

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of PPL Electric Utilities Corporation :
Filed Pursuant to 52 Pa. Code Chapter 57, : Docket Nos. A-2009-2082652, *et al.*
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, *et al.* :
:

**THE SAW CREEK ESTATES COMMUNITY ASSOCIATION, INC'S
REPLY BRIEF**

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TABLE OF CONTENTS

TABLE OF CITATIONS iii

BRIEF 1

I. INTRODUCTION..... 1

II. STATEMENT OF THE CASE..... 1

III. SUMMARY OF ARGUMENT 2

IV. ARGUMENT..... 3

A. LEGAL STANDARD..... 3

 1. PPL Bears the Burden of Proof Throughout This Matter 3

 2. The Commission’s Siting and Construction Regulations Establish the Detailed Showing and Determination Required in This Matter. 5

 3. PPL’s Route Selection Process is Not Subject to the Standard of Whether PPL “Wantonly, Capriciously or Arbitrarily Exercised” its Power 6

C. SITING - HAS FAILED TO MEET ITS BURDEN OF COMING FORWARD WITH SUFFICIENT EVIDENCE TO ESTABLISH A PRIMA FACIE CASE AND SHIFT THE BURDEN OF PRODUCING OPPOSING EVIDENCE..... 7

 1. Route Selection 7

 2. Safety – PPL’s Initial Brief Cannot Disguise PPL’s Failure to Present Sufficient Evidence On the Dangers to Homes Within the Tower Fall Distance, and to Weigh That Evidence..... 8

 3. Health – Electric and Magnetic Fields: PPL’s Analysis of Magnetic Fields and Their Impacts is Flawed 9

 a. PPL’s Initial Brief Misrepresents Anticipated Magnetic Field Levels and PPL’s Insufficient Consideration of Those Levels..... 9

 b. PPL’s Initial Brief Fails to Disprove that Magnetic Fields Within and Beyond the Right-of-Way Will Greatly Exceed Levels Shown to Cause Disease in Humans..... 11

c.	PPL’s Initial Brief, and its Application, Fail to Discuss and Weigh the Tremendous Fear and Stress to Residents of Saw Creek.....	13
4.	Environmental Impacts	14
5.	Reroutes to Avoid Saw Creek Estates - PPL’s Initial Brief Attempts to Deflect Attention From the Defects in PPL’s Link Selection Process	14
12.	Construction Issues	16
a.	PPL’s Initial Brief Fails to Suggest that PPL Sufficiently Evaluated the Impacts Arising From Construction of the Proposed Lines.....	16
b.	Commencing Construction of the Wallenpaupack-Bushkill Segment Offends Common Sense and Violates Applicable Law.....	21
V.	CONCLUSION	24

TABLE OF CITATIONS

Judicial Decisions

<i>Barensfeld v. Pa. PUC</i> , 624 A.2d 809 (Cmwlth. 1993).....	7
<i>Foundation on Economic Trends v. Heckler</i> , 756 F.2d 143, 155 (D.C. Cir. 1985)	22
<i>Henes v. McGovern</i> , 317 Pa. 302, 176 A. 503 (1935)	4
<i>Hill v. Smith</i> , 260 U.S. 592, 43 S.Ct. 219 (1923).....	4
<i>In re Fink's Estate</i> , 21 A.2d 883, 888-89 (Pa. 1941)	5
<i>MacDonald v. Pennsylvania R. Co.</i> , 36 A.2d 492 (Pa. 1944)	3, 4
<i>Macht v. Skinner</i> , 916 F.2d 13 (D.C. Cir. 1990).....	22
<i>Maryland Conservation Council, Inc. v. Gilchrist</i> , 808 F.2d 1039 (4th Cir. 1986)	22, 23, 24
<i>Milkie v. Pennsylvania Public Utility Com'n</i> , 768 A.2d 1217 (Cmwlth. 2001)	5
<i>Pa. DER v. Pa. PUC</i> , 18 Pa Commw Ct. 558, 335 A2d 860 (1975), <i>aff'd per curiam</i> 473 Pa. 378, 374 A.2d 693 (1977).....	6, 16
<i>Paxtowne v. Pa. PUC</i> , 398 A.2d 254 (Pa. Cmwlth. 1979)	7
<i>Payne v. Kassab</i> , 11 Pa. Commw. Ct. 14, 312 A2d 86 (1973), <i>aff'd</i> 468 Pa. 226, 361 A.2d 263 (1976)	6, 16
<i>PPL v. Pa. PUC</i> , 696 A.2d 248 (Cmwlth. 1997).....	7
<i>Powers v. Russell</i> , 13 Pick., 30 Mass., 69 (Mass. 1833).....	4
<i>Sierra 94 Club v. Hodel</i> , 544 F.2d 1036 (9th Cir. 1976)	22
<i>Thomas v. Pennsylvania Human Relations Com'n</i> , 527 A.2d 602 (Cmwlth. 1987)	4
<i>Winnebago Tribe of Nebraska v. Ray</i> , 621 F.2d 269 (8th Cir. 1980)	22

Administrative Decisions

<i>Application of Pennsylvania Power & Light Co.</i> , Doc. Nos. A-110500F0196, <i>et al.</i> ; 1994 Pa. PUC LEXIS 65 (Oct. 21 1994).....	13, 15
--	--------

Re Overhead Electric Transmission Lines, 1978 Pa. PUC LEXIS 203, 51 Pa. PUC 682
(March 1, 1978)6, 8, 12, 15, 16, 19

Re Proposed Electric Regulation, 49 Pa. P.U.C. 709, 710 (1976)5, 19

Constitutional Provisions

Pennsylvania Constitution, Article 1, Section 276, 16

Statutes

National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321, *et seq*.....22, 23, 27

Regulations

Commission Review of Siting and Construction of Electric Transmission Lines, 52 Pa.
Code Part I, Subpart C, Chapter 57, Subchapter G..... *passim*

52 Pa. Code § 57.72(d)(iv).....10, 21, 26

52 Pa. Code § 57.72(d)(v).....21

52 Pa. Code § 57.75(e)(2).....2, 8, 19, 26

52 Pa. Code § 57.75(e)(3)(i)25, 26

52 Pa. Code § 57.75(e)(4).....3, 15, 19, 25, 26

52 Pa. Code § 57.76(a)(2).....3, 5, 8, 13, 19, 25, 26

52 Pa. Code § 57.76(a)(3).....22, 27

52 Pa. Code § 57.76(a)(4)3, 5, 13, 14, 20, 25, 26

Other Sources

Preliminary Treatise on Evidence, Thayer (1898).....4

I. INTRODUCTION

This matter consists, *inter alia*, of Application A-2009-2082652, the Application of PPL Electric Utilities Corporation (“PPL”) Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for approval of the siting and construction of the Pennsylvania portion of the proposed Susquehanna-Roseland 500 kV transmission line (the “S-R Line”) in portions of Lackawanna, Luzerne, Monroe, Pike and Wayne Counties, Pennsylvania (the “Application”). The instant Reply Brief is submitted on behalf of the Saw Creek Estates Community Association, Inc. (“SCECA”) in response to PPL’s Initial Brief. For the reasons discussed below and in SCECA’s Initial Brief, PPL’s Application should be denied.

II. STATEMENT OF THE CASE

SCECA generally does not take exception to PPL’s Statement of the Case. However, PPL does mistakenly state that SCECA served the Surrebuttal Testimony of four witnesses. *See* PPL Initial Br., p.12. SCECA actually served the Surrebuttal Testimony of five witnesses. PPL also states that SCECA St. No. R-4, Surrebuttal Testimony of Albert J. Spinelli, Jr. was not moved into evidence. *See* PPL Initial Br., p.12. Actually, the Presiding Officer directed that SCECA could not move to admit this testimony on its behalf. *See* Tr. pp.782-83. Instead, the Presiding Office allowed that Albert J. Spinelli, Jr. could move to admit this testimony on his own behalf. *Id.* However, he elected not to do so.

III. SUMMARY OF ARGUMENT

PPL has failed to present a *prima facie* case proving that it is entitled to have its

Application approved. This is so for three reasons:

1. PPL has so significantly failed to present and analyze certain impacts (specifically construction dangers and resident fears and resultant stress) of the proposed S-R Line that PPL has not satisfied its burden of producing evidence to establish a *prima facie* case that its Application should be granted.
2. PPL has also failed to demonstrate that every reasonable effort has been made to minimize the impacts of the S-R Line through alternative routing; therefore, PPL has not satisfied its burden of producing evidence to establish a *prima facie* case that its Application should be granted.
3. PPL has also failed to demonstrate that the harms of the S-R Line are clearly outweighed by the benefits to be derived from the S-R Line; therefore, PPL has not satisfied its burden of producing evidence to establish a *prima facie* case that its Application should be granted.

PPL's failures in these regard preclude the Commission from making its necessary determinations that:

- 1) The S-R Line will not create an unreasonable risk of danger to the health and safety of the public.
- 2) The S-R Line will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives.

Additionally, because PPL has failed to demonstrate a *prima facie* case on several issues (most notably construction impacts and the fears and resultant stress of residents, and evaluation of reasonable alternative routes), PPL has not shifted the burden of going forward with evidence on those issues to other parties.

PPL had a duty to fully analyze and discuss its construction schedule, the details of construction activities, and their impacts on the record. *See* 52 Pa. Code § 57.75(e)(2) of the regulations entitled "Commission Review of Siting and Construction of Electric Transmission Lines" (the "Siting and Construction Regulations"). This duty is particularly evident given the

very real concerns raised by the parties at public input hearings, in their written testimony, and at the hearing in this matter. In the face of these real concerns, however, PPL's exhibits and testimony pertaining to PPL's siting analysis barely mention, analyze, weigh, or otherwise consider them. This failure renders PPL's application deficient, and precludes the Commission from making the necessary determination under 52 Pa. Code § 57.76(a)(2) that the proposed S-R Line does not present an unreasonable risk of danger to health and safety of the public.

PPL also had a duty to evaluate every reasonable alternative to minimize these construction risks. 52 Pa. Code § 57.75(e)(4). However, but PPL failed to do so. PPL's failure precludes the Commission from making the necessary determination under 52 Pa. Code § 57.76(a)(4) that the proposed S-R Line will have minimum adverse environmental impact (including construction impacts), considering the electric power needs of the public, the state of available technology and the available alternatives. Accordingly, PPL's application should be denied.

In the course of presenting its case, PPL has erroneously interjected several misstatements of the applicable burdens to be borne by the parties, and the applicable standard for the Commission's review of the record. PPL has also misstated the evidence in that record. The following discussion identifies and corrects those misstatements, and explains why, on the record as it exists, PPL's Application should be denied.

IV. ARGUMENT

A. LEGAL STANDARDS

1. PPL Bears the Burden of Proof Throughout This Matter

PPL misrepresents the applicable legal burdens in this matter. PPL admits that it has the burden of proof to establish by a preponderance of the evidence that it has satisfied the

Commission’s Siting and Construction Regulations at 52 Pa. Code § 57.71, *et seq.* See PPL Initial Br., p.16. However, PPL then mistakenly states that “the burden shifts to the opponent” once the applicant establishes a *prima facie* case. See *id.* at p.17 (citing *MacDonald v. Pennsylvania R. Co.*, 36 A.2d 492 (Pa. 1944)). On the contrary, the burden of proof never leaves the applicant; instead, only the burden of going forward with opposing evidence shifts to opposing parties. The Court in *MacDonald* made this very clear, stating:

“The burden of going forward with evidence may shift often from side to side, while the duty of establishing his proposition is always with the actor and never shifts”: Thayer’s ‘Preliminary Treatise’, post, p. 378. See also Chief Justice Shaw’s opinion in *Powers v. Russell*, 13 Pick., Mass., 69. In *Henes v. McGovern*, 317 Pa. 302, 310, 176 A. 503, 506, we pointed out the difference between the ‘burden of proof’ (which always ‘remains on the party affirming a fact in support of his case’) and ‘the burden of going forward with evidence’ to meet the evidence already produced by the opposing party, which burden shifts from side to side in the progress of the trial. See also *Hill v. Smith*, 260 U.S. 592, 43 S.Ct. 219, 67 L.Ed. 419.

MacDonald v. Pennsylvania R. Co., 36 A.2d at 496, n.2. See, *Thomas v. Pennsylvania Human Relations Com’n*, 527 A.2d 602, 605 (Cmwlth. 1987) (explaining these shifting burdens in the context of an employee discrimination case). The only exception noted in which the opponent of an application bears a burden of proof is where that party asserts an affirmative defense. *MacDonald* at 495. That exception has no bearing on the instant Application by PPL.

As PPL acknowledges, PPL has the burden of going forward with sufficient evidence to establish a *prima facie* case. See PPL Initial Br., p.17. Only if PPL succeeds do the opposing parties have any burden of going forward with evidence. Thereafter, the matter essentially turns into a weighing of evidence to determine whether the applicant has met its burden of persuasion. As the Commonwealth Court explained in the context of a complaint against a utility for excessive charges (in which the complainant, rather than the utility, bore the burden of proof):

Once it is determined that the complainant has made out his *prima facie* case, the burden of going forward shifts to the utility, but the ultimate burden of persuasion remains with

the complainant. The Commission must measure the weight and credibility of all the evidence, and simply because the ratepayer has presented a prima facie case does not obligate the Commission to credit this evidence or to give it any special weight. If the utility presents evidence found to be of co-equal (or greater) weight with that of the complainant, the complainant will not have met his burden of proof.

Milkie v. Pennsylvania Public Utility Com'n, 768 A.2d 1217, 1220 (Cmwlth. 2001) (emphasis added). *See In re Fink's Estate*, 21 A.2d 883, 888-89 (Pa. 1941) (similarly explaining that establishing a *prima facie* case is no guarantee of success on the merits; once the burdens of going forward with evidence have been met, the court must then weigh the evidence). As discussed below, in the instant case, on many issues PPL has neither come forward with sufficient evidence to establish a *prima facie* case nor has PPL satisfied its burden of persuasion that its Application should be granted.

2. The Commission's Siting and Construction Regulations Establish the Detailed Showing and Determination Required in This Matter.

The Commission crafted siting and construction regulations pertaining electrical transmission lines at 52 Pa. Code Part I, Subpart C, Chapter 57, Subchapter G, entitled "Commission Review of Siting and Construction of Electric Transmission Lines." Under these regulations, the Commission cannot grant an application unless the Commission itself finds and determines that the line:

- will not create an unreasonable risk of danger to the health and safety of the public, and
- 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)(2) and (4), respectively (emphasis added). Moreover, when the Commission adopted the regulations, the Commission specifically stated:

It is essential in the siting, construction, and maintenance of overhead electric transmission facilities to minimize any adverse effect upon the environment and upon the quality of human life in the area in which new facilities will be located, and to minimize any potential hazards to public health and safety.

Re Proposed Electric Regulation, 49 Pa. P.U.C. 709, 710 (1976) (emphasis added).

Thus, the Siting and Construction Regulations force applicants to analyze and weigh, and the Commission to confirm for itself, the minimization of both dangers to public health and safety and adverse effects on the quality of human life in the area. Moreover, the Commission cannot approve an application unless the applicant demonstrates on the record all of the elements of the Siting and Construction Regulations, and that “the environmental harm is clearly outweighed by the benefits to be derived from the facilities to be constructed.” *Id.* at 712. (emphasis added). This demonstration is coupled with an “intensified burden arising out of Article 1, Section 27 of the Pennsylvania Constitution “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.” *See Re Overhead Electric Transmission Lines*, 1978 Pa. PUC LEXIS 203, 51 Pa. PUC 682 (March 1, 1978) at *14 (*citing Payne v. Kassab*, 11 Pa. Commw. Ct. 14, 312 A2d 86 (1973), *aff’d* 468 Pa. 226, 361 A.2d 263 (1976) and *Pa. DER v. Pa. PUC*, 18 Pa Commw Ct. 558, 335 A2d 860 (1975), *aff’d per curiam* 473 Pa. 378, 374 A.2d 693 (1977)) (emphasis added).

3. PPL’s Route Selection Process is Not Subject to the Standard of Whether PPL “Wantonly, Capriciously or Arbitrarily Exercised” its Power

In its Initial Brief, PPL erroneously argues that the proper standard with respect to routing selection issues is whether the applicant’s powers “have been wantonly, capriciously or arbitrarily exercised.” *See* PPL Initial Br., p.19. That standard does not apply to PPL’s Application under 52 Pa. Code § 57.71, *et seq*, but rather is the standard used for purely eminent domain proceedings. Each of the cases PPL cites preceded the Commission’s siting regulations,

and in the most recent case citing by PPL the Commonwealth Court explicitly stated that the only reason it was not applying the siting regulations was because:

the regulations proposed by the Commission by its order of March 2, 1976 were not made effective until May 20, 1978. Additionally the 1978 regulations do not apply to a design voltage of 138 KV as proposed here.

Paxtowne v. Pa. PUC, 398 A.2d 254, 255, n.1 (Pa. Cmwlth. 1979).¹ Cases subsequent to *Paxtowne* in which the Siting and Construction Regulations were applied steered clear of the “wanton, capricious or arbitrary” standard. *See, e.g., PPL v. Pa. PUC*, 696 A.2d 248 (Cmwlth. 1997); *Barensfeld v. Pa. PUC*, 624 A.2d 809 (Cmwlth. 1993). PPL does not contest that its Application is subject to the Siting and Construction Regulations, nor could it. Accordingly, the standard expressed in *Paxtowne* is inapplicable to the Commission’s review of PPL’s Application under the siting regulations.

C. SITING - HAS FAILED TO MEET ITS BURDEN OF COMING FORWARD WITH SUFFICIENT EVIDENCE TO ESTABLISH A PRIMA FACIE CASE AND SHIFT THE BURDEN OF PRODUCING OPPOSING EVIDENCE

1. Route Selection

SCECA’s objections to PPL’s Route B generally pertain specifically to its insistence on running the proposed S-R Line through Saw Creek, rather than viewing the S-R Line as an opportunity to move the existing lines out of Saw Creek. Accordingly, PPL’s objections are discussed *infra.* at Section 4, Reroutes to Avoid Saw Creek Estates, and in SCECA’s Initial Brief in the same section.

¹ PPL also mistakenly represents that “inconvenience to a landowner does not constitute grounds for withholding the exercise of the power to condemn the easement.” *See* PPL Initial Br. p.21 (citing *Paxtowne*). However, the language in the quoted sentence actually finished with the following language: “where the record establishes that the utility’s route selection was reasonable considering all the factors involved in the selection of a line.” *Paxtowne* at 256 (emphasis added, citations omitted). Thus, inconvenience to a landowner could be grounds for withholding authority if the inconvenience is not overcome when properly weighed against other factors.

2. Safety – PPL’s Initial Brief Cannot Disguise PPL’s Failure to Present Sufficient Evidence On the Dangers to Homes Within the Tower Fall Distance, and to Weigh That Evidence

PPL, in its Initial Brief, makes the starting announcement that “in Saw Creek, PPL Electric has identified the sites for structures, and no structure will be located in areas that are subject to being washed out.” PPL Initial Br., p.95 (citing PPL Electric St. 5-R, p.2). PPL does this in order to support its assertion that structures will not be located in areas that are subject to being washed out. *See id.* This assertion is unsupported.

PPL’s Rebuttal Statement No. 5 makes no mention of where the structures will be cited, and fails to even conclude that PPL has identified their locations. On the contrary, no documents or testimony reveal the locations for the specific structures; the most that PPL has revealed thus far is that the towers will be “similar” in number and location to the existing towers. Therefore, PPL’s statement in its Initial Brief is not only incorrect, but it disingenuously converts PPL’s mere promise that structures will not be located in areas that are subject to being washed out into a representation that PPL has actually made a finding to this effect. In truth, because PPL has not identified specific structure locations, it has not found or concluded that none will be located in areas that are subject to wash out. On this critical issue, PPL needs to do far more than make an unsubstantiated assertion to the Commission.

Given the fact that electrical transmission towers do sometimes fail, and given the fact that 31 Saw Creek residents’ homes would lie within the fall distance of the proposed towers (as would those of an unknown number of residents outside the Saw Creek community) (*see* ECC Cross Ex. 6, June 23, 2008, presentation, at pp. 24 and 25), PPL should have actually identified the anticipated locations for structures, and determined whether it could avoid areas subject to washout. Having failed to do so, PPL is unable to satisfy its duty to fully discuss and analyze on

the record, pursuant to 52 Pa. Code § 57.75(e)(2), the dangers of failing towers. This failure renders PPL's application deficient. *See Re Overhead Electric Transmission Lines, supra.* This failure also precludes the Commission from making the necessary determination under 52 Pa. Code § 57.76(a)(2) that the proposed S-R Line does not present an unreasonable risk of danger to health and safety of the public. *See Re Proposed Electric Regulation, supra.* Accordingly, PPL's application should be denied.

3. Health – Electric and Magnetic Fields: PPL's Analysis of Magnetic Fields and Their Impacts is Flawed

a. PPL's Initial Brief Misrepresents Anticipated Magnetic Field Levels and PPL's Insufficient Consideration of Those Levels

In its Initial Brief, PPL devotes considerable discussion to the magnetic fields which will arise from the proposed S-R Line. However, its discussion includes several erroneous contentions. First, PPL asserts that the magnetic fields from the S-R Line “are in the range of EMF that are found through out normal everyday environments in homes and workplaces.” PPL Initial Br., p.100. PPL callously steers clear of acknowledging the laws of physics which dictate that, in relative terms, magnetic field levels from power lines decrease only slightly with increasing distance from the line, while magnetic field levels from appliances and lights decrease dramatically with increasing distance from the appliance or light. *See, e.g., SCECA Surreb. St. R-1, p.2; Tr.1156; SCECA Att. DWF-2.* PPL also declines to acknowledge that magnetic fields from power lines are relatively constant over time, while fields from appliances may only exist during operation of the appliance, and exposure may only occur when an individual is very close to the appliance. *SCECA Surreb. St. R-1, p.2; Tr.1156.*

Second, PPL also disingenuously argues that Dr. Fugate has no realistic basis to say that the S-R Line will be operated “at the loading levels he was suggesting should have been used for

EMF calculations.”² PPL Initial Br., pp.107, 123. PPL again was not listening. Dr. Fugate was very clear, in both his written and oral testimony, that PPL’s record evidence fails to reveal the loads PPL anticipates will be carried by the S-R Line after 2013, and that for this reason, he identified the summer normal rating as resultant magnetic field levels as an upper bound. SCECA Surreb. St. R-1, pp.3-4; Tr.1074, 1148-49. The basis is that PPL projected increasing loads in the years following 2013, admits that nothing precludes increasing the loads on the S-R Line, and admits that the S-R Line can carry a much greater load with upgrades to other elements of the circuit. *See* Tr.936-38, 1074, 1144, 1164; PPL Ex. PFM-2 and PFM-3; PPL Reb. St. 8R, pp.3-5. But, PPL would rather mischaracterize this testimony than admit that the testimony illuminates PPL’s failure to reveal the load levels PPL will actually employ on the S-R Line.

In the end, PPL’s own eagerness to increase voltage has compelled PPL to disclose its intent to do so. Based on PPL’s anticipated need to increase loading to the S-R Line, in its Initial Brief, PPL states:

PPL Electric Utilities Corporation requests specifically that the Administrative Law Judge and the Pennsylvania Public Utility Commission approve future operation of the S-R Transmission Line at the highest voltage for which the lines are designed and constructed....

See PPL Initial Br., p.181. This request by PPL reveals its true intentions and the resultant facts PPL does not want to admit. By implementing upgrades to other elements of the circuit, the resultant load would be higher than the 2013 load, and would cause higher magnetic fields than PPL projects for the year 2013.

² In its transparent attempts to deflect attention, PPL repeatedly suggests that Dr. Fugate lacks the qualifications to understand these issues related to operational changes and resultant line loads. *See, e.g.*, PPL Initial Br., p.127. PPL disingenuously does this notwithstanding Dr. Fugate’s obviously significant understanding of the issues. *See, e.g.*, SCECA St. 1 and SCECA Surrebutt St. R-1. Ironically, PPL nevertheless attempts to use Dr. Fugate to support their citation to magnetic field standards, ignoring that Dr. Fugate’s Ph.D. is in electrical engineering, not medicine, and that he did not provide any direct testimony on that topic in this matter.

This request to maximize voltage is also improper under the Siting and Construction Regulations. An increase in voltage requires either a new Application, or a Letter of Notification in Lieu of Application. *See* 52 Pa. Code § 57.72(d)(iv). In the current Application, the Commission may only grant PPL authority to operate at such voltage for which PPL demonstrates a commensurate need. PPL’s application says nothing about operating at higher voltages and loads than what PPL forecasted for 2013 on the record. PPL has failed to present any discussion of what higher voltages it might employ, or what the impacts of doing so will be. Accordingly, this request to increase voltage should be denied.

b. PPL’s Initial Brief Fails to Disprove that Magnetic Fields Within and Beyond the Right-of-Way Will Greatly Exceed Levels Shown to Cause Disease in Humans

In its Initial Brief, through Drs. Lee and Israel, PPL constructs an argument that epidemiological studies on childhood leukemia should be rejected because they are because she “inconsistent.” *See, e.g.,* PPL Initial Br., p.119. PPL then employs the selective referencing which accuses Dr. Carpenter of employing. For instance, the 2007 WHO report states that epidemiological studies do “show an association between ELF magnetic field exposure and an increased risk of childhood leukemia.” SCECA Surreb. St. R-2, p.6. Similarly, Dr. Carpenter testified that “[t]he evidence for an association between ELF-EMF exposure and the neurodegenerative diseases, Alzheimer’s and amyotrophic lateral sclerosis (ALS), is strong.” *Id.* at p.7. In fact, studies reveal odd ratios (ORs, that being the ratio of neurodegenerative disease in the exposed population as compared to the unexposed population) ranging from 1.6 to 9.4 for ALS. *Id.*

PPL also relies heavily on its standard of requiring (apparently uniformly) consistent, repeatable (robust) results in scientific studies. PPL rejects, without discussion, the fact that

reproducibility often has nothing to do with validity, and that an acceptable approach to considering numerous studies is to evaluate the weight of the evidence, rather than require uniformity. *Id.* at p.3. Additionally, PPL again employs selective referencing by ignoring the fact that the National Research Council concluded “that the link between wire code grading and childhood leukemia is statistically significant, (unlikely to have arisen from chance) is robust in the sense that eliminating any single study from the group does not alter the conclusions that associations exist.” Tr.1137-38.

In the end, PPL concludes that the occupational studies show “little indication of an increased risk of leukemia. PPL Initial Br., pp.120-21. PPL also concludes that those studies fail to show a dose-response relationship. *Id.* However, the lack of a dose-response relationship is an entirely separate issue from whether there is an increased risk. Determining a dose-response relationship is a much finer point, and the lack of such a determination does not discount the presence of an increased risk.

Finally, PPL goes to great lengths to attack Dr. Carpenter on the basis of studies by Nick Day. PPL relies chiefly upon its own self-serving idolization of Mr. Day as a “preeminent epidemiologist” and of Mr. Day’s studies as several of the “most important.” PPL Initial Br., p.119. However, PPL fails to demonstrate that these assertions are credible, and neglects to provide any third-party endorsements of them. Accordingly, these are nothing more than additional baseless attacks by PPL.

As explained in SCECA’s Initial Brief, the calculated magnetic field levels from the proposed S-R Line will exceed levels demonstrated to be associated with, and likely cause, human diseases, including childhood leukemia, cancer, Alzheimer’s disease, and ALS. In the face of these real dangers, PPL had a duty to evaluate every reasonable alternative to minimize

them. *See Re Overhead Electric Transmission Lines, supra.* PPL's failure precludes the Commission from making the necessary determination under 52 Pa. Code § 57.76(a)(4) that the proposed S-R Line will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives.

Accordingly, PPL's application should be denied.

c. PPL's Initial Brief, and its Application, Fail to Discuss and Weigh the Tremendous Fear and Stress to Residents of Saw Creek

Not surprisingly, Saw Creek community residents expressed significant concern and fears over the proposed S-R Line. Individuals testified that they fear tower failures and construction accidents, and cancer, childhood leukemia and other negative health impacts from the increased magnetic field levels, which will be caused by the proposed S-R Line. Tr.107, 120, 124, 125, 129, 140, 142-45, 203, 205, 224-25, 253, 262, 265-67, 268, 271, 282-83, 284-85, 286-88, 289-23, 294-97, 309-13, 314-16, 317-19, 327-32, 484, 488, 500. Even putting aside whether actual incidents of cancer, childhood leukemia, and other health impacts would arise, for the multitude of Saw Creek residents living under this cloud of uncertainty "just the stress alone is tremendous." Tr.271. The public's stress and concern with potential impacts is in itself an issue which an applicant should address in its analysis supporting its application. *See Application of Pennsylvania Power & Light Co.*, Doc. Nos. A-110500F0196, *et al.*; 1994 Pa. PUC LEXIS 65 (Oct. 21 1994), *68. PPL Initial Br., p.103 (holding that the applicant's consideration of alternatives should recognize the public's concern with magnetic fields). Yet, PPL's exhibits and testimony pertaining to PPL's siting analysis do not mention, analyze, weigh, or otherwise consider the public's fear and stress over these issues.

This failure to weigh resident fears and stress precludes the Commission from making the necessary determination under 52 Pa. Code § 57.76(a)(2). Accordingly, PPL has failed to satisfy its burden of going forward with evidence on this issue, and has failed to satisfy its burden of providing that the S-R Line should be approved. PPL's failure precludes the Commission from making the necessary determination under 52 Pa. Code § 57.76(a)(4) that the proposed S-R Line will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives. Accordingly, PPL's application should be denied.

4. Environmental Impacts

The proposed S-R Line will cause significant impacts on both the natural and human environment. These concerns are addressed *supra* and *infra* in the context of the Saw Creek community, and in SCECA's Initial Brief in the same sections.

5. Reroutes to Avoid Saw Creek Estates - PPL's Initial Brief Attempts to Deflect Attention From the Defects in PPL's Link Selection Process

PPL's Initial Brief sets forth its route selection process. *See, e.g.*, PPL Initial Br., p.76. However, neither PPL's Initial Brief nor a single document or line of testimony on the record shows that PPL took a look at the vast open area east of the Saw Creek community. Additionally, nothing in the record shows what features, if any, led PPL to reject potential routes though that area. Dr. Moscovici was the first to begin that process, by suggesting several "rough" alternatives, named Alternative Links A and B. SCECA St. R-5, p.5; Apps. DAM-2 and DAM-3. Unfortunately, PPL declined to pick up the ball, and instead immediately rejected the idea in its entirety because it concluded that, as drawn in one of the appendices, Dr Moscovici's

rough alternatives ran through, or too close to, existing features. *See* PPL Initial Br., p.144 (*citing* PPL St. 3-RJ, pp.304). However PPL’s rejection of modified Alternatives Links A and B, or the rest of the eastern area, lacks support in the record and is incomplete, at best.

In its Initial Brief, PPL again purports to have considered the area east of the Saw Creek community. In a nearly 1 ½ page discourse beginning at page 141 of its Initial Brief, PPL defends *one* potential re-route it contends it properly evaluated. *See* PPL Initial Br., p.141-142. With one minor exception, that discussion lacks any citation to record evidence – no citation to the Application, its exhibits, written testimony, or hearing testimony. And, although PPL’s discussion does go on to cite PPL’s rejoinder testimony, that testimony says nothing about the bulk of the area east of the Saw Creek community. *See* PPL Initial Br., p.144. Nor does the testimony or other record evidence provide more than scant support for PPL’s claim that it “carefully scrutinized” even the *one* potential re-route PPL claims it considered. *See id.* at n.57.³

Moreover, as discussed above, PPL’s failure to discuss and weigh the public’s fears and stress when making its route selection renders that selection defective. These fears include fears of dangers arising from construction of the S-R Line as well as fears of dangers arising from the operation of the S-R Line. As noted above, the Commission has held that, in recognition of the public’s fears and stress, applicants should consider locating lines in less densely populated areas. *See Application of Pennsylvania Power & Light Co., supra.* Additionally, under the siting regulations, PPL had a duty to evaluate every reasonable alternative to minimize risks such as these fears and stress, but failed to do so. *See Re Overhead Electric Transmission Lines, supra.*; 52 Pa. Code § 57.75(e)(4). Unfortunately, nothing in the record suggests that PPL’s selection of

³ Having failed to conduct its own true “field review,” PPL hollowly attacks Dr. Moscovici for not conducting a field review. This assertion ignores that PPL is the party which bears the burden of proof, and has vastly superior resources at its disposal to do so. PPL also attacks Dr. Moscovici for not have viewed discovery responses (which do not change Dr. Moscovici’s conclusions). As PPL’s counsel knows from an email exchange, PPL failed to provide proper notice to SCECA’s counsel that PPL had prepared those responses.

routes gave any consideration to the remaining fears and stress of Saw Creek residents.

Therefore, PPL's route selection process is defective, and its Application should be denied.

Although PPL widely touts its magnetic field management plan (*see, e.g.*, PPL Initial Br., p.103), that plan takes a fatally limited approach to managing magnetic fields. PPL's magnetic field management plan only considers modifications which can be achieved at "little or no cost," with "little cost" being defined as up to 5% of the project cost. By limiting PPL's consideration only to alternatives which add 5% or less to the project costs, PPL is constraining the balancing and weighing process required by the Commission's siting regulations and Article 1, Section 27 of the Pennsylvania Constitution. *See Re Overhead Electric Transmission Lines, supra; Pa. DER v. Pa. PUC, supra; Payne v. Kassab, supra.*

12. Construction Issues

a. PPL's Initial Brief Fails to Suggest that PPL Sufficiently Evaluated the Impacts Arising From Construction of the Proposed Lines

Concerns with construction safety also are prominent among Saw Creek residents, and for good reason. PPL admitted it has no prior experience constructing a project of this size in such a densely populated area. Tr.140-41, 205, 282-83, 501. Individuals specifically expressed concern with the impacts of construction of the proposed S-R Line, including blasting, truck traffic on the Saw Creek community's narrow roads in which children walk, noise, dust, and falling towers during construction. Tr.106, 117, 121-24, 129, 130-32, 208, 282-83, 308, 309-13, 314-15, 459-60, 469-70, 494-95, 500, 504-05, 517. Moreover, about 625 of Saw Creek Estates' residents are children. Tr.454. The extensive degree to which PPL's truck and heavy equipment will permeate the community is made amply clear in SCECA Ex. ARH-3, which depicts the Saw Creek roads PPL anticipates it will use to construction the S-R Line.

PPL transparently contends in its Initial Brief that it conducted a “careful balancing” of numerous factors, and gave “substantial weight” to “safety during construction and maintenance” and “inconvenience to the public during construction and maintenance.” PPL Initial Br., p.73. However, not a single document or line of testimony bears this out. Nowhere has PPL presented what the construction will actually be like. How can PPL possibly weigh the impacts of construction without having developed a construction schedule and plan? Where is PPL’s spreadsheet of tasks showing the various tasks they have to complete, when they plan to start and finish them, and what the order will be? The most PPL provides is a conclusory statement that construction is expected to “approximately two or three months.” PPL Initial Br., p.167 (*citing* PPL Rebuttal St. 1-R, pp.16-17). Where in the record is the proof or analysis underlying this statement? It does not exist. This appears to have been nothing more than an “off the cuff” remark by Greg Smith, made without any analysis or support.

Many questions remain concerning construction of the S-R Line. For constructing additional access road construction, how many tons of material will PPL have to remove to make their access roads? How many trucks will be used to remove that material? How many trucks per day? Over how many days? How many tons of rock, asphalt, and/or concrete will they need to build these access roads? How many trucks will that require? How many trucks per day will that be? Over how long?

For demolition of existing towers and lines, how many hours will that take? How many trucks will be needed to remove that material? How many trucks per day will that be? Over how long? For preparation of the areas for of the tower bases, where are PPL’s determinations of which areas will require drilling and which will require blasting? How much blasting will be needed? What volume of rock do they plan to blast? How much explosives are they planning to

bring into Saw Creek and detonate? How much rock do they calculate they will have to remove? How much rock will be drilled? How much rock waste will that produce? How many trucks will it take to bring in the explosives and equipment? How many trucks will be needed to remove the waste?

For construction of the tower bases and towers, how many tons of concrete will PPL need? How many trucks will be required to deliver that concrete? How many tons of steel and other materials will they need? How many trucks do they calculate will be needed to bring in that material? Over how long a period?

Equally important, what are the health effects going to be from all of this construction work? No PPL documents or statements provide this information. What air emissions are residents going to be subjected to? What levels of noise? How much are their houses going to shake when PPL blasts, drills, and drives heavy machinery down the streets? Will the foundations crack? None of this is explained anywhere in PPL's Application. These are calculations that only PPL has the information to prepare. These are issues which any reasonable resident would fear, even if PPL had analyzed them. The fact that PPL actually has no idea what construction is really going to be like, and has no idea whether any of this is actually going to work, generates enormous legitimate fear and stress among Saw Creek residents.

On cross-examination, Mr. Smith candidly admitted that PPL has not evaluated impacts of construction on residents of Saw Creek at all. Tr.918. PPL has no idea what level of inconvenience and safety risks will occur, either with or without its purported minimization efforts. Tr.924; PPL St. 1R, p.16. PPL still has not determined how many access roads it will have to clear or build. Tr.929. PPL has not determined the extent of blasting which will take place in the Saw Creek area, or the degree of resultant vibrations in people's homes. Tr.923.

PPL also has not evaluated the impacts of blasting out rock, removing rubble, and transporting it through the Saw Creek community. Tr. 924. In fact, PPL has not done anything to evaluate the amount of truck traffic which would occur through Saw Creek in order to build the S-R Line. Tr.924. PPL does not yet know the extent to which it may need helicopters to bring into Saw Creek conductors, heavy equipment, or towers for the proposed line. Tr.926-27.

In the face of these real dangers, PPL had a duty pursuant to 52 Pa. Code § 57.75(e)(2) to fully discuss and analyze on the record the safety of the proposed line and the dangers it presents. The Commission was very clear on this point, when it promulgated its regulations:

It is essential in the siting, construction, and maintenance of overhead electric transmission facilities to minimize any adverse effect upon the environment and upon the quality of human life in the area in which new facilities will be located, and to minimize any potential hazards to public health and safety.

Re Proposed Electric Regulation, 49 Pa. P.U.C. at 710 (emphasis added). Mr. Smith himself admitted in his rebuttal testimony that “any reasonable siting process” must consider inconvenience and safety risks to the public posed by construction. *See* PPL St. 1R, p.3. PPL’s failure to do so violates the Commission’s regulations and renders PPL’s application deficient for failure to sufficiently present, evaluate and weigh the dangers and inconvenience. Additionally, PPL cannot demonstrate that the construction “harm is clearly outweighed by the benefits to be derived from the facilities to be constructed.” *See Re Proposed Electric Regulation*, 49 Pa. P.U.C. at 712 (emphasis added). PPL’s failure also precludes the Commission from making the necessary determination under 52 Pa. Code § 57.76(a)(2) that the proposed S-R Line does not present an unreasonable risk of danger to health and safety of the public. Accordingly, PPL’s application should be denied.

PPL also had a duty to evaluate every reasonable alternative to minimize the construction dangers, but failed to do so. *See Re Overhead Electric Transmission Lines, supra.*; 52 Pa. Code

§ 57.75(e)(4). The most obvious reasonable alternatives are alternative routing east of the Saw Creek community, as discussed in SCECA's Initial Brief. PPL's failure precludes the Commission from making the necessary determination under 52 Pa. Code § 57.76(a)(4) that the proposed S-R Line will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives.

At a number of locations within its Initial Brief, PPL attempts to deflect criticism of its insufficient record by contending that certain impacts "would be incremental when compared to existing conditions." *See, e.g.*, PPL Initial Br., p.74. This statement is meaningless for several reasons. First, the statement says nothing about the degree of increased impacts, and thus precludes PPL, and the Commission, from weighing the increase against other factors. Second, *nothing* in the Commission's siting regulations, or its discussion of those regulations, suggests that an applicant need only consider the incremental impacts, and can discount existing impacts.

Third, with respect to construction impacts, the statement is meaningless, particularly in the context of the Saw Creek area. No construction impacts currently exist in the Saw Creek area (or in any other area where existing lines exist). Furthermore, when construction of the Wallenpaupack-Bushkill Line took place, one or two generations ago, the Saw Creek area was nothing like it is now. In the intervening eighty years, the area has gone from lacking any (or virtually any) homes along the lines to having homes packed as densely and closely as possible to the lines.

PPL's blindness to construction impacts is shockingly belied by an even bolder statement in its Initial Brief. At one points, while pleading for permission to begin work on the Wallenpaupack-Bushkill line immediately, PPL actually makes the assertion that this work "will have no adverse effect on the public because, as explained above, that portion of the line must be

replaced, regardless of the S-R Transmission Line.” *See* PPL Initial Br., p.180. The Commission specifically rejected this blanket assumption in its electrical transmission citing regulations, which expressly apply to increasing voltage, reconductoring, or reconstructing a line unless “the size, character, design or configuration of the proposed HV line does not substantially alter the right-of-way.” *See* 52 Pa. Code § 57.72(d)(iv) and (v). PPL’s statement suggests PPL entered this S-R Line application process with the mistaken view that PPL had no obligation to evaluate reconstruction impacts because they enjoy a presumption of no impacts.

PPL also attempts to deflect criticism of its insufficient record by contending that “other routes would require substantially greater amounts of construction where there presently are no electric transmission facilities.” *See, e.g., id.* This conclusion is unfounded on the record. There is no record evidence to demonstrate that greater construction is necessary to remove trees or meadows than to remove existing towers, lines and tower supports. This conclusion is patently false with respect to the impacts noted above when comparing the Saw Creek area to unpopulated or less populated potential routes elsewhere, including east of the Saw Creek area. In those areas, the absence or any (or virtually any) residences would cause dramatically less impacts on the public. PPL’s scant record on construction issues precludes concurrence with PPL’s conclusions.

b. Commencing Construction of the Wallenpaupack-Bushkill Segment Offends Common Sense and Violates Applicable Law

PPL improperly requests approval to begin construction of a portion of the S-R Line before obtaining all permits for the entire line. *See* PPL Initial Br., p.182. State and federal law, as well as common sense, preclude the Commission from doing so. The Commission’s siting regulations explicitly condition an applicant’s commencement of construction “upon compliance

with existing law.” 52 Pa. Code § 57.71. For an applicant to commence construction absent full compliance with all laws is “unlawful.” *Id.* Likewise, the Commission is barred from even granting an application “unless it finds and determines ... that it is in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth.” 52 Pa. Code § 57.76(a)(3).

One of the statutes applicable to PPL’s Application is the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321, *et seq.* Private projects of non-federal actors (such as PPL) are subject to NEPA requirements when federal agency involvement in the outcome of a project rises to a level determinative of the outcome of the project, such as when a federal permit is applied for. *Macht v. Skinner*, 916 F.2d 13, 14 (1990) (*citing Maryland Conservation Council, Inc. v. Gilchrist*, 808 F.2d 1039 (4th Cir. 1986) (*Gilchrist*); *Winnebago Tribe of Nebraska v. Ray*, 621 F.2d 269 (8th Cir. 1980); *Sierra 94 Club v. Hodel*, 544 F.2d 1036 (9th Cir. 1976)); *see also Foundation on Economic Trends v. Heckler*, 756 F.2d 143, 155 (D.C. Cir. 1985). In its Appendix E-6 Local, State, and Federal Governmental Agency requirements, PPL provided a list of all those federal agencies from which it believed permits are required for the S-R Line. In addition to the permits required by DOI to route the line along PPL’s existing easements through the Delaware Water Gap National Recreation Area and the Middle Delaware National Scenic and Recreational River (“DEWA”), PPL lists the need for multiple other permits from the United States Army Corps of Engineers, United States Fish and Wildlife Service, United States Environmental Protection Agency, and the National Marine Fisheries Service. *See* Application, Ex. E-6.

On the current record, PPL fails to explain whether or when compliance with NEPA will occur. Tr. at 381. As of May 5, 2009, PPL still had not even indicated whether it would

immediately undertake an Environmental Impact Statement (“EIS”), or instead start with the preliminary (and likely unsuccessful) first step of conducting an Environmental Assessment (“EA”) to determine whether an EIS is going to be required in order to satisfy NEPA. Tr. at 380-81. Thus, PPL has not demonstrated compliance with NEPA with respect to the many federal approvals it seeks.

NEPA precludes PPL from initiating construction of the S-R Line until PPL has satisfied PPL’S NEPA obligations. In *Gilchrist*, Montgomery County, Maryland proposed to build a highway through Seneca Creek State Park, which required discretionary Department of the Interior. *Gilchrist* at 1041. The highway construction was challenged, in part, on the grounds that NEPA applied and required an EIS, and that therefore no part of construction of the project could proceed until federal action on the EIS had been finalized. *Gilchrist* at 1042-43. The *Gilchrist* court concluded as follows.

Because it is inevitable that the construction of the highway will involve a major federal action, it follows that compliance with the NEPA is required before any portion of the road is built. This conclusion effectuates the purpose of the NEPA. The decision of the Secretary of the Interior to approve the project, and the decision of any other Secretary whose authority may extend to the project, would inevitably be influenced if the County were allowed to construct major segments of the highway before the issuance of a final EIS.

Gilchrist at 1042 (emphasis added). Thus, NEPA bars non-federal actors from commencing construction on any portion of a project, where that or another portion of the project is within NEPA’s jurisdiction, until the actor has satisfied its environmental review obligations. *Id.*

Common sense also bars PPL from commencing construction of any portion of the S-R Line until PPL has obtained all required approvals. Absent full approvals for the complete project from all relevant agencies, PPL should not be permitted to embark on it in a piecemeal fashion. If PPL cannot obtain all permits, it will necessarily have to go back to the drawing

board. In that case, PPL may very well end up crafting an alternative which would not require any lines through the Saw Creek community. That being a very real possibility, PPL should not be allowed to subject the Saw Creek residents to very serious, and potentially unnecessary, impacts of construction in their community.

PPL's request to commence construction immediately is also suspect. PPL has admitted that it has not developed any construction plans, or evaluated many of the impacts it concedes will result. How, then, can it leap onto the site and begin construction? This begs the question of whether PPL actually knows quite a bit more about the details (and impacts) of construction than it has revealed. Alternatively, giving PPL the benefit of the doubt, it begs the question of why, if PPL can suddenly develop detailed construction plans in order to immediately commence construction, it could not have prepared those plans earlier during the course of this proceeding, so that the parties and Presiding Officer would have an opportunity to evaluate them.

Additionally, if construction in the Wallenpaupack-Bushkill area will only take one to two months as PPL contends, then for the reasons indicated above PPL would gain very little by commencing construction early, while the residents of Saw Creek would suffer very much. Accordingly, in the event the Commission would otherwise approve PPL's Application, the Commission should condition any approval such that PPL is prohibited from beginning any actual construction on its proposed route unless and until PPL has acquired all necessary federal approvals regarding the SR500 line.

V. CONCLUSION

PPL has not met its burden of proving by a preponderance of the evidence that it is entitled to have its Application approved. Additionally, on certain issues, PPL has not even met

its burden of producing evidence sufficient to establish a *prima facie* case that its Application should be granted.

PPL's exhibits and testimony fail to provide the details of the construction of the S-R Line, or the schedule of that construction. Therefore, PPL has not, and cannot, evaluate the dangers of construction. This failure renders PPL's application deficient, and precludes the Commission from making the necessary determination under 52 Pa. Code § 57.76(a)(2) that the proposed S-R Line does not present an unreasonable risk of danger to health and safety of the public. PPL also had a duty to weigh the dangers of construction in the course of evaluating every reasonable alternative to minimize these risks, but failed to do so. 52 Pa. Code § 57.75(e)(4). PPL's failure precludes the Commission from making the necessary determination under 52 Pa. Code § 57.76(a)(4) that the proposed S-R Line will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives. Accordingly, PPL's application should be denied because of the danger of tower collapse onto Saw Creek residents.

The possibilities of harm to Saw Creek residents from tower collapse, human diseases, and construction mishaps and inconveniences has caused, and will continue to cause, tremendous fear and resultant stress to Saw Creek residents. This legitimate fear and resultant stress, in themselves, are impacts which PPL should have evaluated on the record pursuant to 52 Pa. Code § 57.75(e)(3)(i) and (4). Instead, PPL failed to adequately mention or analyze these conditions at all. This failure renders PPL's application deficient and precludes the Commission from making the necessary determination under 52 Pa. Code § 57.76(a)(2) that the proposed S-R Line does not present an unreasonable risk of danger to health of the public. PPL also had a duty to evaluate every reasonable alternative to minimize these fears and stress under 52 Pa. Code § 57.75(e)(4),

but failed to do so. PPL's failure precludes the Commission from making the necessary determination under 52 Pa. Code § 57.76(a)(4) that the proposed S-R Line will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives. Accordingly, PPL's application should be denied.

PPL also failed to evaluate specific areas which could be reasonable alternatives to siting the proposed S-R Line through the Saw Creek community. One is the nearby former Tamiment Resort property. Other potential areas lie near Alternative Link A and Alternative Link B, presented by SCECA in its written testimony. PPL had a duty to fully evaluate these reasonable alternatives in order to minimize the dangers of the S-R Line to Saw Creek residents, and a duty to fully document that evaluation on the record pursuant to 52 Pa. Code § 57.75(e)(2), (3) and (4). PPL's failure precludes the Commission from making the necessary determination that the proposed line 1) will not create an unreasonable risk of danger to the health and safety of the public, and 2) 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)(2) and (4) (emphasis added). Accordingly, PPL's application should be denied.

Finally, PPL has improperly requested that it be allowed to both increase voltage beyond what it has presented and analyzed in its Application, and immediately commence construction on the Wallenpaupack-Bushkill portion of the S-R Line. The Siting and Construction Regulations bar the Commission from granting the former request. Having failed make this request in its Application or evaluate voltages beyond those it stated it would need in the year 2013, PPL must submit a subsequent Application or Notification in Lieu of Application before it can increase the voltage on the S-R Line. 52 Pa. Code § 57.72(d)(iv).

The Commission's Siting and Construction Regulations, and common sense, call for rejection of the latter request. The Commission cannot grant PPL's Application unless PPL will be in compliance with all applicable laws, including NEPA. 52 Pa. Code § 57.76(a)(3); *Gilchrist*. Additionally, given the very real possibility that PPL may not receive NEPA or other approvals, PPL should not be allowed to subject the Saw Creek residents to very serious, and potentially unnecessary, impacts of construction in their community.

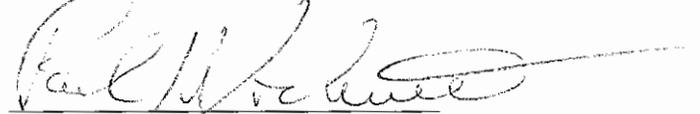
For the reasons set forth above and in SCECA's Initial Brief, PPL's Application should be denied.

Respectfully submitted,

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