

COMMONWEALTH OF PENNSYLVANIA



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

Dear Secretary McNulty:

Enclosed for filing is the Exceptions of the Office of Consumer Advocate to the Recommended Decision issued on November 12, 2009 by the Honorable Susan D. Colwell, in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Darryl Lawrence".

Darryl Lawrence
Assistant Consumer Advocate
PA Attorney I.D. # 93682

Enclosure

cc: Honorable Susan D. Colwell
Office of Special Assistants
00118305.docx

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of PPL Electric Utilities Corporation 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 in Portions of Lackawanna, Luzerne, Monroe, Pike and Wayne Counties, Pennsylvania	:	Docket No.	A-2009-2082652
Petition of PPL Electric Utilities Corporation for a Finding that a Building to Shelter 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	:		A-2009-2082832
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 Murphy, and Marguerite T. Kranick	:		A-2009-2088297
HaRa Corporation	:		A-2009-2088337
Richard Coccodrilli, Jr., Jeffrey J. Coccodrilli, Jr, Ryan T. Coccodrilli, and Joseph Williams	:		A-2009-2088327
D&L Realty Company	:		A-2009-2088340
Kenneth Powell and Linda Powell	:		A-2009-2088359

Rudolph Saporito and Maria Saporito : A-2009-2088312
David Murphy : A-2009-2088360

EXCEPTIONS OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: December 3, 2009

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I. INTRODUCTION

On November 12, 2009, the Pennsylvania Public Utility Commission (Commission) issued the Recommended Decision (R.D.) in the instant Application filed by PPL Electric Utilities Corporation (PPL or Company) in January 2009. The Office of Consumer Advocate (OCA) would note that the Administrative Law Judge (ALJ) engaged in a laudable effort to review and summarize an extensive evidentiary record in order to reach the proposed findings of fact and conclusions of law in this important matter. On the ultimate issue, the ALJ was correct in conditioning her recommendation that “the Commission make the necessary findings to approve this project *after all necessary permits have been obtained for the entire line.*” R.D. at 288 (emphasis added). Unfortunately, however, the ALJ overlooked some critical factual issues and misinterpreted certain provisions of applicable law in the Recommended Decision, leading to the rejection of two of the three primary recommendations proposed by the OCA. Therefore, the OCA submits these Exceptions for the Commission’s consideration.

After a full and complete analysis of the relevant information in PPL’s Application, supporting materials and voluminous documents provided in discovery, the OCA presented its case, essentially recommending three discrete conditions.

First, the OCA proposed that the Commission require PPL to conduct a “retool” study to take into account the most current relevant factors impacting projected peak demand – the factor that drives planning system violations in load flow analyses. The three major factors are: (1) the dramatic recent changes in the economy that have substantially reduced peak demands; (2) the Demand Response (DR) and Energy Efficiency (EE) resources that cleared the PJM Interconnection’s Reliability Pricing Model (RPM) Auction in May 2009; and (3) the peak

load reductions that will result from Pennsylvania's Act 129 Programs and the New Jersey Energy Master Plan.

In the Recommended Decision, the ALJ proposed that the OCA's request for a current retool study be denied, asserting that there must be a time "when the gathering of information must cease to allow for evaluation and decision." R.D. at 121-22. The Recommended Decision continues: "...if the next retool shows that this line is not necessary, then the Company will not build it." R.D. at 122. The problem with the ALJ's conclusion is that it places the Commission's determination in the hands of the Company, and allows for no further regulatory review of the basis of the decision whether to go forward. It is true that the Commission cannot gather information indefinitely, but there have been dramatic changes since this line was proposed that must be accounted for by the Commission *before* it decides whether to approve the Application.

Second, the OCA requested that, if the SR500 Project were to be approved, that PPL reroute the SR500 line around, rather than through, Saw Creek Estates (SCE), a community of 3,000 homes in the Pocono Mountains area, in the interest of public safety. The ALJ proposed that this request be denied. R.D. at 228-42. The OCA provided ample record evidence to substantiate its concerns related to the public safety aspects of building a 500kV transmission line through a residential community like SCE. If additional process is needed in order to find a route that will address these important public safety concerns, then this Commission should craft its decision in such a manner as to allow for this process to occur.

Third, the OCA proposed that, if the line is approved, the Commission do so on the express condition that construction of any segment of the SR500 Project may not commence unless and until *all* required state and federal approvals and permits have been granted. OCA M.B. at 80. In the Recommended Decision, as noted above, the ALJ correctly recommended that this condition be granted, noting that the ratepayers, not PPL, would be left paying for the line if it is abandoned before completion. R.D. at 255-67, 278. This is extremely significant because the proposed line crosses the Delaware Water Gap National Recreation Area (DEWA), which will require an Environmental Impact Statement to be prepared along with a strict federal review process. Granting PPL approval to construct the Pennsylvania portion of the line without first having the necessary federal approvals could lead to the construction of a very expensive line to nowhere.

The OCA would urge the Commission to recognize that, because of the condition just described, which is consistent with applicable state and federal law, the Commission should adopt the OCA's other recommendations. Particularly while the National Park Service federal permitting process is still ongoing, it is appropriate for this Commission to keep the record open in order to receive the benefit of an updated "retool" analysis to determine if and when the line is still needed. Consistent with the recommendations of the OCA witnesses, it is within the Commission's power to provide a process whereby the Company can perform and submit to the parties and this Commission for consideration a more current version of the load flow studies which led to the inclusion of the SR500 line in the PJM Regional Transmission Expansion Plan (RTEP). This Commission has the legal authority to provide a process that allows for a current

retool to be submitted as part of this record, and such process need not result in the loss of jurisdiction to the FERC.¹

Under federal law this Commission effectively has one year to either approve or deny PPL's Application. Alternatively, the Company can agree to a process whereby the record could be supplemented as occurred in the TrAIL case. Based on the current record, the OCA submits that this Commission must either deny the Application, in which case PPL would have no recourse to the FERC, or alternatively, PPL could agree to waive the one-year requirement and agree to hold its Application in abeyance until it provides a current retool study for the parties' and the Commission's consideration. The OCA submits that before a project of this magnitude is allowed to proceed, and especially considering that the federal park permitting process is still ongoing, allowing additional, current evidence in the form of a retool is the prudent course of action.

Accordingly, even assuming *arguendo* that the information in the current record was sufficient to lead the ALJ to determine that the proposed line is needed, the public interest demands that the Commission give further consideration to more updated information regarding the need for the line due to the dramatic changes in the economy since the line was proposed. The Commission should also consider the possible accommodation of the concerns of the Saw

¹ The Energy Policy Act of 2005 (EPAct05) granted the FERC "backstop" siting authority for interstate transmission lines in certain limited situations. Of relevance here, EPAct05 authorized the FERC to assume jurisdiction over the permit process for certain transmission line projects when a state commission had "withheld" approval for more than one year. Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 5594 (2005). The FERC initially interpreted the term "withheld" to include when a state commission denied the application. In reality, under the then-existing FERC interpretation, the state commission's only decision that would not involve possible usurpation by FERC was to approve an application. Numerous parties appealed to the Federal courts over this interpretation. On February 18, 2009, the United States Court of Appeals for the Fourth Circuit held that FERC's interpretation of the word "withheld" is incorrect. Piedmont Environmental Council v. FERC, 558 F.3d 304 (4th Cir. 2009). The Court held that if a state commission *denies* an application to build an interstate transmission line within the required one-year timeframe, the FERC does not have backstop authority to approve construction of such a line in that instance. Id. at 309-10, 312-15. The Supreme Court of the United States has been asked to review the Fourth Circuit's Decision. Edison Elec. Institute v. Piedmont Environmental Council, 2009 WL 3022142, at *1 (Appellate Petition, Motion and Filing) (U.S. Sept. 17, 2009) Petition for a Writ of Certiorari. That Petition is still pending.

Creek community, if the line is finally determined to be needed. There is ample time and authority for this Commission to proceed on this most reasonable course of action.

II. EXCEPTIONS

OCA Exception No. 1: The ALJ Erred By Not Ordering PPL To Submit A Current Retool Study. (R.D. at 92-148; OCA M.B. at 22-71; OCA R.B. at 15-31).

A. Introduction.

In the absence of the most current available information, PPL has failed to show that it is prudent and reasonable to spend \$1.2 billion, at the expense of PJM ratepayers, to build the SR500 Project at this time. In recommending approval of this Project, ALJ Colwell did not give adequate consideration to the changes in electricity demand resulting from the extraordinary economic times currently being experienced in this country, or to new developments regarding peak load reductions that are required during the relevant study period. The OCA presented substantial evidence to show that a current retool study, which includes the results of demand response committed in the 2009 RPM Auction and reasonable levels of peak load reductions from Pennsylvania Act 129 and the New Jersey Energy Master Plan, could show a significant change in the potential reliability violations that are driving the need for this Project. The OCA submits that it is not reasonable to rely on the Company's March 2009 Retool Study alone, as that Study's data is no more recent than the fourth quarter of 2008, when PPL and PJM possess current data that could be readily submitted in this proceeding. Contrary to the ALJ's assertions, this Commission has the authority to order PPL to produce an updated study as a part of this proceeding.

Moreover, as noted above, because the ALJ correctly determined that no construction can begin on any part of the SR500 unless and until all state and federal permits are

granted, additional time is available during which this type of factual data can be provided for the parties' and the Commission's review.

B. A Current Retool Study Is Needed In Order To Accurately Determine Whether There Is A Need For The SR500 Project.

1. The Decision To Spend \$1.2 Billion At The Expense Of PJM Ratepayers Must Be Analyzed Using Current Data.

PPL's testimony in this case provided that the SR500 Project was needed in order to resolve 23 potential reliability violations. PPL St. 8; Exhibit PFM-1. These 23 potential reliability violations were projected to occur based on data and studies that were obtained and conducted long before the economic downturn that began in the Fall of 2008. OCA St. 2 at 4; OCA M.B. at 64-65. The March 2009 Retool Study conducted by PJM reduced the number of potential reliability violations in the Company's originally filed case from twenty-three to thirteen.² OCA M.B. at 56. The March 2009 Retool Study's most current data is from the fourth quarter of 2008. OCA St. 2 at 8-9; OCA M.B. at 39. The OCA provided substantial evidence of record to show that the current economic climate is extraordinary, and that accurate assessments of demand for electricity can only be made with current data – data which PPL has failed to provide. OCA M.B. at 22-40; OCA R.B. at 24-31. In the Recommended Decision, ALJ Colwell accepts this 2008 data as being sufficient to justify this \$1.2 billion project. R.D. at 121-122. ALJ Colwell goes on to conclude that if more current information is later made available as part of PJM's next RTEP process, and the SR500 Project is found to be not needed, "then the Company will not build it." R.D. at 122. The OCA submits that it is unreasonable to base a decision of this magnitude on stale data in light of the extraordinary economic climate this nation is currently experiencing – and equally unreasonable to effectively cede to the Company the

² Neither of these numbers include the 10 Category C potential reliability violations as shown in PPL Exhibit PFM-3. In these Exceptions, the OCA will address these Category C potential reliability violations separately.

Commission's regulatory authority to decide whether this line should be built. The OCA files this Exception in support of its position.

The 23 potential reliability violations found in PPL Exhibit PFM-1, which are at the heart of the Company's case as to need for the SR500 Project, were based on peak load forecasts prepared before the economic downturn. OCA St. 1 at 10; OCA M.B. at 29. The March 2009 Retool Study, based on data up to and including the fourth quarter of 2008, provided a significantly different picture, as the original 23 potential reliability violations had shrunk to 13. OCA M.B. at 33-35. OCA witness Lanzalotta discussed the importance of this reduction, as follows:

Of the 23 original violations, only 13 remain. Of these 13 remaining violations, three occur after 2019.

It is relevant to note that the retool study eliminates the 500 kV overload, that was one of the original 23 reliability violations, moving it out past the 15 year planning horizon used by PJM.

This leaves ten 230 kV system overloads, driven by single contingencies, in or before the year 2019, as the prime justification for the S/R Line.

OCA St. 1 at 12; OCA M.B. at 34-35. As Mr. Lanzalotta explained:

These [remaining 10] 230 kV system overloads can be addressed by system reinforcement using a new 500 kV line and transformers to tie to the 230 kV system, as proposed by the Company in this proceeding, or they can be addressed by providing reinforcement at the 230 kV voltage level. Such reinforcement techniques typically include reconductoring existing circuits with higher-capacity conductors or adding additional circuits or transformers. This type of response to a single 230 kV system overload, or even to several 230 kV system overloads, is typically less expensive and less intrusive than a new 500 kV line, and associated substations, would be. However, when one new 500 kV line, with associated substations, can address 10 (or more) 230 kV system overloads, then costs and impacts are typically more in favor of system reinforcement at the 500 kV voltage level.

However, the 2009 Retool Study on which these ten remaining violations are based was performed on or before March 2009. As pointed out in the Direct Testimony of Robert Fagan, there are factors that affect projected load levels, and other elements relevant to the need for transmission system reinforcement, that have changed substantially since this Retool Study was prepared. The Retool Study reduced the overall number of reliability violations supporting the need for the S/R line from 23 to 13, and it eliminated the only 500 kV violation, leaving only 230 kV violations. A new, completely up-to-date Retool Study might reduce this number of 230 kV violations even further. As I discuss above, the fewer 230 kV violations that need to be addressed, the more likely it becomes that a 230 kV solution to the remaining overloads will become feasible.

OCA St. 1 at 13; OCA M.B. at 36-37.

Considering the reduction in potential reliability violations, from 23 to 13, the OCA concluded that more current data was needed as it appeared that the economic downturn was far from over as of the end of 2008. OCA witness Fagan's testimony expressed this recommendation. Mr. Fagan testified that:

It is important to use a current forecast because the general downturn in the US economy has been extremely severe since the last quarter of 2008, when PJM's 2009 load forecast was developed.

OCA St. 2 at 8; OCA M.B. at 38-39. This continued downturn in the economy since the last quarter of 2008 is not reflected anywhere in PPL's need case for this Project.

As to the timeliness of data in this case, the Recommended Decision provided that "If the Commission required up-to-the-minute information, it could never act, since the Retool will always be several months behind current conditions." R.D. at 122. The ALJ concluded that there is a time when the gathering of information must end in order to permit a decision. R.D. at 122. The OCA agrees that there comes a time when one must either "fish or cut bait," but the data being relied on here is not just several months behind – it has become stale due to the

extraordinary circumstances that have occurred with the economic downturn nationwide as well as the dramatic changes in the results of PJM's 2009 RPM Auction and the passage of Act 129 of 2008 by the Pennsylvania General Assembly which mandates reductions in peak demand for electricity. OCA St. 2-S at 2-4. This Commission requires and deserves a current, inclusive retool study in order to fairly and accurately decide a matter of this magnitude. As OCA witness Fagan showed, a current retool study could show that these potential reliability violations may be pushed out several years into the future. OCA St. 2 at 6-8; OCA M.B. at 35-36. If PPL has not proven that its Project is needed to be in service within the Company's proposed timeframe, then the Commission must reject the Application or, in the alternative, offer PPL the option to supplement the record with a current retool.

2. Reasonable Levels Of Peak Load Reductions Resulting From Pennsylvania Act 129 And The New Jersey Energy Master Plan Should Be Included In The Retool.

Peak load reductions resulting from compliance with Pennsylvania Act 129 and the implementation of the New Jersey Energy Master Plan could have substantial impacts on the need for the SR500 Project. The OCA presented substantial evidence to show the direct relationships between these peak load reduction programs and the need for the SR500 Project. OCA M.B. at 44-52; OCA R.B. at 28-30. The Recommended Decision concludes that these peak load reduction plans are not a substitute for appropriate transmission planning, and thus it is reasonable to disregard these planned peak load reductions. R.D. at 126-128. The OCA respectfully disagrees.³

³ The OCA also disagrees with the statement in the R.D. concerning the "OCA ...attempt to paint PPL Electric as being disingenuous..." R.D. at 127. The OCA was not attempting to paint PPL as being disingenuous. In its Main and Reply Briefs, and in these Exceptions, the OCA is arguing that all major Pennsylvania Electric Distribution Companies (EDCs) have a statutory duty to meet the Act 129 mandates and yet, for purposes of transmission planning, PPL implies that these peak load reduction programs do not even exist. There is a substantial difference between showing that PPL's arguments are directly at odds with the Act 129 mandates for EDCs and a showing that PPL is being disingenuous.

The claimed need for the SR500 Project is based on projected peak loads, and not on the average, everyday loads placed on the transmission system. OCA St. 2 at 5; OCA M.B. at 29. Pennsylvania Act 129 and the New Jersey Energy Master Plan (NJ EMP) are both geared to substantially reduce peak loads on the transmission system. Moreover, both Act 129 and the NJ EMP are particularly relevant to reducing peak loads in the area of concern. The Company's Main Brief provided the following footnote:

⁴⁰ EMAAC is comprised of Rockland Electric Company, Public Service Electric and Gas Company, Jersey Central Power and Light Company, Atlantic City Electric Company, Delmarva Power and Light Company and PECO Energy Company. NERC Reliability Standards violations identified in the PJM RTEP for EMAAC are the primary drivers for the need for the S-R Transmission Line.

PPL M.B. at 55 (internal citations omitted). As the Company provided, EMAAC is the area of concern.

As OCA witness Fagan testified, all of the New Jersey utilities are in EMAAC and would be affected by the NJ EMP peak load reduction goals. Tr. at 1796-97; OCA M.B. at 48-52. PECO is in EMAAC and its mandated Act 129 peak load reductions of 355MW are particularly relevant here. Peak load in the EMAAC area occurs in the summer months. Tr. at 1796-97; OCA M.B. at 46-48. PECO is a summer-peaking utility. Tr. at 1796-97; OCA M.B. at 46-48. PECO's compliance with the Act 129 mandates would significantly affect peak load in EMAAC. OCA St. 2 at 18-19; OCA M.B. at 46-48.

In Mr. Fagan's sensitivity analysis, he included 100% of PECO's mandated Act 129 peak load reductions and 50% of the NJ EMP peak load reduction goals. OCA St. 2 at 25-26; OCA M.B. at 54-55. The OCA submits that this type of a sensitivity analysis is directly relevant to the need for the SR500 Project and could have a substantial impact on the need for this Project, as OCA Table 7 shows. OCA St. 2 at 25-27; OCA M.B. at 55. OCA Table 7 shows

that the effects of a current, inclusive retool study, as OCA witness Fagan recommends, could push out the 2012 potential reliability violations for 8 years, or until 2020. OCA St. 2 at 25-27; OCA M.B. at 55.

PPL and PJM, however, believe that it is reasonable to completely disregard both of these important state initiatives, and the Recommended Decision agrees with that conclusion. R.D. at 126-128. The OCA submits that such a conclusion is not reasonable. A current retool, with some sensitivity analysis as recommended by Mr. Fagan, should be conducted to allow the Commission to have complete information when determining the need for this Project.

3. The Results Of The May 2009 RPM Auction Should Be Included In The Retool.

In PJM's May 2009 RPM Auction, significant amounts of Demand Response and Energy Efficiency resources cleared the auction. OCA St. 2 at 11; OCA M.B. at 40. These Demand Response and Energy Efficiency resources will be available as a capacity resource in the area of concern here, EMAAC. OCA M.B. at 40-41. PJM agrees that these types of capacity resources can be a substitute for more generation or transmission infrastructure. Tr. at 1322-1323; OCA M.B. at 42-43. On this evidentiary record, however, neither PPL nor PJM have modeled how these increased capacity resources may impact the need for the SR500 Project. Tr. at 1272-73; OCA M.B. at 42. The Company maintained that the capacity resources from the RPM Auction were of no use in helping to resolve the ten Category C violations, and thus modeling these resources was unnecessary. PPL R.B. at 38. PPL argued that these 10 Category C violations support the need for the SR500 Project. The Recommended Decision adopted this reasoning. R.D. at 130. This reliance on the Category C violations to support this 500kV project, however, is misplaced.

a. The Potential Category C Double Circuit Tower Contingencies Do Not Provide A Reasonable Basis For Approving The SR500 Project.

As part of its revised need case in this matter, the Company provided a list of ten Category C double circuit tower contingencies in its rebuttal testimony. PPL St. 8-R; PPL Exhibit PFM-3. OCA witness Peter Lanzalotta testified to how these double circuit tower contingencies, Category C5, are treated differently by NERC than the Category A and B violations that were listed in Exhibit PFM-2 as support for the SR500 Project. Mr. Lanzalotta testified:

Double circuit tower contingencies are treated differently from single contingencies because they are typically much less likely events, compared to single contingencies. Also, it is expensive to design the electric system to have enough redundancy to withstand contingencies that affect two or more system elements with no loss of load.

OCA St. 1-S at 2; OCA M.B. at 66-67. The Company has argued that Demand Response resources are only used during peak load situations. PPL R.B. at 38. The Category C contingencies are tested during normal periods of load, and thus, argues the Company, the Demand Response resources would not be turned on and could have no impact on these 10 category C potential reliability violations. R.D. at 121. ALJ Colwell accepted this reasoning. Id. The OCA, however, provided unrebutted evidence to show that the existence of the Category C violations listed in Exhibit PFM-3 should be seriously questioned as supporting the construction of the SR500 Project. Without the Category C violations, the results of the May 2009 RPM Auction that included significant amounts of Demand Response resources are extremely relevant to the need for the SR500 Project and should be included in any retool that is performed. In the Recommended Decision, there is no discussion of the OCA's evidence as to

why these claimed Category C violations should be given little weight in the need analysis for the SR500 Project. See OCA R.B. at 20-24.

NERC classifies a double circuit tower contingency as a Category C5 event, the loss of both circuits on a dual-circuit transmission line, such as a tower collapse that takes out both transmission lines on that tower. See also OCA Exhibit PJJ-4 attached to OCA St. 1-S. If such an event occurs, any load that is solely connected to the transmission system by the lines that failed will be lost. This loss of load is a consequence of the double circuit tower event, and thus it is referred to as consequential load loss. OCA witness Lanzalotta testified that these double circuit tower contingencies are much less likely to occur than other single contingencies, like the types found in PPL Exhibit PFM-1. PPL, however, did not consider this difference in its testing and analysis for the Category C contingencies.

As Mr. Lanzalotta explained, it would be very expensive to design the entire transmission system in such a fashion that even the most highly improbable event could not result in the loss of any load. OCA St. 1-S at 2; OCA M.B. at 66-67. PJM agrees. Tr. at 1311; OCA R.B. at 23. PJM witness Herling testified that a consequential load loss of up to 300MW was considered acceptable in PJM for planning purposes. Tr. at 1311; OCA Cross Exhibit 16; OCA R.B. at 23. The OCA performed extensive discovery relative to the Category C violations listed in Exhibit PFM-3, and as part of those findings Mr. Lanzalotta testified as follows in his surrebuttal:

In response to discovery on this matter, the Company states that **no load loss was considered acceptable for double circuit tower contingencies** [Category C violations] when it developed the list of apparent violations presented in Exhibit PFM-3. So, in effect, the Company is using a more stringent standard than is required by NERC standards to increase the number of apparent potential reliability violations in its attempt to continue to demonstrate the need for the S/R Line.

OCA St. 1-S at 4; OCA R.B. at 23. As the OCA detailed in its Reply Brief, the Category C violations listed in Exhibit PFM-3 were established using the wrong standard. OCA R.B. at 20-24. The Company allowed for no loss of load for these double circuit tower contingencies, and yet, PJM allows up to 300MW load loss as an acceptable figure. Id. It is not known if any of the 10 Category C double circuit tower contingencies would remain if PPL had used the correct standard.

The OCA's evidence on this issue is un rebutted. These critically important distinctions as to the existence of any Category C violations were not addressed in the Recommended Decision. As discussed above, the capacity resources that became available through the May 2009 RPM Auction are vitally important to the analysis of need for the SR500 Project if the cloud of the Category C violations is appropriately dispersed. The OCA submits that this critical portion of the evidentiary record needs to be reviewed in detail.

C. Conclusion.

The Commission cannot approve PPL's Application on the current evidentiary record. Current load data, with sensitivity analysis that models Pennsylvania's Act 129, NJ EMP peak load reduction goals and includes the May 2009 RPM Auction results is needed before this Commission should authorize PPL to spend over a billion dollars at the expense of the ratepayers. The ALJ correctly found that no construction should commence on this project before the Company obtains all required approvals, at least in part because it is the ratepayers who bear the risk of a project that is started but never put in service. R.D. at 278. Similarly, it is the ratepayers who bear the risk if the project is approved but turns out not to be needed. The Commission should deny this Application or offer the Company the chance to supplement the evidentiary record with a current, inclusive retool study while it is engaged in obtaining the

required permits and approvals. Contrary to what the Recommended Decision described as “moot,” this course of action is within the Commission’s authority. R.D. at 148

ALJ Colwell apparently misunderstood what the OCA provided in its Main Brief regarding the FERC “backstop” authority. Under the current state of the law, if the Commission denies the Company’s Application within the 12-month timeframe, the Company has no federal recourse. See infra fn 1; OCA M.B. at 70-71. The Commission, however, can allow PPL the option to voluntarily extend these proceedings in order to supplement the record with a current, inclusive retool study as the OCA witnesses have recommended. The procedure for this would be exactly the same as the Commission authorized in the TrAIL case – a voluntary stay of the proceedings to allow the retool study to be completed and reviewed by the parties. In re Application of Trans-Allegheny Interstate Line Co., Docket No. A-110172, Final Order at 11-12 (Order entered December 12, 2008)⁴ (TrAILCo Order).

OCA Exception No. 2: The ALJ Erred By Not Ordering PPL To Develop A Reroute Around The Saw Creek Estates Community. (R.D. at 218-242; OCA M.B. at 72-80; OCA R.B. at 37-38, 50-52).

A. Introduction.

State Senator Lisa Baker testified at the public input hearings held at Saw Creek Estates (SCE), in relevant part as follows:

While using an existing right-of-way is more convenient and less costly for the company, the impacts to this community are unacceptable.

...It may not be easy for PPL to ...[find] a route comparable in cost. There are many areas off limits because of environmental considerations. But I believe the company must find an alternative route as a matter of fairness to the public ...

⁴ Available at www.puc.state.pa.us//pcdocs/1028423.doc.

Tr. at 91-92. Senator Baker succinctly framed the issue – it is simply unacceptable to build a transmission superhighway directly through the midst of this tightly-packed residential community, seemingly part of the rock-strewn, mountainous terrain. Anyone who has been to SCE can quickly identify with these thoughts. As ALJ Colwell eloquently noted:

The residents cared enough to come out in great numbers to the two public input hearings, to find out how to best prepare their presentations, and to look me in the eye and tell me how they felt. Several of them broke down and cried while telling me about their concerns for the health of the residents, especially the children, who would now be exposed to the effects of a higher voltage transmission line. I heard the concerns of the retirees whose health had improved since moving to the country, and listened as they worried about the stressful effects of the construction on the nearby homeowners. They told me that they had sunk everything into their dream homes, and now they were certain that the value of the property would be reduced and in the present housing market, they could not sell.

R.D. at 239. Based on her first-hand site visit and the public testimony, ALJ Colwell concluded:

The people of Saw Creek Estates have effectively brought out the emotional, human side of the effects of this project. If I were not constrained by the law and the overall facts of this case, I would recommend that the Company go back and find a route around this community.

R.D. at 240.

ALJ Colwell, however, then went on to find that the residents of Saw Creek would face the prospects of a giant new set of transmission line towers even if she were to rule against the SR500 project. ALJ Colwell stated:

The Company has a 200 foot right-of-way which presently carries a high voltage transmission line through the Saw Creek Estates on towers which are about 80 foot high. The existing facilities were installed in 1929 and are in need of replacement. Replacement must be consistent with today's NESC standards, which will result in transmission towers of 140 foot, which is about 60 foot above the existing treeline, if the replacement is with 230 kV facilities.

An upgrade to 500 kV will result in towers of 180-190 foot in height.

R.D. at 240 (footnotes omitted). The OCA submits that ALJ Colwell has not accurately characterized the possible tower heights of a 230kV replacement transmission line through SCE, as other options besides just 140 or 180-190 foot towers exist. In addition, the law governing this matter does not place any constraints on this Commission's ability to fashion a fair and equitable remedy for the residents of SCE.

B. Less Intrusive Options Are Available For Rebuilding The Existing 230kV Transmission Line Through SCE.

The existing 230kV transmission line that bisects SCE is in need of replacement.

No party contests this issue. R.D. at 64. In the Recommended Decision, ALJ Colwell made the following statement as to the tower heights in SCE:

Therefore, the issue for Saw Creek Estates is not whether there will be higher towers, it is whether they will be 140 feet high (230 kV) or 180-190 feet high (500 kV).

R.D. at 220. This statement appears to form the foundation for ALJ Colwell's analysis and ultimate decision as to whether or not the Company should be authorized to construct the SR500 Project through SCE, but it is factually incomplete. Judge Colwell either misinterpreted or simply overlooked the OCA's arguments as to other options that are available for rebuilding the existing 230kV transmission line through SCE. OCA St. 1 at 20-22; OCA St. 1-S at 8; OCA R.B. at 50-52.

It is a fact that rebuilding the existing 230kV transmission line to current National Electric Safety Code (NESC) specifications will result in higher towers than the 80-85 foot towers currently in place. It is a fact that if the Commission authorizes PPL to construct the SR500 Project through SCE, then the new 500kV towers will be approximately 180-190 feet tall.

It is also a fact that if the Commission approves the SR500 Project, but directs PPL to reroute the 500kV line around SCE, or the Commission denies approval for the SR500 Project, then the existing 230kV line through SCE will still need to be rebuilt to current 230kV specifications under the NESC. It is not a fact, however, that a rebuild of the existing 230kV transmission line through SCE needs to include 140 foot towers. If the existing transmission line through SCE is rebuilt as a 230kV line, PPL has a range of options available that include towers much shorter than 140 feet. The ALJ's either/or analysis of this issue is incomplete without a consideration of the additional information that the OCA's expert witness provided as to possible 230kV tower heights. The relevant parts of the record on this issue, as recounted next, must be thoroughly reviewed as no discussion of these facts appear in the Recommended Decision.

OCA witness Lanzalotta discussed the issue of a less intrusive rebuild of the 230kV transmission line through SCE in his Direct testimony, as follows:

In addition, if the Company chose to rebuild this line as a single-circuit 230 kV transmission line, the height of that line could be shorter than that of the potential double-circuit 230 kV line, and thereby, less threatening to dwellings located at the edge of the ROW. Even using conventional conductors, a rebuild as a single-circuit 230 kV line will substantially increase circuit capacity. The existing 230 kV conductors are very old and have a thermal capacity of around 700 MVA. Higher capacity 230 kV conductors on the grid have capacities in the 1,200 to 1,300 MVA range, as reflected in the line capacities provided in OCA-7-4. Furthermore, use of new, composite, high-temperature, low-sag conductors ("HTLS") could be used to further increase line capacity and/or reduce tower height. The Company suggested that it might use such technology on the proposed S/R line when it asked FERC to grant it increased incentive rate of return on equity for its potential investment in the S/R line. This is an instance where such technology could be put to use.

OCA St. 1 at 21-22 (footnote omitted); OCA R.B. at 51. As Mr. Lanzalotta went on to explain in his Surrebuttal Testimony, a rebuild of the existing 230kV line through SCE need not incorporate 140 foot towers:

The existing line, which has conductors aligned horizontally, averages about 85 feet in height through Saw Creek. A new, single-circuit, 230 kV line would average 105 feet in height, but would incorporate a vertical alignment for the conductors. A vertical alignment for conductors increases tower height above what is needed for horizontal conductor alignment, since vertical spacing between conductors adds to the tower height. This tower height could be further reduced to something closer to the 85 foot height of the existing 230 kV line with the use of horizontal spacing between conductors, since all the conductors would be at the same height.

OCA St. 1-S at 8 (footnotes omitted); OCA R.B. at 52. As Mr. Lanzalotta testified, there are additional options available for a rebuild of the existing 230kV line through SCE beyond the either/or 140 foot or 180-190 foot tower dichotomy presented in the Recommended Decision. Rather, the existing 230kV line could be replaced with a new 230kV line that is quite comparable in size to the existing 85-foot-tall towers that have been successfully integrated into the Saw Creek community.⁵ The OCA submits that this important part of the evidentiary record in this matter must be carefully reviewed, as it appears that ALJ Colwell may have performed her analysis in this area without considering this aspect of the full record.

⁵ As ALJ Colwell provided in the Recommended Decision:

There are site view photographs admitted to this record which are available on the Commission's website at this docket, as well as in the Commission's electronic document system. I urge the Commission to view these photographs to see that this decision has a real effect on the citizens of the Commonwealth. This decision isn't just about a potential change in electric transmission rates. The facilities themselves affect citizens all along the proposed route, every day.

R.D. at 239-240.

C. The Commission Has The Legal Authority To Fashion A Fair And Equitable Remedy For The Residents Of SCE.

The OCA's position in this proceeding regarding SCE is that if the Commission authorizes PPL to construct the SR500 Project, the Company must find a route around SCE. OCA M.B. at 72-80; OCA R.B. at 37-38, 50-52. While the OCA is generally supportive of maximizing the use of existing rights-of-way (ROW) for transmission infrastructure projects, the ultimate determination must still be made on a case-by-case basis. In this matter, the conclusion must come down on the side of common sense and safety. If PPL is authorized to build the SR500 project, then this Commission must fashion a remedy that accommodates the needs of the Company and the Saw Creek community. Contrary to the findings of the Recommended Decision, there is no applicable legal constraint barring the Commission from acting in this manner.

In the Recommended Decision, ALJ Colwell found that the existing ROW through SCE was "adequate" for the SR500 Project to be constructed there. R.D. at 240. The fact that the NESC standards provide that a 200 foot ROW is adequate to support a 500kV transmission line does not automatically mean that any such ROW should be acceptable for any 500kV project that comes along. In this case the OCA, and other parties, provided substantial record evidence as to: (1) the tightly-packed nature of the SCE community; (2) the extremely rocky and mountainous terrain; (3) the fact that PPL recognizes that fewer people in the area of construction equals less of a risk; (4) the fact that PPL has a safety policy which disallows the use of helicopters in areas like SCE, yet PPL plans to use them during construction; and, (5) the fact that areas around SCE that may provide opportunities to reroute the SR500 Project do not involve close contact with residential housing. OCA M.B. at 72-80; OCA R.B. at 38.

Despite these valid concerns, ALJ Colwell reached the following conclusion regarding the use of ROW through SCE:

The long-term policy implications of telling an electric utility that it cannot use its existing transmission line right-of-way for an upgrade which does not require additional right-of-way to be taken because people built their houses on the edge of it, would be crippling to the future siting of utility infrastructure in Pennsylvania.

R.D. at 241. As just discussed, the Commission certainly has the ability to view the facts of each case and make its decisions accordingly. From the quoted language above, it would appear that any 200 foot ROW is acceptable for any 500kV transmission project, regardless of the surroundings. This reasoning would effectively defeat the purpose of the regulations that are designed to protect the public, as Section 57.75(e) clearly provides:

§ 57.75. Hearing and notice.

(e) At hearings held under this section, the Commission will accept evidence upon, and in its determination of the application it will consider, *inter alia*, the following matters:

...

(2) The safety of the proposed HV line.

52 Pa. Code § 57.75(e)(2). The OCA submits that nothing in the law precludes the Commission from thoroughly reviewing the important safety considerations raised by the OCA.

Creative solutions may need to be considered in order to fairly address the concerns of all stakeholders in proceedings of this type. The Office of Trial Staff (OTS) recommended that a collaborative effort may be useful here in attempting to address the need issue. R.D. at 147. ALJ Colwell dismissed this idea as being “moot” because the Company would not voluntarily agree to a waiver of the 12-month decision timeframe. R.D. at 148. The point that the ALJ overlooked here is that this Commission has the authority to deny the

Application. Alternatively, the Commission can offer PPL the opportunity to form a collaborative to study the SCE route and find some mutually agreeable resolution for this issue.⁶ Again, it is important to recognize that, even under the Recommended Decision, the Company cannot start construction anywhere until it receives all required permits and approvals. R.D. at 278. ALJ Colwell's conclusion that these creative solutions put forth by OTS and OCA are moot is incorrect and unnecessarily relinquishes the Commission's authority over this matter.

D. Conclusion.

The Recommended Decision fails to address several of the key points made by the OCA in regard to the options available for a rebuild of the 230kV line through SCE and also the possible options that are available to the Commission for resolving this matter. Accordingly, the OCA submits that these important parts of the evidentiary record must be carefully reviewed in order for the Commission to fashion an adequate remedy for the residents of SCE if the SR500 project is allowed to proceed.

OCA Exception No. 3: The ALJ's Analysis Of The Application Standards Is Not Consistent With The Siting Regulations, Which Are Intended To Embody The Holding of *Payne v. Kassab* In Order To Fulfill the Commission's Responsibilities Under the Pennsylvania Constitution. (R.D., *passim*; OCA M.B. at 15-16; OCA R.B. at 12-15).

A. Introduction.

State eminent domain law, the Public Utility Code and the relevant Commission regulations must govern the outcome of this proceeding. Independent of PJM's "directive" to PPL to build the SR500 Project, this Commission must find that PPL has satisfied all of the necessary legal requirements in Pennsylvania before a transmission project of this magnitude can

⁶ See OCA R.B. at 38.

be allowed to go forward.⁷ PJM's analysis determines the requirement to address a specified set of potential reliability violations and whether a proposed project resolves those potential reliability violations. This is different from the comprehensive *need* analysis that this Commission must undertake under Pennsylvania law. It is these two separate standards that are not clearly differentiated in the Recommended Decision, and the OCA submits have led to the erroneous analysis and conclusions therein. Specifically, the ALJ erred in: (1) the interpretation of the siting regulations such that a finding of a reliability need effectively trumps all other components of Section 57.76(a), including the consideration of alternative ways to meet that need, and (2) the lack of any discussion concerning the well-established principle that the capacity and scope of a proposed high-voltage line must be shown to be commensurate to the need. The OCA submits this Exception in support of its argument that the legal analysis contained in the Recommended Decision does not accurately reflect Pennsylvania law.

B. The Recommended Decision Incorrectly Elevated The Need Requirement Above The Other Regulatory Requirements Found In Section 57.76(a).

The ALJ correctly restated the Commission's responsibilities under the Pennsylvania Constitution, Article 1, Section 27, as interpreted by the seminal case, Payne v. Kassab, 312 A.2d 86 (Pa. Commw. 1973), aff'd, 323 A.2d 407 (Pa. Commw. 1974), and aff'd, 468 Pa. 226, 361 A.2d 263 (1976). R.D. at 85. The statutory requirement that the proposed line be "necessary for the service, accommodation, convenience or safety of the public" pursuant to Section 1511(c) of the Business Corporation Law of 1988 is also noted. 15 Pa.C.S. § 1511; R.D.

⁷ Pursuant to the terms of the FERC Open Access Transmission Tariff (OATT), Regional Transmission Expansion Planning (RTEP) Protocol—Schedule 6, any such PJM directive is subject to the transmission owner (here, PPL) meeting all requirements of state law and regulation. See www.pjm.com/planning/rtep-development/stakeholder-process/~media/documents.agreements/

at 87.⁸ The Recommended Decision also contains an accurate restatement of the required Commission findings under 52 Pa. Code § 57.76(a)(1)-(4), which mandates the four specific Commission findings prerequisite to approval of the siting of a proposed high-voltage line:

- (1) That there is a need for it.
- (2) That it will not create an unreasonable risk of danger to the health and safety of the public.
- (3) That it is in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth.
- (4) That it will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives.

R.D. at 86, citing 52 Pa. Code § 57.76(a). The OCA submits that each and every one of these elements must be met in order for a high-voltage transmission line to be sited in Pennsylvania, but Judge Colwell incorrectly gave the *need* requirement heightened importance in the Recommended Decision. The ALJ, in essence, first determined the need for a particular solution to the potential reliability violations and then viewed all other requirements through this lens. The OCA submits, however, that all elements bear equally on the final determination.

ALJ Colwell concluded that once the threshold “need” showing is made, comparisons of alternatives except as to the various routes considered are irrelevant. The ALJ stated:

It is true that the Company must prove that the solution is a 500 kV line..., but then the review turns to the route which is best, not a cost/benefit analysis of the discarded alternatives. Reliability is not a function of cost. Rather, cost is involved where the cost of the alternate *routes* are compared, after proving *need*, and the

⁸ The ALJ asserts that Chapter 11 of the Public Utility Code is inapplicable in the instant proceeding. R.D. at 82, referencing PPL R.B. at 5. The OCA concurs in this conclusion but would note, however, that PPL also invoked Chapter 11 of the Code, 66 Pa. C.S. §§ 1101, *et seq.*, as a basis for Commission jurisdiction in its Proposed Conclusions of Law. PPL M.B., App. B, ¶1.

Company did provide those estimates in the comparisons of the three alternate routes.

R.D. at 141 (emphasis in original); see also 273-74. The ALJ's rejection of any consideration of costs of the proposed project versus alternatives to meeting the identified reliability violations is contrary to the Commission's regulations and prior Commission decisions. Most recently, in the TrAILCo Order the Commission stated that "[i]n reviewing alternatives such as these, the issue of costs is an important driver." TrAILCo Order at 31.

Judge Colwell's statement that "Reliability is not a function of cost" goes too far. PJM tests for potential solutions to any identified reliability violations without directly considering cost. Tr. at 1301-02; OCA R.B. at 55-56. This Commission, however, must consider cost, including the cost of available alternatives in determining what is reasonably necessary to resolve the reliability concerns.⁹

By improperly elevating the need requirement beyond all other factors, Judge Colwell relegated the importance of alternatives, as required by Section 57.76(a)(4) to a position substantially subservient to need. ALJ Colwell concluded that PPL was correct in presenting only transmission alternatives for this Commission's consideration. Specifically, the ALJ states: "The problem is a transmission problem; therefore, it is no surprise that solutions entertained are

⁹ The ALJ here rejected the argument that, for a project of this magnitude, a cost-benefit analysis is called for. R.D. at 144-147. See OCA M.B. at 99; OCA R.B. at 54-57. The OCA submits that the costs of the proposed project, over \$1.2 billion, must be considered to be relevant in a case of this magnitude, consistent with the Commission's approach in TrAILCo. OCA R.B. at 54-57. The ALJ does acknowledge later, however, after rejecting the need for a cost-benefit analysis for a reliability project, that "it would be irresponsible for the Commission to approve a project of this magnitude without some idea of the costs and the responsibility for bearing them." R.D. at 278. This issue was also addressed by Chairman Cawley in his Statement in the TrAILCo case:

We should provide appropriate evidentiary support regarding benefits and costs, and seek to assign an appropriate share of costs to beneficiaries. In this manner, the public utility commissions in PJM can properly assess the most cost-effective backbone transmission projects among various alternatives going forward, and allocate costs fairly.

TrAILCo Order, Statement of Chairman James H. Cawley, at 1-2.

transmission solutions.” R.D. at 133. The OCA respectfully submits, however, that the ALJ has misstated both the problem and the law in this regard.

The Company’s case is founded on potential reliability concerns. The only solution that PJM could order was a transmission solution, and thus it was the solution brought forward to address these potential reliability concerns. Tr. at 1293, 1388; OCA M.B. at 59. The fact that PJM does not have the authority to order non-transmission alternatives to resolve potential reliability violations does not relieve this Commission from consideration of non-transmission alternatives or transmission alternatives other than the one proposed by PPL, as is required by Pennsylvania law. As the Commission recognized in the recent TrAILCo proceeding:

The ALJs applied the appropriate statutory and regulatory standards in their consideration of this matter. In doing so, it was entirely appropriate for the ALJs to examine federal policy and national issues revolving around the transmission grid. Similarly, we find that the ALJs properly examined issues such as the potential costs of green house emissions, DSM and energy efficiency alternatives...

As we consider Section 1501 of the Code and our Regulations at 52 Pa. Code § 57.76 (related to required findings), we agree with ECC and OCA that the relevant legal authority provided the ALJs with the necessary support for the scope and breadth of their analysis in this matter.

TrAILCo Order at 29-30. The Commission specifically approved consideration of non-transmission alternatives, stating as follows:

...[W]e do not disagree with the ALJs’ consideration of factors such as whether or not this project was to be built to facilitate the transmission of coal-fired generation eastward, or whether or not Green House Gases (GHG) or costs of emission should be considered in this direction. In fact, the Partial Settlement Agreement acknowledges that the Company will consider alternatives such as Demand Side Management, Energy Efficiency and improvements to existing facilities for that project. In

reviewing alternatives such as these, the issue of costs is an important driver.

TrAILCo Order, at 31. The OCA submits that the ALJ erred by improperly limiting the analysis as to the scope of possible alternatives. Moreover, the ALJ erred by failing to analyze and discuss whether the SR500 Project is reasonably responsive to the identified need, as Pennsylvania law requires.

The law in Pennsylvania requires that an application to build a high-voltage transmission line must show that the proposed facilities are reasonably responsive to the need that exists. OCA R.B. at 9-10; OCA M.B., App.B, West Penn I.D. at 6, quoting Re Pennsylvania Power & Light Co., 50 Pa. PUC 480 (1977); In re Application of Trans-Allegheny Interstate Line Co., Docket No. A-110172, Recommended Decision at 111 (August 21, 2008)¹⁰; TrAILCo Order (PUC noted that the ALJs applied the appropriate statutory and regulatory considerations). The fact that Pennsylvania law requires that the project must be properly sized to meet the need indicates not only that Pennsylvania lands should not be unduly burdened with unnecessary transmission infrastructure, but also that a project that is sized to meet the need will necessarily be more cost-effective.

The Commission should not accept the Recommended Decision in light of its overreliance on need alone and its limited analysis of alternatives, but should instead again make clear, as it did in the TrAILCo case, that available alternatives to be considered should not be limited to only the alternatives presented by the Applicant.

C. The Required Analysis Under *Payne v. Kassab* Is Legally Deficient.

The seminal case of *Payne v. Kassab* requires three questions to be addressed:

¹⁰ Available at www.puc.state.pa.us//pcdocs/1019983.df.

(1) Was there compliance with all applicable statutes and regulations relevant to the protection of the Commonwealth's public natural resources?

(2) Does the record demonstrate a reasonable effort to reduce the environmental incursion to a minimum?

(3) Does the environmental harm which will result from the challenged decision or action so clearly outweigh the benefits to be derived therefrom that to proceed further would be an abuse of discretion?

Payne v. Kassab, 11 Pa. Commw. 14, 29-30, 312 A.2d 86, 94 (Pa. Commw. Ct. 1973). As set forth in the OCA's Main Brief, the Commission's regulations are intended to incorporate Article 1, Section 27 of the Pennsylvania Constitution, as interpreted by Payne v. Kassab, into Commission deliberation on high-voltage line application. OCA M.B. at 15-16. Yet, the way in which the ALJ has applied the case law here undercuts the holding of this important case.

The ALJ confined the environmental considerations to comparisons among the three alternative routes from Susquehanna to Roseland only in the context of siting. R.D. at 181. It is this limitation that most directly contravenes the Payne v. Kassab standard that requires consideration of whether the resulting environmental harm will outweigh the public benefit to be derived from going forward with the project. Payne v. Kassab, 29-30, 312 A.2d 86, 94 (Pa. Commw. 1973). To reduce this important environmental regulatory criterion to comparing the environmental impacts of three routes chosen by the Company would be to virtually eliminate this aspect of the Payne v. Kassab holding.

D. Conclusion.

As set forth in the OCA's Main Brief, the transmission line siting regulations follow from Article 1 Section 27 of the Pennsylvania Constitution as interpreted by the Commonwealth Court in Payne v. Kassab, 114 Pa. Commw. 14 (Pa. Commw. 1973). OCA M.B.

at 15-16. The siting regulations in Pennsylvania demand that all aspects of the regulations including *need* and *available alternatives* are equally analyzed and weighed in the evaluation. In addition, the Commission's consideration of environmental impacts is broad, not limited to the effects on rights-of-way. The Recommended Decision contains inaccuracies on these important legal issues that must be reviewed and corrected by the Commission.

OCA Exception No. 4: Ordering Paragraph No. 7 Must Be Clarified. (R.D. at 255-267; OCA M.B. at 80-96; OCA R. B. at 43-50).

Ordering Paragraph No. 7 reads as follow:

7. That the request of PPL Electric Utilities Corporation to replace the 230 kV line from Wallenpaupack to Bushkill in kind is granted but construction shall not commence until PPL Electric Utilities Corporation has obtained or been denied all approvals necessary for construction of the Susquehanna-Roseland 500 kV Transmission Line.

R.D. at 297 (emphasis added). The phrase "or been denied" in Ordering Paragraph 7 introduces uncertainty into when the Recommended Decision would permit PPL to replace the 230 kV Wallenpaupack to Bushkill line. While PPL has indicated that it will replace this portion of its 230 kV transmission system regardless of the outcome of its application to construct the SR500 Project, the record shows that PPL's planned rehabilitation of the existing 230 kV line would still require a federal permitting process similar to that required for the proposed 500 kV line.

Indeed, PPL acknowledges that the existing Wallenpaupack to Bushkill 230 kV line traverses the DEWA.¹¹ Under a literal reading of Ordering Paragraph 7, the Recommended Decision would permit construction within the DEWA, absent required permits, even if permission to build the SR500 line were ultimately denied. The Commission should clarify that

¹¹ See Letter from PPL counsel to ALJ Colwell of October 15, 2009, acknowledging that the statement in PPL Reply Brief at 52-53 that the Wallenpaupack-to-Bushkill segment does not traverse the DEWA was in error.

obtaining all required permits is a precondition to any construction that may occur within the DEWA regardless of which project PPL plans to pursue in that area.

To make the required clarification, the OCA submits that the following Ordering Paragraph should be adopted by the Commission in lieu of Ordering Paragraph No. 7 in the Recommended Decision:

7. Construction of the Susquehanna-Roseland 500 kV Transmission Line Project and replacement of the 230 kV line from Wallenpaupack to Bushkill shall not commence until PPL Electric Utilities Corporation has obtained all necessary state and federal approvals.

The OCA submits that modification of the Ordering Paragraph in this way would make it consistent with the ALJ's conclusion that:

To avoid the appearance that this Commission is attempting to influence the permitting process of the federal government, PPL Electric should not be given permission to begin construction on the Wallenpaupack-Bushkill line until all permits are in place.

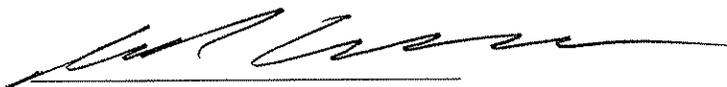
R.D. at 267.

III. CONCLUSION

For the reasons set forth above, and for the reasons set forth in the OCA's Main Brief and Reply Brief, the OCA respectfully submits that the ALJ erred in finding that PPL's Application to construct the SR500 Project should be granted at this time and in finding that PPL should be authorized to construct the SR500 Project through Saw Creek Estates. The OCA requests that the Commission reject the ALJ's Recommended Decision on these issues. The OCA respectfully requests that the Commission: (1) either deny the Application at this time or provide PPL the opportunity to supplement the record with a current, inclusive retool study as

the OCA has outlined herein; and (2) order PPL to reroute the SR500 Project around Saw Creek Estates if at any time the Commission authorizes the Project to proceed.

Respectfully Submitted,



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Dated: December 3, 2009

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CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing documents, the Exceptions of the Office of Consumer Advocate to the Recommended Decision issued on November 12, 2009 by the Honorable Susan D. Colwell, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 3rd day of December 2009.

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