mitigated and will include negative impacts on “core forest habitat.” PPL Electric St. 15-RJ, p. 18. The only way to mitigate those impacts is to avoid the PPL Functional Configuration entirely, which is what he recommended. *Id.*, p. 17 (“Avoidance of these routes, all things being equal, would be preferable.”).

The adverse environmental impacts associated with PPL’s selected option include the destruction of nearly 50 acres of pristine forest habitat. These impacts are real and cannot be mitigated. The ALJ erred, therefore, in concluding that PPL has mitigated all of the environmental impacts associated with its preferred route. In fact, the only way to mitigate those impacts is to avoid them by using the Springfield Functional Configuration, which moves any construction away from the environmentally sensitive Tohickon Creek and its forested watershed.

Exception 4: The ALJ Erred in Finding that PPL has Demonstrated a Need for the Proposed Substation Control Building

Springfield Township has shown that PPL could provide safe and reliable electric service – meeting all of PPL’s internal planning criteria – without constructing a new substation. In order for the Commission to override local zoning requirements and authorize the construction of a new utility building, the Commission must find that the “proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public.” 53 P.S. § 10619.

Springfield Township demonstrated that PPL could provide safe and reliable electric service throughout the planning period without constructing a new substation or control building. The ALJ acknowledged this on page 64 where she states: “While it may be true that a new substation is not the sole solution to the reliable delivery of electric service”

The ALJ then relied on factors other than reliability, such as “benefits of flexibility, transferability and the like” (R.D. at 64) to find that a new substation was “reasonably necessary for the convenience or welfare of the public.”

Springfield Township submits that the ALJ’s analysis is too broad. If reliable service to the public can be maintained without a new utility building, then the building is not “reasonably necessary” for the public. While the utility might like the new building, and might find that it makes the utility’s operations more convenient (or flexible), that is not the legal standard. The Commission must find that the new building is necessary to provide service to the public. Springfield Township submits that PPL has not, and cannot, demonstrate this because PPL is able to provide reliable service for at least 15 years without constructing the substation and related control building. The Commission, therefore, should deny PPL’s petition to override local zoning requirements for the construction of a substation control building.

Exception 5: The ALJ Acknowledged that PPL had Agreed to Various Conditions, but She Failed to Require PPL to Abide by Those Conditions.

In her findings of fact, the ALJ recognized that PPL had agreed to several mitigation measures that would serve to condition PPL’s ability to construct and operate the Cross Country Line and substation. Specifically, in findings 203 and 204 (R.D. at 46-47), the ALJ found as follows:

203. PPL will take steps to mitigate environmental impacts of the Cross Country Corridor, in accordance with Springfield’s zoning ordinance. PPL has agreed to many mitigation measures proposed by Springfield, including:

- comply with all requirements for the erosion and sedimentation control;
- provide engineering plans and consider suggestions;
- take reasonable steps to minimize disturbances of woodlands and wetlands;

- place the Coopersburg Tap at right angles to streams where practical;
- comply with all conditions and requirements of DEP and COE for the construction on wetlands;
- remove only vegetation that has the potential to grow more than 20 feet;
- use herbicides only if landowners agree;
- consider suggestions from Springfield regarding the design of access;
- provide copies of all applications for permits to construct portions of the Coopersburg Tap within Springfield;
- develop plan for control of invasive species; and
- create berms and plant vegetation to reduce visual impact of the Hickon substation.

204. PPL is willing to convey a substantial portion of the Hickon substation site to Springfield to demonstrate that it does not plan to construct any additional facilities at the Hickon substation site except for additional transmission lines.

The ALJ's recommended Ordering Paragraphs (R.D. at 144-147), however, fail to expressly impose these as enforceable conditions on PPL.

If the Commission rejects Springfield Township's other Exceptions and approves PPL's plans, then the Commission should specifically include the items listed in Findings 203 and 204 as express conditions of its approval. In this way, the Commission would retain jurisdiction to enforce those conditions and to ensure that PPL constructs and operates the Cross Country Line and substation in such a way as to mitigate at least some of the harm that will be caused.

III. CONCLUSION

For the reasons set forth above and in Springfield Township's Main Brief and Reply Brief, Springfield Township respectfully requests the Pennsylvania Public Utility Commission to: (1) deny PPL Electric's Application for permission to construct a 138 kV transmission line along the Cross Country Corridor, and (2) deny PPL Electric's Petition for a waiver of local zoning requirements for the construction of a substation control building on the Hickon Road

Substation Site in Springfield Township. These two components of an integrated project are not needed in order to provide reliable electric service to the public and would result in significant harm to the natural environment in northern Bucks County. Both projects could be avoided through the Springfield Functional Configuration – a series of projects that involves upgrading PPL Electric’s existing transmission lines and substation facilities, along with the construction of a much shorter transmission line in a portion of the Southern Lehigh Region that is experiencing significant load growth. This alternative would meet all of PPL Electric’s planning criteria through at least the year 2020 (the planning period used in this case), and it would do so without impacting the sensitive natural environment surrounding the Tohickon Creek and its forested watershed.

Respectfully submitted,



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Dated: March 2, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing upon the following parties to this proceeding by electronic mail and first class mail.

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