



17 North Second Street  
12th Floor  
Harrisburg, PA 17101-1601  
717-731-1970 Main  
717-731-1985 Fax  
www.postschell.com

---

John H. Isom

jisom@postschell.com  
717-612-6032 Direct  
717-731-1985 Fax  
File #: 2507/140068

December 3, 2009

James J. McNulty  
Secretary  
PA Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
PO Box 3265  
Harrisburg, PA 17105-3265

**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**

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Dear Secretary McNulty:

Enclosed for filing please find the original Exceptions of PPL Electric Utilities Corporation to the Recommended Decision of Administrative Law Judge Susan D. Colwell in the above-referenced proceeding.

As indicated on the certificate of service, copies are being provided to the parties in the manner indicated.

Respectfully Submitted,

John H. Isom

JHI/jl

Enclosures

cc: Honorable Susan D. Colwell  
Cheryl Walker Davis  
Certificate of Service

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

### VIA E-MAIL & FIRST CLASS MAIL

Dianne E. Dusman, Esquire  
Darryl Lawrence, Esquire  
Shaun A. Sparks, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1923

Charles Daniel Shields, Esquire  
Office of Trial Staff  
PO Box 3265  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
Harrisburg, PA 17105-3265

Adeolu Bakare  
Office of Trial Staff  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
PO Box 3265  
Harrisburg, PA 17105-3265

Paul M. Schmidt, Esquire  
Zarwin Baum DeVito Kaplan Schaer &  
Toddy P.C.  
1515 Market Street  
12<sup>th</sup> Floor  
Philadelphia, PA 19102-1981

Edmund J. Berger, Esquire  
Berger Law Firm, P.C.  
2104 Market Street  
Camp Hill, PA 17011

Shelby A. Linton-Keddie, Esquire  
McNees Wallace & Nurick, LLC  
P.O. Box 1166  
100 Pine Street  
Harrisburg, PA 17108-1166

Kent D. Murphy, Esquire  
Senior Counsel  
UGI Corporation  
460 North Gulph Road  
King of Prussia, PA 19406

Joseph Dominguez, Esquire  
Exelon Generation  
300 Exelon Way, Suite 340  
Kennett Square, PA 19348

Michael F. Faherty, Esquire  
Lavery Faherty Young & Patterson, P.C.  
225 Market Street, Suite 304  
P.O. Box 1245  
Harrisburg, PA 17108-1245

Willard R. Burns, Esquire  
Burns Law Firm, LLC  
390 Oak Spring Road  
Marianna, PA 15345

Peter Lanzalotta  
Lanzalotta & Associates LLC  
67 Royal Pointe Drive  
Moss Creek Plantation  
Hilton Head, SC 29926

Susan Simms Marsh, Esquire  
800 West Hershey Park Drive  
Hershey, PA 17033

Robert Fagan  
Synapse Energy Economics, Inc.  
22 Pearl Street  
Cambridge, MA 02139

VIA FIRST CLASS MAIL

Cheryl L. Hamilton, MD  
276 Saw Creek Estates  
Bushkill, PA 18324

Etianna M. Hyman  
576 Saw Creek Estates  
Bushkill, PA 18324

Joseph and Maria Doe  
2117 Fifth Street  
East Meadow, NY 11554  
(For 3134 Windgate Court  
Sawcreek Estates  
Bushkill, PA 18324)

Alix M. Mariette  
63 Wickes Road  
Bushkill, PA 18324

Beverly & Arthur Karten  
155 At The Falls  
Bushkill, PA 18324

Angelica Rovira  
305 Woodville Court  
Lot 305, Section 21  
Saw Creek Estates  
Bushkill, PA 18324

Annette & Ralph Seeley  
52 Saw Creek Estates  
Bushkill, PA 18324

Timothy and Debra Kocher  
1184 Ridge Road  
Bath, PA 18014

Sheryl A. Rosen  
668 Saw Creek Estates  
Bushkill, PA 18324

David Murphy and Marguerite T. Kranick  
279 Faller Road  
Lake Ariel, PA 18436

D&L Realty Company  
400 Mill Street  
Dunmore, PA 18512

Arlean K. Lilly  
1260 Smith Gap Road  
Bath, PA 18014-8738

Patrick J. Lavelle  
1000 S. State Street  
Clarks Summit, PA 18411

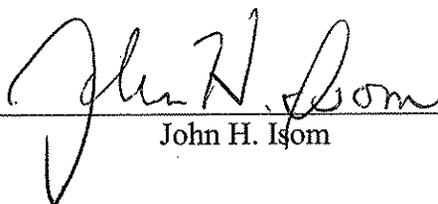
Diane and Larry Berger  
205 Princeton Place  
Williamstown, NJ 08094

Donna Davis, Esquire  
PO Box 423  
Dunmore, PA 18512

Rudolph Saporito and Maria Saporito  
PO Box 434  
Lake Ariel, PA 18436-0434

HaRa Corporation  
c/o F. Andrew Wolf, Corporate Counsel  
Bushkill Group  
Route 209  
PO Box 447  
Bushkill, PA 18324

Date: December 3, 2009

  
John H. Isom

**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 : Docket Nos. A-2009-2082652;  
Siting and Construction of the Pennsylvania : A-2009-2082832; A-2009-2088297;  
Portion of The Proposed Susquehanna : A-2009-2088337; A-2009-2088327  
Roseland 500 kV Transmission Line in : A-2009-2088340; A-2009-2088359;  
Portions of Lackawanna, Luzerne, Monroe, : A-2009-2088312; A-2009-2088360  
Pike and Wayne Counties, Pennsylvania, *et al.* :

**EXCEPTIONS OF PPL ELECTRIC UTILITIES CORPORATION  
TO THE RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE SUSAN D. COLWELL**

Paul E. Russell (ID # 21643)  
Jesse A. Dillon (ID # 47580)  
PPL Services Corporation  
Office of General Counsel  
Two North Ninth Street  
Allentown, PA 18106  
Phone: 610-774-4254  
Fax: 610-774-6726  
E-mail: [perussell@pplweb.com](mailto:perussell@pplweb.com)  
E-mail: [jadillon@pplweb.com](mailto:jadillon@pplweb.com)

Curtis S. Renner  
Watson & Renner  
1400 16<sup>th</sup> Street, NW  
Suite 350  
Washington, DC 20036  
Phone: 202-737-6302  
E-mail: [crenner@w-r.com](mailto:crenner@w-r.com)

Of Counsel:

Post & Schell, P.C.

Date: December 3, 2009

David B. MacGregor (ID # 28804)  
Post & Schell, P.C.  
Four Penn Center  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2808  
Phone: 215-587-1197  
Fax: 215-320-4879  
E-mail: [dmacgregor@postschell.com](mailto:dmacgregor@postschell.com)

Michael W. Gang (ID # 25670)  
John H. Isom (ID # 16569)  
Andrew S. Tubbs (ID #80310)  
Christopher T. Wright (ID # 203412)  
Post & Schell, P.C.  
17 North Second Street  
12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601  
Phone: 717-731-1970  
Fax: 717-731-1985  
E-mail: [mgang@postschell.com](mailto:mgang@postschell.com)  
E-mail: [jisom@postschell.com](mailto:jisom@postschell.com)  
E-mail: [atubbs@postschell.com](mailto:atubbs@postschell.com)  
E-mail: [cwright@postschell.com](mailto:cwright@postschell.com)

Attorneys for PPL Electric Utilities Corporation

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## **I. INTRODUCTION**

In these consolidated proceedings, PPL Electric Utilities Corporation (“PPL Electric”) seeks the approvals and findings necessary for: (1) 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 (“S-R Transmission Line”); (2) the construction of a control equipment building at the proposed Blakely Borough substation site; and (3) the exercise of the power of eminent domain in order to obtain rights-of-way and easements over several tracts of land.

The Pennsylvania portion of the S-R Transmission Line will include approximately 101 miles of 500 kV double-circuit transmission line between PPL Electric’s Susquehanna Substation and the Delaware River. The Pennsylvania portion of the S-R Transmission Line will be located, for the most part, in existing rights-of-way and along the paths of existing transmission lines. The cost of the Pennsylvania portion of the S-R Transmission Line is estimated to be \$510 million. PPL Electric Ex. 1, Summary, p. 1.

In New Jersey, Public Service Electric and Gas Company (“PSE&G”) will construct the portion of the S-R Transmission Line from the Delaware River to PSE&G’s substation in Roseland Borough, Essex County, New Jersey. The New Jersey portion of the S-R Transmission Line will be approximately 45 miles in length and will cost approximately \$700 million. The total length of the S-R Transmission Line will be approximately 146 miles; the total cost of the entire line is estimated to be approximately \$1.2 billion. PPL Electric Ex. 1, Summary, p. 1.

The principal purpose of the S-R Transmission Line is to enable electric distribution companies (“EDCs”) to provide long term adequate and reliable service to customers in the area served by the PJM Interconnection, LLC (“PJM”), including the approximately 1.4 million

customers served by PPL Electric. The S-R Transmission Line will resolve numerous violations of mandatory reliability standards established by the North American Electric Reliability Corporation (“NERC”). PPL Electric Ex. 1.A, pp. 1-2.

The project will provide several additional benefits to customers, including the replacement of antiquated facilities, the improvement of voltage levels, and the elimination of stability limits on certain generation output. In addition, the S-R Transmission Line will provide economic benefits. It, together with other transmission projects, is expected to reduce congestion costs by approximately \$150 million annually in the PPL Electric transmission zone alone. PPL Electric Ex. 1.A, p. 13.

PJM, through its regional transmission expansion plan (“RTEP”), has approved this project and directed PPL Electric and PSE&G to construct the S-R Transmission Line with a required in-service date of June 1, 2012, which is when the NERC reliability violations are projected to begin to occur. PPL Electric Ex. 1.A, pp. 1-2.

PPL Electric selected the proposed route for the Pennsylvania portion of the S-R Transmission Line after extensive public input and a detailed siting analysis, which included a comprehensive environmental inventory, identification and analysis of alternative routes and selection of the proposed route. In selecting the proposed route, PPL Electric considered, among other things, functional requirements, environmental impacts, social impacts, public input, costs, and many other factors identified in the Pennsylvania Public Utility Commission’s (“Commission”) siting regulations at 52 Pa. Code §§ 57.71 — 57.77. PPL Electric Ex. 1.C.

Following extensive discovery, exchanges of written testimony and substantial public input and technical hearings, Administrative Law Judge Susan D. Colwell (“ALJ”) issued her Recommended Decision on November 13, 2009. There, the ALJ recommended that the

Commission approve the siting and construction of the S-R Transmission Line and make the findings necessary for the construction of the control equipment building and for PPL Electric to exercise the power of eminent domain. Generally, the ALJ agreed with PPL Electric's analysis of the need for and proposed route for the S-R Transmission Line and recommended approval of the proposed project.

PPL Electric's specific exceptions to the Recommended Decision are set forth in detail below. As a general matter, however, it should be recognized that high voltage transmission line siting proceedings are highly complex and inevitably involve many detailed factual and legal issues. This is particularly true for the S-R Transmission Line, given the size and length of the project and its critical role in providing reliable service both in Pennsylvania and on a regional basis. Fortunately, the ALJ has provided the Commission with an outstanding Recommended Decision, which provides a well-organized and exhaustive analysis of the many complex issues presented in this case. Regarding the ultimate issues in this case, *i.e.*, whether the S-R Transmission Line is needed and whether PPL Electric selected a reasonable line route, the Recommended Decision correctly concludes that the project should be approved and provides a well-reasoned and fully supported basis for this decision. PPL Electric fully supports the Recommended Decision on these issues and believes that it should be approved by the Commission.

PPL Electric's exceptions primarily relate to the Recommended Decision's findings regarding the timing of the construction of the S-R Transmission Line. In addition to approving the project, the ALJ made certain findings regarding the timing of construction that if adopted, would unduly restrict PPL Electric's ability to construct the S-R Transmission Line on a timely basis and could prevent the line from being constructed at all. These findings are inconsistent

with the Recommended Decision's overall approval of the project. Moreover, they are not supported by record evidence, were not proposed by any party, are unprecedented and should be rejected.

The primary role of the Commission in the transmission line siting process is to review a proposed project and approve it or reject it. Once a line has been approved by the Commission, it is up to the electric utility to obtain any other necessary approvals and permits and to design and construct the line. Issues regarding what permits are required, when they should be applied for, when to start construction and how to time and stage construction are left to the utility's discretion and are generally not reviewed by the Commission. For this reason, standard Commission practice, as reflected in its siting regulations and in its transmission line siting orders, is to approve the project and then leave it to the utility to construct the project. The only condition typically imposed, and which was imposed by the Recommended Decision, requires the utility to comply with any restrictions on any permits required for the project.

The issue of timing was complicated in this proceeding by PPL Electric's request to start construction immediately on a specific 28-mile segment of the proposed line, *i.e.*, the Wallenpaupack-Bushkill Segment. As explained in more detail below, this portion of the project involves replacing an existing 80-year old line that is in a badly deteriorated condition. PPL Electric must replace the Wallenpaupack-Bushkill Segment as soon as possible whether or not the S-R Transmission Line is constructed. In addition, early construction of this segment will provide PPL Electric with the best possible opportunity to complete the S-R Transmission Line on time, *i.e.*, by June 1, 2012.

The Recommended Decision rejected PPL Electric's proposal, finding that there was no immediate emergency and that early construction of the Wallenpaupack-Bushkill Segment could

unduly influence the National Park Service (“NPS”) permitting process. PPL Electric disagrees with these findings. As explained in detail below, although there may not be an immediate “emergency,” it is uncontested that this line segment is in very poor condition and could fail at any time. Prompt rebuilding of this line segment is clearly in the public interest. Moreover, it is clear that the construction of this line segment, which must be replaced whether or not the S-R Transmission Line is ever built, will have no effect on the NPS’s issuance of a permit for the S-R Transmission Line.

PPL Electric recognizes, however, that a portion of the Wallenpaupack-Bushkill Segment goes through Saw Creek Estates, where there is substantial opposition to the proposed line. To address this concern, PPL Electric is willing to agree that it will not reconstruct the three-mile segment through Saw Creek Estates as part of its request to accelerate construction of the Wallenpaupack-Bushkill Segment.

In addition, the Recommended Decision also contains language which appears to say that PPL Electric cannot begin construction on any part of the S-R Transmission Line until all permits have been obtained for the entire line. Notably, this condition does not appear in the proposed Order, so it is not clear that the ALJ intended for this to be a mandatory condition. It is important, however, that this issue be clarified and that the Commission not adopt this requirement for several reasons. First, no party proposed such a condition and there is no record evidence to support it. Second, such a condition is completely unprecedented and improperly injects the Commission into managing utility planning and construction of transmission line projects. Third, such a condition is clearly unreasonable. Major projects, such as the S-R Transmission Line, require literally hundreds of permits and approvals. In practice, PPL Electric (and other EDCs) obtains the more ministerial street occupancy and stream crossing permits as

construction progresses. Such permits are often effective for only a limited period of time and are obtained as construction nears the specific area for which a permit is needed. PPL Electric cannot reasonably be expected to obtain, in advance, all permits for the entire project, which is expected to take at least 27 months to construct. Such a condition would make it essentially impossible for PPL Electric to construct the S-R Transmission Line and therefore should be rejected. Finally, in order to address possible concerns that PPL Electric might commence construction prematurely, PPL Electric is willing to assure the Commission that it has no intention of starting construction of portions of the Line, other than the Wallenpaupack-Bushkill Segment, until it has received this Commission's approval for the Pennsylvania portion of the Line, the New Jersey portion of the Line has been approved, and the NPS has provided reasonable assurance that the Line may be constructed through the Delaware Water Gap Recreation Area ("DEWA").

The Recommended Decision also imposes a condition that construction must commence within two years of the entry of the Commission order approving the project. Again, no party proposed such a condition, and there is therefore no record evidence to support it. Also, there is no precedent for such a condition in transmission line siting proceedings. More importantly, such a condition would potentially jeopardize the project, as PPL Electric may not be able to start construction within two years for reasons beyond its control. For example, appeals from the Commission's order in this proceeding and appeals from the New Jersey BPU proceedings may not be resolved within two years. This condition therefore should be eliminated. In the alternative, any "clock" on the condition should not begin to run until orders approving the portions of the Line in Pennsylvania, New Jersey and the DEWA have become "final," *i.e.*, are no longer subject to judicial review.

Finally, the Recommended Decision contained two findings of fact that could be construed in a manner inconsistent with the ALJ's other findings and conclusions and with her explanations of the reasons for her conclusions. These findings should be modified to be consistent with the remainder of the Recommended Decision.

## II. EXCEPTIONS

### A. **EXCEPTION NO. 1: PPL ELECTRIC SHOULD BE PERMITTED TO START CONSTRUCTION OF THE WALLENPAUPACK-BUSHKILL SEGMENT OF THE S-R TRANSMISSION LINE BEFORE THE NATIONAL PARK SERVICE ISSUES PERMITS FOR CONSTRUCTION THROUGH THE DELAWARE WATER GAP NATIONAL RECREATION AREA.**

#### 1. **PPL Electric Should Be Allowed To Commence Construction Of The Wallenpaupack-Bushkill Segment Of The Line In Order To Replace The Aged And Deteriorated Existing 230 kV Transmission Line Presently Occupying The Same Corridor.**

The ALJ has recommended that PPL Electric should not be permitted to commence construction of the portion of the S-R Transmission Line between the Wallenpaupack Hydroelectric Plant and the Bushkill Switchyard (“Wallenpaupack-Bushkill Segment”) until all permits are in place. R.D., pp. 267, 297. That condition, if adopted by the Commission, could delay construction of the Wallenpaupack-Bushkill Segment for an extended period of time – perhaps years – thereby jeopardizing service to customers served by PPL Electric and PJM.

The Wallenpaupack-Bushkill Segment is presently occupied by a 230 kV transmission line that was constructed in the 1920s – about 80 years ago. Not surprisingly, the line is in a deteriorated condition, and as explained below, needs to be replaced, regardless of whether the S-R Transmission Line ultimately is built.

Major components of the existing 230 kV transmission line between Wallenpaupack and Bushkill are at or near the end of their useful lives. These components include the conductors, splices, steel structures and their foundations. In inspections of this line in 1983, PPL Electric found that:

There were problems found with the conductor splices. Those are devices that join the conductors or the wires together. They found that those splices were deteriorating at a much faster rate than they expected and

they also determined that some of the conductor at certain locations was also deteriorating. The steel core that supports the conductor was corroding. As a temporary fix, they removed those conductor splices and replaced them with a new type of splicing device. At that time the engineering group gave an estimate that they believed the splices in the line would be able to continue operating for another 10 to 15 years. . . . We're on borrowed time. Tr. 1729-30.

A more recent extensive survey of the existing 230 kV transmission line has revealed an anomaly in the conductor. The conductor is out of tolerance and cannot handle the mechanical and electrical loadings for which it was designed. Tower steel near the ground has deteriorated to such an extent over the years that members on many structures have been replaced. Similarly, foundations have been recapped due to deterioration. PPL Electric St. 5-R, p. 10. Simply stated, delaying the replacement of the Wallenpaupack-Bushkill Segment of the S-R Transmission Line will increase the risk of failure and the potential for unsafe conditions. PPL Electric St. 1-R, p. 25. As explained above, the existing line is on borrowed time; it could fail at any time.

The ALJ rejected these explanations on the basis that there is no emergency. R.D., p. 25. It is correct that there is no emergency today. The point here, however, is that an emergency could arise at any time upon a failure of the existing structures or conductors. PPL Electric proposes to replace this existing, deteriorated, 80-year-old transmission line in conjunction with the construction of the S-R Transmission Line in order to prevent an emergency from occurring.

**2. PPL Electric Must Commence Construction In The First Quarter Of 2010 In Order To Meet The In-Service Date Required By PJM.**

PPL Electric should be allowed to initiate construction of the Wallenpaupack-Bushkill Segment of the S-R Transmission Line as soon as the Commission enters a final order in this proceeding regardless of whether the NPS has issued permits to construct the S-R Transmission Line through the DEWA. Commencing construction of the Wallenpaupack-Bushkill Segment of the S-R Transmission Line as soon as practical will enhance the possibility of meeting the in-

service date for the S-R Transmission Line required by PJM. PJM requires the S-R Transmission Line to be in service by June 1, 2012, when reliability violations are projected to begin to occur. PPL Electric Ex. 1.A, p. 12; PPL Electric St. 1-R, pp.25-27.

If commencement of construction of this segment must be postponed until the NPS permitting process has been completed, there is no realistic possibility that the S-R Transmission Line will be completed in a timely manner. The evidentiary record indicates that the permitting process before the NPS will not be completed before March, 2011. PPL Electric estimates also that construction of the entire S-R Transmission Line will require approximately 27 months. PPL Electric St. 1-R, pp. 25-27. Thus, if PPL Electric is not permitted to start any construction until after the NPS permitting process is complete, the S-R Transmission Line cannot be completed until the second half of 2013, at the earliest, more than a year after the required in-service date. Any delay in the in-service date for the S-R Transmission Line beyond June, 2012 could have consequences adverse to the public because analyses performed by PJM indicate that violations of NERC reliability criteria are projected to commence as early as 2012. PPL Electric Ex. 1.A, p. 12.

In order to meet PJM's required in-service date and to minimize any waste in the event that PPL Electric is not allowed to construct the S-R Transmission Line for any reason, PPL Electric proposed that it be allowed to initiate construction of the Wallenpaupack-Bushkill Segment before permits for other portions of the S-R Transmission Line, including the portion through the DEWA, are obtained. PPL Electric St. 1-R, pp. 25-27. Starting construction of this segment will not be wasteful because the existing line has to be replaced regardless of whether the S-R Transmission Line ultimately is constructed.

**3. Commencing Construction Of The Wallenpaupack-Bushkill Segment Of The Transmission Line Will Not Cause Any Significant Adverse Impact To The Public Because That Segment Must Be Replaced Due To Its Deteriorated Condition Regardless Of The S-R Transmission Line.**

Initiation of construction of the Wallenpaupack-Bushkill Segment of the S-R Transmission Line will have no significant adverse impact on the public because the route for this segment is presently occupied by an existing 80-year-old 230 kV transmission line that, as explained above, must be replaced due to its advanced age and deteriorated condition, regardless of whether the S-R Transmission Line ultimately is constructed. PPL Electric St. 1-R, pp. 24-25. In essence, PPL Electric would rebuild the existing aged and deteriorated 230 kV transmission line to meet modern transmission line construction and safety standards and to accommodate a second circuit. The circuit replacing the existing 230 kV transmission line would be operated initially at 230 kV but would be constructed to permit operation at 500 kV to allow it to meet future load growth without additional construction. The second circuit would be the 500 kV circuit for the S-R Transmission Line. PPL Electric Ex. 1.D., p. 3.

Initiation of construction of the Wallenpaupack-Bushkill Segment of the S-R Transmission Line before the NPS approves the construction of the S-R Transmission Line through the DEWA and before the NJ BPU approves the New Jersey portion would not adversely affect the public in any substantial way because the need to replace this existing 230 kV transmission line is not dependent on the outcome of the S-R Transmission Line proceeding. The existing 230 kV line was built in the late 1920s – approximately 80 years ago. As explained above, recent inspections and tests have revealed that the line's condition has deteriorated and that the line is at the end of its useful life.

Even if the S-R 500 kV Transmission Line were not constructed and the existing 230 kV transmission line were replaced by a new 230 kV transmission line, the new structures would be

substantially taller than the existing structures that were built in the 1920s. The existing 230 kV transmission line cannot be rebuilt “as is” because modern construction standards for electric high voltage transmission lines are more stringent than they were 80 years ago when the existing line was built. Although existing transmission lines are “grandfathered” so that they do not need to conform to construction standards adopted after the lines were constructed, PPL Electric must meet new, more stringent standards when constructing new lines to replace the old lines. PPL Electric St. 5-R, pp. 10-11.

Modern design for a 230 kV transmission line calls for structures that average approximately 140 feet in height, only 45 feet shorter than the structures that will be required for the 500 kV S-R Transmission Line. PPL Electric St. 5-R, p. 11. Those structures will average 185 feet in height in the Wallenpaupack-Bushkill Segment of the S-R Transmission line, including Saw Creek Estates, where much of the opposition to the S-R Transmission Line is concentrated. Further, due to terrain, the maximum height of a structure will be 195 feet, regardless of whether a 500 kV line or a 230 kV line is constructed. PPL Electric St. 1-R, p. 24.

Tangent poles, which support the line where there is no change in direction, for both a 230 kV and a 500 kV transmission line will be tubular steel structures with steel arms that will be corrosion resistant and dark brown in color. Both the 500 kV S-R Transmission Line and a modern rebuild of the existing 230 kV transmission line would be built to accommodate two circuits. Other than the height, the structures for a rebuild of the existing 230 kV transmission line would appear very similar to the structures that would be required for the 500 kV S-R Transmission Line. PPL Electric St. 5-R, pp. 11-13.

Because the present line has to be replaced and because the structures to replace a 230 kV transmission line are similar to the structures for a 500 kV transmission line, the public would

not be significantly harmed if PPL Electric were permitted to initiate construction of the Wallenpaupack-Bushkill Segment even if the NPS subsequently refused to grant construction permit for construction of the S-R Transmission Line through the DEWA.

The ALJ generally agreed with PPL Electric that the Wallenpaupack to Bushkill 230 kV transmission line must be replaced with facilities described above. R.D. 219-20. Nevertheless, the ALJ recommended that PPL Electric should not be permitted to initiate construction of the Wallenpaupack-Bushkill portion of the S-R Transmission Line until all permits are in place. R.D. 259-67. The ALJ concluded that allowing PPL Electric to start construction of this portion of the S-R Transmission Line before the NPS approval is obtained could create the appearance that the Commission is attempting to influence the NPS' permitting process. R.D. 267. No witness made such a contention during the evidentiary hearings. Instead, the argument was raised by OCA for the first time in its Main Brief and by Saw Creek Estates and the Energy Conservation Counsel for the first time in their Reply Briefs.<sup>1</sup> As explained below, these concerns are overstated.

In reaching her conclusion, the ALJ relied substantially upon arguments by the OCA based primarily upon *Maryland Conservation Counsel, Inc. v. Gilchrist*, 808 F.2d 1039 (4<sup>th</sup> Cir. 1986) ("*Gilchrist*"). R.D. 259; OCA Main Brief, pp. 94-96. In *Gilchrist*, the United States Court

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<sup>1</sup> These contentions should be rejected for the additional reason that they were raised for the first time in briefs. See *Dee-Dee Cab, Inc. v. Pa. P.U.C.*, 817 A.2d 593, 598 (Pa. Cmwlth. 2003), *appeal denied*, 836 A.2d 123 (Pa. 2003) (holding that for matters coming before an administrative agency, procedural due process requires that a party be afforded reasonable notice of the issues raised so that the party has an opportunity to present any response or objection). See also *Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service Petition for Reconsideration of Duquesne Light Company Petition for Reconsideration of Constellation NewEnergy, Inc. and Constellation Power Source, Inc.*, Docket No. P-00032071, 2004 Pa. PUC LEXIS 42 (Oct. 5, 2004) (holding that "[i]n a contested proceeding such as this, due process demands, at a minimum, that all parties of record be given notice and an opportunity to be heard.... Here, such opportunity would have included giving the Parties the opportunity to have their experts review, and if they chose to, challenge, the [proposed alternative]."); *Enron Capital & Trade Resources Corporation v. The Peoples Natural Gas Company, Peoples Industrial Intervenors and Columbia Energy Services Corp., Intervenors*, Doc. No. R-00973928C0001, 1998 Pa. PUC LEXIS 199 (Aug. 24, 1998) (holding that a proposal that was not introduced during the evidentiary stages of the proceeding was procedurally inappropriate because due process requires that the parties have the opportunity to examine the proposal during the evidentiary stages of this proceeding).

of Appeals for the Fourth Circuit held, generally, that a private action may arise under the National Environmental Policy Act of 1969, 42 U.S.C.A. §§ 4321, 4331 – 35 (“NEPA”), to enjoin a project until the relevant federal agencies that must approve particular portions of the project have complied with NEPA if the private action rises to the level of a “major federal action” and if construction of a project would unduly influence the federal permitting process.

In *Gilchrist*, the State of Maryland had sought a permit from the NPS to allow construction of a highway through a park that had been acquired by Maryland with federal funds. The park was situated in approximately the middle of the length of the highway. Prior to the completion of the NPS permitting process, Maryland began construction of the highway on both sides of the park. The plaintiff sought to enjoin Maryland from continuing construction toward the park on both sides. The Court affirmed the injunction issued by the trial court, expressing concern that the two segments of the highway, when completed, “would stand like gun barrels pointing into the heartland of the park.” *Id.* at 1042. The issuance of the injunction was affirmed because the Court concluded that continuation of the construction of the highway would unduly influence the NPS permitting process by reducing it essentially to a *fait accompli*.

The ALJ’s reliance on *Gilchrist* and similar federal court decisions to bar construction of the Wallenpaupack-Bushkill Segment of the S-R Transmission Line pending the completion of the NPS permitting process is erroneous for two principal reasons. First, issues related to federal permitting under the NEPA should be left to the federal permitting agencies and the federal courts which have the power to protect that process. Second, as explained below, construction of the Wallenpaupack-Bushkill Segment of the S-R Transmission Line will not influence the NPS permitting process under the NEPA.

**4. All Issues Related To The Federal Permitting Process Under The National Environmental Policy Act Of 1969 Should Be Addressed And Resolved By Federal Administrative Agencies And The Federal Court System.**

The Commission should not, as recommended by the ALJ, essentially enjoin PPL Electric from initiating construction of the Wallenpaupack-Bushkill Segment of the S-R Transmission Line. As discussed above, the ALJ's recommendation is based almost entirely on concerns related to the NPS permitting process under the NEPA. Such issues should be left to the federal permitting agencies which administer and have expertise and experience in resolving NEPA issues and the federal courts which can protect the permitting process. Federal district courts have jurisdiction over NEPA claims pursuant to 28 U.S.C. § 1331 and the Administrative Procedure Act, 5 U.S.C. § 702. *See Nuclear Information and Resource Service v. DOT Research*, 457 F.3d 956, 959 (9th Cir. Cal. 2006); *see also Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1179 (9th Cir. 2004).

The issue of whether PPL Electric should be enjoined from starting construction pending the completion of the federal NPS permitting process for the DEWA arises, if at all, under NEPA, a federal law that applies exclusively to the permitting process of federal administrative agencies. It has no application to state agencies. In general terms, the NEPA is procedural in nature. It does not require that federal agencies achieve any particular substantive results, but it does require agencies to collect and disseminate information about the environmental consequences of proposed actions that fall under their respective jurisdictions. *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989). It is these agencies, not the Commission, which have expertise and experience in administering the provisions of the NEPA and determining whether construction of a portion of a project could improperly influence a federal permitting process under NEPA.

Significantly, in this regard, all of the court decisions cited by the OCA (Main Brief, pp. 93-95), Saw Creek (Reply Brief, pp. 22-23), ECC (Reply Brief, pp. 9-10) and the ALJ (R.D., pp. 259-65) in support of prohibiting PPL Electric from starting construction until the completion of the NPS permitting process, are decisions of federal trial or appellate courts. It is exclusively the federal courts that have interpreted and applied principles arising under NEPA to determine whether construction may commence or continue. Issues arising under the NEPA are federal and should be resolved by federal agencies and courts. It is the federal court system, and not the Commission, that has jurisdiction to determine whether such a prohibition is appropriate to protect the federal permitting process. There is no basis for a state administrative agency to take steps to attempt to enforce its perception of the NEPA and rights arising under it.

Further, the Commission has no expertise or experience in applying the provisions of the NEPA. There is no reason for the Commission to impose conditions on PPL Electric related to the NEPA. Instead, the NPS and other federal agencies which are responsible for administering the NEPA and which are experienced in applying its provisions should make such determinations in conjunction with federal courts which have the power to protect federal permitting processes under NEPA.

No party has cited any case in which a state agency has sought to protect a federal permitting process under the NEPA. Even though the NEPA has been in effect for 40 years, there is no precedent for, and no basis for, what would amount to an injunction by the Commission, a state administrative agency, against the initiation of construction by a private corporation in an attempt to protect the federal permitting process on environmental issues under NEPA.

**5. Initiation Of Construction Of The Wallenpaupack-Bushkill Segment Of The S-R Transmission Line Will Not Influence The Federal Permitting Process Of The National Park Service.**

The federal courts have declined to enjoin construction of segments of a project where the construction would not unduly influence the federal permitting agency from exercising its discretion under NEPA. PPL Electric will identify and discuss some of the cases in which the federal courts have declined to enjoin construction of projects for which federal permitting under NEPA had not been concluded on the basis that the construction would not improperly influence the permitting process. Then, PPL Electric will show that, under the particular facts of this case, construction by PPL Electric of the Wallenpaupack-Bushkill Segment of the S-R Transmission Line will not unreasonably influence the NPS permitting process under the NEPA. Because initiation of construction by PPL Electric will not unduly influence the NPS permitting process, the condition proposed by the ALJ is unnecessary regardless of whether it arises under the NEPA, or as suggested by the ALJ, from a desire to avoid the appearance that the Commission is attempting to influence the NPS permitting process. R.D., p. 267.

Federal courts have declined to issue injunctions against construction of projects where federal permits are required under NEPA in numerous instances. For example, the United States Court of Appeals for the Fourth Circuit has decided that no injunction against construction was appropriate where the construction would not unduly influence federal permitting discretion under NEPA. In *North Carolina v. City of Virginia Beach*, 951 F.2d 596 (4<sup>th</sup> Cir. 1992) (“*Virginia Beach*”), a plaintiff sought an injunction against the construction of a city pipeline connecting a hydropower facility with the City of Virginia Beach’s water system. Although the City had obtained approval from the Army Corps of Engineers for construction of the pipeline, it had not yet obtained approval from the Federal Energy Regulatory Commission (“FERC”) which licenses hydropower facilities and immediately surrounding land. The City sought to proceed

only on two small areas of the pipeline pending FERC's approval. The Court determined that FERC would not be unduly pressured by the City's desire to work on small parts of the pipeline falling outside of the FERC's jurisdiction. Ultimately, the court concluded that construction beyond the boundaries of FERC's jurisdiction could be enjoined only when it would have a substantial and direct probability of influencing FERC's decision. *Id.*, 603. Under all of the circumstances, the Court concluded that the plaintiffs had not demonstrated that the construction would influence FERC's decision.

Similarly, in *Macht v. Skinner*, 916 F.2d 13, 18 (D.C. Cir. 1990) ("*Macht*"), the court approved the basic reasoning in *Gilchrist*, that the construction on any part of a project may not begin if the construction would limit significantly the options of federal officials who have discretion over substantial portions of the project. However, the Court declined to enjoin the construction. Plaintiffs sought an injunction to bar the construction of a state-funded light rail project that required a federal wetlands permit, alleging that state and federal officials failed to comply with NEPA. The Court characterized the question before it as "whether state or private action on an entire project should be enjoined until the federal agencies that must approve particular portions of the project have complied with NEPA." *Id.* at 18. In reaching its conclusion, the Court noted that there was no reason to believe that the Army Corps of Engineers would fail to comply with NEPA and that the Army Corps of Engineers had discretion over only a small portion of the entire project. *Id.*, at 18-19.

Another case in which a federal court determined that no injunction was appropriate was *Southwest Williamson County Community Association v. Slater*, 234 F.3d 270, 281 (6<sup>th</sup> Cir. 2001) ("*Slater*"). There, the plaintiff sought unsuccessfully to obtain an injunction against construction of a state-funded highway pending more extensive environmental review under

NEPA by the Federal Highway Administration. The project involved the construction of four interchanges and the highway corridors that connected the interchanges. Construction of the highway required approval from the Federal Highway Administration, the Army Corps of Engineers and the NPS. Although construction had begun on the highway segments at issue, the court determined that construction did not restrict the federal agencies' choice of a reasonable alternative. In reaching this conclusion, the Court stated the following:

Actual construction and paving of the third section has not, according to the record before us, even begun. In contrast to the situation in Gilchrist, then, we conclude that the FHWA was afforded ample time and opportunity to respond to the state's proposal before action by the state which would harm the environment or limit the agency's choice of reasonable alternatives, the concerns enunciated by the CEQ regulations.

\* \* \* \*

[The Army Corps of Engineers] issued several Nation-Wide Permits ("NWPs") and § 404 permits allowing the state to cross several streams and fill almost four acres of wetlands.... The Association does not allege that the Secretary of the Army was pressured to render its decision or that its choice of action was limited by the state's construction.

\* \* \* \*

[A]fter submitting five preliminary draft EAs [Environmental Assessments] to the . . . [NPS], the state submitted a final draft EA in October 1996 to the Secretary of the Interior seeking approval of its EA and a right-of-way to cross the federally-protected Natchez Trace Parkway. . . . The Secretary of the Interior has not, according to the record, responded to the state's draft EA with either an EIS [Environmental Impact Statement] or a FONSI [Finding of No Significant Impact]. While we are concerned that the state began building Route 840 South prior to receiving final approval from the Secretary of the Interior, we note that the Association concedes that there has been extensive contact, beginning as early as 1990 . . . between the state and the NPS, a division of the Department of the Interior, regarding where the highway should cross the Parkway.

*Id.* at 282. Based on these findings, the Court determined that the construction work did not restrict the federal decision-makers' choice of reasonable alternatives, and therefore, construction was not halted. *Id.* at 283.

As explained below, construction of the Wallenpaupack-Bushkill Segment of the S-R Transmission Line will not restrict or otherwise limit the NPS' review of reasonable alternatives under the NEPA.

The physical layout of the relevant area is set forth most clearly on Map 21 in PPL Electric Exhibit 1.F. This map shows, among other things, the proposed path of the S-R Transmission Line through the southern portion of Saw Creek Estates, which is south of the Wallenpaupack Hydroelectric Generating Station, to the Bushkill Switchyard in Shoemakers, a village in Middle Smithfield Township, Pike County, where the Wallenpaupack-Bushkill Segment of the S-R Transmission Line ends. The map also shows that the proposed path turns east in Shoemakers, near the Bushkill Switchyard, to enter into the DEWA and cross the Delaware River into New Jersey.

The only portion of the 28 mile segment of the S-R Transmission Line between Wallenpaupack and Bushkill that crosses into the park is a small area, approximately 3,400 feet in length, just north of the Bushkill Switchyard. PPL Electric Ex. 1.F, Map 21. This portion of the DEWA is a narrow finger-like extension of the Park running in a generally westerly direction away from the Delaware River. Significantly, this portion of the DEWA is a substantial distance from all of the features of the park about which the NPS expressed concern during the site inspection on May 5, 2009. R.D. pp. 249-55; ALJ Ex. 1; Tr. 363-436. All of the features about which the NPS expressed concern are located to the east, closer to the Delaware River, which is

well over a mile away from the remote portion of the DEWA which the Wallenpaupack-Bushkill Segment of the S-R Transmission Line would traverse.

Construction of the Wallenpaupack-Bushkill Segment of the S-R Transmission Line would not influence the NPS because PPL Electric would commence construction north of where the Wallenpaupack-Bushkill Segment of the S-R Transmission Line crosses the DEWA. The northern end of this segment is about 27 miles away from the portion of the DEWA which the Wallenpaupack-Bushkill Segment will cross. Thus, as in *Slater*, the NPS will still have substantial time to conduct a thorough evaluation of the environmental impact of the S-R Transmission Line before construction reaches the DEWA. Further, PPL Electric has stated that it would not commence construction in the DEWA before receiving all required permits from the NPS. PPL Electric St. 1-R, p. 27.

Initiation of construction would not place any pressure on the NPS. If PPL Electric constructs the Wallenpaupack-Bushkill segment of the S-R Transmission Line but ultimately is not allowed to construct the remaining portions of the line, most of its investment would not be wasted. Because the Wallenpaupack-Bushkill Segment of the line still must be built to replace the existing aged and deteriorated 230 kV line, the only potential “waste” would be the incremental cost of construction that would allow the Segment to accommodate 500 kV lines instead of 230 kV lines. Thus, the present situation is unlike that in *Gilchrist*, where construction of portions of a highway on each side of a park would make the permitting process a *fait accompli* because removing the completed portions of the highway would involve great expense and great waste.

PPL Electric believes that it selected the best route for the S-R Transmission Line. There would be many obstacles to changing that route at this time. However, the construction of the

Wallenpaupack-Bushkill Segment of the S-R Transmission Line is not one of them. It will not prejudice any decision by the NPS to relocate the portion of the Line that enters the main portion of the DEWA to cross the Delaware River. As shown on Maps 18 through 21 in PPL Electric Ex. 1.F., the Wallenpaupack-Bushkill Segment of the S-R Transmission Line runs generally north to south, paralleling the Delaware River. It is conceivable that to obtain needed permits from the NPS, the S-R Transmission Line could be extended further south from the Bushkill Switchyard to turn east to cross the Delaware River at a location south of the proposed route. Also, the Wallenpaupack-Bushkill Segment of the S-R Transmission Line could be tapped north of Bushkill so that the S-R Transmission could turn east to cross the Delaware River at a location north of the proposed route. Again, unlike *Gilchrist*, the proposed construction of the Wallenpaupack-Bushkill Segment of the Line will not reduce the NPS' ability to relocate the Delaware River crossing to the north or south.

It is important to note that PPL Electric has been in contact with the NPS regarding the S-R Transmission Line Project for an extended period of time, commencing in March 2008. PPL Electric St. 3-R, p. 16. PPL Electric has continued to work with the NPS to attempt to address and resolve its concerns. As in *Slater*, where no injunction was issued, the agency and the party seeking permission to construct a project have been in contact, and the agency will have ample time to meet its obligations under NEPA.

There is no reason to believe that the NPS will fail to meet the requirements of the NEPA. Indeed, based on the NPS' testimony at the site inspection on May 5, 2009, it is clear that the NPS takes its responsibilities to protect the DEWA very seriously. Tr. 363-436. However, despite its thorough understanding of the S-R Transmission Line Project and the seriousness with which the NPS fulfills its duty to protect the DEWA, the NPS never asked that

the Commission bar PPL Electric from commencing construction of the Wallenpaupack-Bushkill Segment of the S-R Transmission Line. The NPS certainly had an opportunity to request such a ban because the NPS made a presentation to the Commission regarding the DEWA lasting most of an entire day. At that presentation, the NPS never expressed any concern about commencement of construction by PPL Electric outside the DEWA.

As in *Macht*, where no injunction was issued, the federal permitting agency has jurisdiction over only a small portion of the project. Regarding the Wallenpaupack-Bushkill Segment of the S-R Transmission Line, the NPS has jurisdiction over only about 3,400 feet of its 28 mile length. The NPS has jurisdiction over only approximately 1.5 miles of the 101 miles of the Pennsylvania portion of the S-R Transmission Line and jurisdiction over 4 miles of the 146 miles of the total length of the line, including the New Jersey portion. PPL Electric Exhibit 1.C., p. 74; Tr. 817, 1019.

Clearly, replacement of the existing Wallenpaupack-Bushkill 230 kV transmission line due to its advanced age and deteriorated condition would not preclude the NPS from exercising its discretion to make an appropriate decision under the NEPA to protect the DEWA. There is no reason for the Commission to preclude PPL Electric from initiating construction of the Wallenpaupack-Bushkill Segment of the S-R Transmission Line until the NPS permitting process under the NEPA has been completed. Replacing an existing line due to its age and deteriorated condition would not unduly influence the NPS in its permitting deliberations.

The normal practice of the Commission is to approve a transmission line, require that the line be constructed in a lawful manner in compliance with all required permits and all conditions imposed for issuance of those permits. The utility then is allowed to proceed in its discretion, and at its risk, to determine the pace of construction and the timing of permit applications. PPL

Electric here simply requests that the Commission follow its normal practice and allow PPL Electric to proceed in this manner.

Since the NPS never requested or even suggested that there is any need for PPL Electric to be barred from starting construction of the Wallenpaupack-Bushkill Segment of the S-R Transmission Line until the NPS permitting process for the DEWA has been completed, the issue appears to have been raised by others for a different purpose. In fact, the issue was raised by the OCA, which has expressed concern regarding construction of the S-R Transmission Line through Saw Creek Estates. Saw Creek Estates, itself, adopted OCA's argument in its Reply Brief, at pp. 10-11. If the Commission believes that the 500 kV S-R Transmission Line should not be built through Saw Creek Estates until all the portion of the S-R Transmission Line in New Jersey has been approved and PPL Electric has received assurance that it will be allowed to construct the S-R Transmission Line through the DEWA, an option would be to allow PPL Electric to construct the portion of the Wallenpaupack-Bushkill Segment between Wallenpaupack and the southern boundary of the Delaware State Forest, which is north of Saw Creek Estates. This portion of the S-R Transmission Line is about 23 miles in length and stops north of Saw Creek Estates. PPL Electric Ex. 1.C, p. 3. This option would allow PPL Electric to complete a significant portion of the Wallenpaupack-Bushkill Segment of the Line and thereby advance the completion of the S-R Transmission Line upon the approval of the New Jersey portion of the Line and approval of the construction of the Line through the DEWA without undertaking any construction in Saw Creek Estates and would preserve at least the possibility that the S-R Transmission Line could be completed in compliance with PJM's schedule. Subsequently, PPL Electric would construct the 500 kV S-R Transmission Line through Saw Creek Estates if the S-R Transmission Line ultimately is approved, or if not, PPL Electric would

construct the smaller 230 kV replacement transmission line through Saw Creek Estates to the Bushkill Switchyard in Shoemakers.

**B. EXCEPTION NO. 2: PPL ELECTRIC SHOULD NOT BE BARRED FROM COMMENCING CONSTRUCTION ON THE WALLENPAUPACK-BUSHKILL SEGMENT OF THE S-R TRANSMISSION LINE UNTIL ALL PERMITS FOR THE ENTIRE LINE ARE IN PLACE.**

The ALJ recommended that PPL Electric should not be permitted to initiate construction of the Wallenpaupack-Bushkill Segment of the S-R Transmission Line until **all permits for the entire 101 miles of the S-R Transmission Line** are in place. R.D. 267, 297, Ordering ¶ 7, which provides in pertinent part:

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.

Although the ALJ recommended imposition of this condition in conjunction with the NPS permitting process under the NEPA, the above-quoted condition is far broader. This condition, if adopted, would create serious problems for the construction of the Wallenpaupack-Bushkill Segment of the S-R Transmission Line and possibly could make construction impossible.

In fact, to construct the S-R Transmission Line, many permits will be required. PPL Electric has provided a partial list of the agencies involved in permitting of the construction. PPL Electric Initial Brief, pp. 129-30. This list, however, is not complete. In addition to those permitting agencies, PPL Electric will be required to obtain, for example, many street occupancy permits from the numerous political subdivisions through which the S-R Transmission Line will traverse and numerous stream crossing permits. Although most of the permits that PPL Electric will be required to obtain are not controversial and their issuance is ministerial in nature, they are nonetheless permits.

Significantly, no witness in the proceeding suggested such a condition.<sup>2</sup> Instead, the condition was raised for the first time in OCA's Main Brief; thereafter Saw Creek Estates and the Energy Conservation Counsel included the issue in their Reply Briefs. Because the issue was first raised in briefs, PPL Electric's witnesses did not have an opportunity to fully explain the impracticality of this condition.

In practice, PPL Electric (and other entities constructing transmission lines) obtains the numerous street occupancy and stream crossing permits as construction progresses. The normal practice is for a street occupancy permit to be acquired as construction approaches the street. Construction involving the street is started and completed shortly after the permit has been issued. For this reason, many such permits are valid for only relatively short periods of time, such as one year. PPL Electric cannot reasonably be expected to obtain in advance all permits, including permits that expire after one year, for a project that is expected to require 27 months to complete. PPL Electric St. 1-R, p. 26. The condition recommended by the ALJ would be difficult for a short project; it would be impossible for a project 101 miles in length.

PPL Electric notes that the ALJ's discussion of this condition relates entirely to the NPS permitting process under the NEPA. Despite her limited concern, the condition she recommended is far broader. There is no explanation in the Recommended Decision for such an expansive condition, particularly where no witness proposed it.

Moreover, PPL Electric has reviewed previous Commission Orders in proceedings for approval of the siting and construction of transmission lines. PPL Electric's review did not reveal any prior orders of the Commission containing a requirement such as the one proposed by

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<sup>2</sup> OCA witness Lanzalotta raised an issue regarding construction before permits were obtained, but the testimony was clearly limited to "approvals to construct the proposed new transmission line through the DWG [Delaware Water Gap Recreation Area, referred to herein as the "DEWA"]". OCA St. 1-S, p. 10, l. 5.

the ALJ in this proceeding. The absence of prior orders containing such a condition is a further demonstration of the impracticality of the condition.

PPL Electric wishes to emphasize that it is not requesting any exemption from permitting requirements. PPL Electric will obtain all permits required for the construction of all portions of the S-R Transmission Line, and will comply with all conditions imposed by the permitting agencies in conjunction with the issuance of those permits. Separately, the ALJ recommended this condition as well. R.D. p. 296, Ordering ¶ 6.B. This condition is typically included in approvals of the siting and construction of transmission lines, and PPL Electric is not excepting to that recommendation. This condition is the normal means by which the Commission assures that a transmission line will be constructed in a lawful manner in order to comply with 52 Pa. Code § 57.76(a)(3).

Instead of being required to obtain all permits for the entire 101 miles of transmission line before starting any construction, PPL Electric asks that it be allowed to follow its and the industry's normal practice of obtaining permits such as road occupancy and stream crossing permits as construction progresses.

Based on the foregoing, PPL Electric requests that it not be required to postpone initiation of construction of the Wallenpaupack-Bushkill Segment of the S-R Transmission Line until all permits required for construction of the entire segment have been obtained.

In the alternative, if the Commission believes that construction of the Wallenpaupack-Bushkill Segment of the Line should not be initiated until there is reasonable assurance that the S-R Transmission Line will be constructed, PPL Electric requests that it be allowed to commence construction of the Wallenpaupack-Bushkill Segment of the S-R Transmission Line upon the approval by the Commission of the Pennsylvania portion of the S-R Transmission Line,

approval of the New Jersey portion of the Line and receipt by PPL Electric of assurance from the NPS that it will permit the S-R Transmission Line to be constructed through the DEWA.

**C. EXCEPTION NO. 3: PPL ELECTRIC SHOULD BE PERMITTED TO START CONSTRUCTION ON ANY PORTION OF THE S-R TRANSMISSION LINE FOR WHICH IT HAS OBTAINED REQUIRED PERMITS.**

The ALJ recommended that PPL Electric not be permitted to commence construction of the Wallenpaupack-Bushkill Segment of the S-R Transmission Line until it has received all required permits for the entire 101 miles of the Pennsylvania portion of the Line. R.D. 267, 297, Ordering ¶ 7, which is quoted in Section II.B., above. However, there also is language in the Recommended Decision that suggests that PPL Electric may not commence construction of any portion of the Line until all permits for the entire line have been obtained. The ALJ stated: “For the reasons set forth in this Recommended Decision, I recommend that the Commission make the necessary findings to approve this project after all necessary permits have been obtained for the entire line.” R.D., p. 288. Under this language, the S-R Transmission Line would not be approved by the Commission until all permits have been acquired, and PPL Electric could not commence construction of any portion of the Line until it has been approved by the Commission.

This language, if taken from its proper context and applied literally, would mean that PPL Electric could not start construction on any portion of the S-R Transmission Line until all approvals for the entire 101 miles of the Line have been obtained. PPL Electric believes that such an interpretation of the Recommended Decision would be incorrect because the above-quoted passage is far broader and therefore inconsistent with other portions of the Recommended Decision, including the ALJ’s conclusion at page 267 of the Recommended Decision and Ordering Paragraph No. 7, at page 297. Further, the ALJ’s entire discussion of the issue regarding when construction may be started focuses on the Wallenpaupack-Bushkill Segment of

the Line, not the other portions of the Line. R.D., pp. 258-67. This Exception is submitted as a precaution, in the event that the Recommended Decision were to be interpreted to preclude construction of any portion of the S-R Transmission Line until all approvals for the entire 101 miles of the Pennsylvania portion of the Line have been obtained.

In this regard, it is important to note that, other than PPL Electric, no party or witness presented any expert testimony or a comprehensive analysis of alternative routes that were evaluated in detail by PPL Electric, and no other party or witness proposed any alternative route from PPL Electric's Susquehanna Substation to PSE&G's Roseland Substation. Thus, there is no question based on the evidentiary record in this proceeding that, overall, PPL Electric has proposed the best route for the S-R Transmission Line.

The opposing parties have raised issues that are essentially local in nature, dealing primarily with Saw Creek Estates and the DEWA. Even if there were to be small reroutes of the S-R Transmission Line to address issues in Saw Creek Estates and the DEWA, large portions of the S-R Transmission Line, including the portions between the Susquehanna Substation and the Wallenpaupack Hydroelectric Station, are essentially unopposed on siting issues. Therefore, once it has been determined finally that there is a need for the line, there is no reason why construction of the non-controversial portions of the S-R Transmission Line should not commence.

Because concerns about Saw Creek Estates and the DEWA do not apply to the substantial portion of the S-R Transmission Line west of the Wallenpaupack Hydroelectric Station and that PPL Electric should be permitted to initiate construction of the western portion of the S-R Transmission Line upon the Commission's approval of the Line without awaiting approvals related to the Line south and east of the Wallenpaupack Hydroelectric Station.

Further, the condition is completely impractical. To construct the S-R Transmission Line, hundreds of permits will be required. PPL Electric has provided a partial list of the agencies involved in permitting of the construction. PPL Electric Initial Brief, pp. 129-30. This list, however, is not complete. In addition to those permitting agencies, PPL Electric will be required to obtain, for example, many street occupancy permits from the numerous political subdivisions through which the S-R Transmission Line will traverse and numerous stream crossing permits. Although most of the permits that PPL Electric will be required to obtain are not controversial and their issuance is ministerial in nature, they are nonetheless permits.

In practice, PPL Electric obtains the numerous street occupancy and stream crossing permits as construction progresses. The normal practice is to apply for a street occupancy permit as construction approaches the street. Construction involving the street is started and completed shortly after the permit has been issued. For this reason, many such permits are valid for only relatively short periods of time, such as one year. PPL Electric cannot reasonably be expected to obtain in advance all permits, including permits that expire after one year, for a project that is expected to require 27 months to complete. PPL Electric St. 1-R, p. 26. The condition recommended by the ALJ would be impossible for a project more than 100 miles in length.

If PPL Electric is precluded from initiating construction of the S-R Transmission Line until it obtains all permits for the entire line, the result would be devastating to the chances for the S-R Transmission Line to go into commercial operation in a timely manner. If the NPS does not issue the necessary permits to allow construction of the Line through the DEWA until April, 2011, and PPL Electric is not permitted to commence any construction of any portion of the Line until that time, PPL Electric will not be able to place the S-R Transmission Line into operation until the completion of its 27 month construction period — in the second half of 2013. That

schedule would make the S-R Transmission Line operational more than one year after the in-service date required by PJM, which is June 1, 2012.

Under Attachment DD, Section 5.11A of the PJM Open Access Transmission Tariff, transmission owners are required to advise PJM annually of the status of transmission line construction so that PJM can determine which facilities will be available to provide service in order to prepare for the annual Base Residual Auction. PPL Electric is required to provide that update for the S-R Transmission Line on December 3, 2009. Due to the uncertainty created by the Recommended Decision regarding the construction start date and other factors, PPL Electric is unable to certify to PJM that the S-R Transmission Line will be in full commercial operation by June 1, 2013. Similarly, it cannot affirm to PJM that the Line will be in commercial operation by the required in-service date of June 1, 2012.

As explained in Exception No. 2, above, PPL Electric has surveyed previous Commission Orders in proceedings for approval of the siting and construction of transmission lines. PPL Electric's review did not reveal any prior orders of the Commission containing a condition that construction may not commence until all permits for the entire proposed transmission line have been secured. The normal practice of the Commission appears to be that the EDC is given the discretion to commence construction based on its judgment of all the relevant facts and circumstances. PPL Electric asks that the Commission follow its normal practice and allow PPL Electric to proceed to construct the non-controversial portions of the S-R Transmission Line at its discretion based upon its judgment including but not limited to the ability to obtain necessary permits as the project is constructed.

The Commission should not be concerned that PPL Electric will start construction of the S-R Transmission Line prematurely. PPL Electric explained its approach to the initiation of

construction of the Wallenpaupack-Bushkill Segment of the Line in Exception No. 2, above. Regarding the remaining portions of the Line, although such decisions are properly left to the public utility's judgment and discretion, PPL Electric has no intention of starting any construction before the portion of the Line in New Jersey has been approved, and PPL Electric has received reasonable assurance that it will be allowed to construct the Line through the DEWA. Under this approach, it is possible that the S-R Transmission Line could be in commercial operation by the required in-service date of June 1, 2012.

**D. EXCEPTION NO. 4: THE COMMISSION'S APPROVALS SHOULD NOT EXPIRE WITHIN TWO YEARS OF THE ENTRY DATE OF THE COMMISSION'S ORDER UNLESS CONSTRUCTION COMMENCES WITHIN THAT TIME.**

The ALJ recommended that the Commission's approvals for the S-R Transmission Line expire unless construction commences within two years of the entry date of the Commission's order. R.D. 297, Ordering ¶ 8. The ALJ stated:

That the approvals granted in this Order shall expire unless construction of the projects commences within two years of the entry date of the Commission's Order.

This condition is not explained in the Recommended Decision, nor did any party propose such condition in evidence or in briefs.<sup>3</sup>

Further, PPL Electric has reviewed Commission orders in prior proceedings in which the Commission has approved siting and construction of transmission lines, but has not found any Commission order containing a condition similar to the condition proposed by the ALJ in this proceeding. For the reasons explained below, this condition is not practical and could preclude the construction the S-R Transmission Line, even though its construction is in the public interest. The Commission should not adopt the condition recommended by the ALJ.

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<sup>3</sup> See footnote 1, *supra*.

The condition recommended by the ALJ is impractical because PPL Electric, for reasons completely beyond its control, may not be able to start construction within two years of the entry date of the Commission's order. For example, a party in this proceeding may seek appellate review by the Commonwealth Court and, possibly, by the Pennsylvania Supreme Court. Completion of the appellate review process, in this case potentially involving both the Commonwealth Court and the Supreme Court, could require more than two years.<sup>4</sup>

Other circumstances also could cause postponement of construction. If the New Jersey Board of Public Utilities approves the siting and construction of the portion of the S-R Transmission Line in New Jersey, a party in that proceeding may seek review of the Board of Public Utilities' decisions in the New Jersey appellate courts. Such appellate court review in New Jersey could require substantial time to run its course.

Similarly, PPL Electric expects that the permitting process before the NPS will require significant time. For example, the evidence indicates that the permitting process before the NPS for construction through the DEWA will not be completed before March, 2011. PPL Electric St. 1-R, pp. 24-26. Even at that time, persons affected by the issuance of NPS permits could, to the extent permitted by law, seek review of the NPS' permitting decisions through the federal appellate court system. The NPS permitting process under the NEPA may require more than two years to become final at the conclusion of the federal court review process.

PPL Electric also notes that the combination of the two timing conditions proposed by the Recommended Decision, *i.e.*, construction must start within two years but cannot start until all permits are obtained, would be particularly problematic and could make the construction of the

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<sup>4</sup> PPL Electric believes that it may start construction pending appeals from the Commission's approval of the S-R Transmission Line, unless the Commission's approval is stayed. Although the decision to proceed with construction while appeals are pending entails certain risks and PPL Electric has not made any final decision as to whether it would start construction while an appeal is pending, this decision is properly left to PPL Electric's judgment and discretion.

S-R Transmission Line virtually impossible, and amount to an effective rejection of PPL Electric's applications. These unprecedented and unnecessary conditions should be rejected.

PPL Electric recognizes, however, that the Commission may be concerned that its order should not remain in effect indefinitely. One possible approach for addressing this issue would be to impose a condition that the Commission's approvals would expire unless construction begins within six months after the approval from the Commission of the Pennsylvania portion of the Line, the approval of the New Jersey portion of the Line and the approval of the portion of the Line through the DEWA have become final. An approval would be considered final if no appeal has been taken or, if an appeal has been taken, the appellate process has been completed.

**E. EXCEPTION NO. 5: NERC RELIABILITY STANDARDS DO NOT PERMIT UNPLANNED LOAD CURTAILMENT TO RESOLVE NERC CATEGORY C VIOLATIONS**

The ALJ correctly recommends that the Commission approve PPL Electric's Application for the siting and construction of the proposed S-R Transmission Line, finding that the line is necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public. R.D., p. 291. The ALJ properly concludes that additional demand response ("DR") might affect the dates on which NERC Category A<sup>5</sup> and B<sup>6</sup> reliability violations would occur, but that DR would not affect NERC Category C<sup>7</sup> violations. R.D., 121. The ALJ

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<sup>5</sup> NERC Category A criteria require that with all facilities in service, equipment thermal ratings and system voltage levels are within applicable limits and that the system is stable.

<sup>6</sup> NERC Category B criteria impose similar requirements with one facility removed from service. This is referred to as the "n minus 1" or "n-1" criteria or single contingency test. These criteria ensure that the system continues to remain reliable upon the instantaneous outage of a transmission element.

<sup>7</sup> NERC Category C violations require the system to be stable and within applicable equipment thermal ratings and system limits under a variety of multiple facility contingency events, *i.e.*, with two elements of the system out of service. For example, such events include the loss of one system element followed by system readjustments, and then the loss of a second system element (*i.e.*, NERC Category C.3). This is referred to as the "n minus 1 minus 1" or "n-1-1" criteria. NERC Category C.3 violations are irrelevant to this proceeding as no such violations were identified in the PJM RTEP process. However, Category C also includes events such as the loss of two circuits on a single tower line (*i.e.*, NERC Category C.5). The March 2009 Retool identified 10 NERC Category C.5 violations in support for the need for the S-R Transmission Line.

correctly determined DR would not eliminate the need or move the required in service date for the S-R Transmission Line, based on the following explanation on cross-examination by PPL Electric witness Herling:

- Q. As we sit here today, we don't really know whether a further retool would change the need for the Susquehanna-Roseland line, do we? If a retool were done to reflect the amount of DR that cleared the RPM auction, we don't know how it would change it, do we?
- A. Well, No, actually, I can tell you right now that it wouldn't change anything. It would potentially delay some of the load deliverability violations. It would have no impact on -- I believe there were five category C violations in 2012 and 13, it would have no affect on those. So, I can tell you with absolute certainty that it wouldn't change the in-service date.

*Id.*, Tr. 1297; quoted by the ALJ at page 121 of the Recommended Decision. However, the ALJ adopted the following Findings of Fact in the Recommended Decision relative to the NERC reliability standards:

112. NERC standards do not permit firm loads and firm power transfers to be curtailed under normal conditions and single contingencies (except in certain circumstances), but NERC standards do permit firm load and firm power transfer curtailment under double contingencies. OCA Stmt. 1-S at 3.

113. The Company does not allow for any firm load or firm power transfer curtailment for its double contingencies in the updated list of violations, resulting in use of a standard more stringent than the NERC standard. OCA Stmt. 1-S at 4.

These two findings of fact could be construed as inconsistent with the ALJ's disposition of the need issues raised in this proceeding. Therefore, PPL Electric respectfully excepts to these Findings of Fact. Specifically, Finding of Fact 112 states that NERC standards permit firm load and firm power transfer curtailment under "double contingencies." This finding is overbroad because NERC standards only permit **planned** shedding of load resulting from the design of a system. Finding of Fact Number 113 improperly states that because PPL Electric does not allow

for any firm load or firm power transfer curtailment for “double contingencies” that PPL Electric employs a higher reliability standard than NERC. This finding is incorrect because PPL Electric’s application of NERC Category C standards is required by the standard and consistent with the application of the standard by a broad range of other RTOs. As further detailed below and supported by the record evidence in this proceeding and cited by the ALJ in the R.D., these findings of fact are not accurate.

In the context of this proceeding, the “double contingencies” referenced in the two findings of fact refer to NERC Category C.5 violations because those are the NERC Category C violations relied upon by PPL Electric and PJM to justify the need for the line.<sup>8</sup> NERC Category C.5 violations include events such as the loss of two circuits on a single tower, typically as a result of the loss of a tower. In its case, OCA argued that load curtailment was a potential solution to the 10 NERC Category C.5 violations identified based upon its incorrect interpretation that NERC reliability standards “permit firm loads and firm power transfers to be curtailed [or “shed”], in an effort to maintain thermal loading and voltage performance on the elements remaining within specified limits.” OCA St. 1-S, p. 3. However, as explained by PPL Electric and adopted by the ALJ, Mr. Lanzalotta’s interpretation of the NERC Category C standards is incorrect and should be rejected. PPL Electric believes the ALJ correctly recognized that this contention by OCA’s witness was not correct and rejected it in her analysis that led to her recommending approval of the line.

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<sup>8</sup>There are numerous other categories of Class C violations. Such other classes of violations, however, are not relevant to this proceeding because none were identified in the evidentiary record. For example, NERC Category C.3 violations (*i.e.* “n minus 1 minus 1) involve the loss of one system element followed by system readjustments, and then the loss of a second system element. In evaluating the system under such events, PJM does make system readjustments. However, NERC Category C.3 violations are not at issue in this proceeding as none were identified by the PJM RTEP in support of the S-R Transmission Line.

The R.D. correctly rejects the other parties' arguments that an additional retool study is required in order to reflect current economic conditions and the increase in demand response and peak load reductions in Pennsylvania and New Jersey. In rejecting these arguments the R.D. quotes PPL Electric's main brief wherein it details PPL Electric witness Herling's testimony that clearly states that NERC Category C standard violations cannot be resolved by curtailing load because the proposition is fundamentally contrary to NERC Reliability Standards and to PJM's planning processes. R.D., 114-117, PPL Electric St. 7-RJ, p. 3. Specifically, Mr. Herling explained that NERC criteria related to Category C events allow only for **planned** loss of load, but such load loss must be a function of system design, not operator action. *Id.* As noted by Mr. Herling, even OCA's witness Lanzalotta recognizes that "transmission system controls are typically designed to address such problems automatically." (Emphasis supplied.) OCA St. 1-S, p. 4, n. 9. This is a critical distinction. Where system design provides for the automatic loss of customer load as a consequence of a NERC Category C event, that loss of load is modeled by PJM in assessing compliance with NERC Reliability Standards for that event. Such loss of load can be the result of system design, for example, where a customer is served only from the two lines that are lost in a double circuit tower line event, or through the action of protective relaying schemes, but it cannot depend on the intervention of a system operator seeking to "shed load" after the event has occurred.<sup>9</sup> *Id.*

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<sup>9</sup> In addition, Mr. Herling explained that where special purpose relay schemes are used to resolve less probable contingency events such as double circuit tower line ("DCTL") events, they must be locally detected and triggered in order to ensure reliable operation. PPL Electric St. 7-RJ, p. 4. The list of DCTL events underlying the need for the S-R Transmission Line involve overloaded facilities that are electrically distant from the related facilities tripped in the event. This fact, and the number of DCTL events, would require an extremely complex relay scheme that would not be acceptable to PJM or to ReliabilityFirst, the Regional Reliability Council of NERC. This application of the DCTL criteria is not a PJM-specific treatment of double-circuit tower line contingencies. The criteria is interpreted and applied in this manner widely, if not universally, across the industry. Tr. 1310.

In response to cross examination by OCA, Mr. Herling further explained the NERC Reliability Standards relative to planned/controlled load loss relative to NERC Category C.5 criteria violations:

[W]hen you have two lines on a tower, if a customer is connected only to those two lines, and we lose the tower, that customer will no longer have a source of electric service, so, that customer will be shed. That's called consequential load loss. It is a consequence of the outage of the tower.

Operator implemented load loss is the operator observes an event, such as the loss of a tower, and then manually begins to open circuit breakers to shed customer load. That's operator implemented load shedding. That is not allowed by NERC category C events. It's not a function of system design, it's a function of operator action. This is the way everybody does this. I'm not aware of anybody who implements NERC category C in any other manner.

PPL Electric M.B., p. 52, Tr. 1310. Therefore, as explained by Mr. Herling, in response to NERC Category C standard violations, customer load may be shed only due to consequential load loss. That is, load loss may occur as a result of the loss of the two circuits only by system design.<sup>10</sup> However, the NERC Reliability standards do **not** permit PJM or its operators to take actions to shed additional load in response to these violations. Therefore, Finding of Fact 112 is overbroad to the extent it suggests that unplanned load curtailment is an acceptable practice to respond to NERC Category C.5 standard violations. This Finding of Fact can be cured by simply including the word “planned” prior to “firm load” so that it reads as follows:

112. NERC standards do not permit firm loads and firm power transfers to be curtailed under normal conditions and single contingencies (except in certain circumstances), but NERC standards do permit planned firm load and firm power transfer curtailment under double contingencies. OCA Stmt. 1-S at 3.

Finding of Fact 113 incorrectly states that PPL Electric does not allow for firm load or firm power curtailment in response to “double contingencies” resulting in a standard that is more

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<sup>10</sup> As explained by Mr. Herling, PJM has established a limit of 300 MW for consequential load loss and has designs its system accordingly. Tr. 1307.

stringent than the NERC standards. Again, Mr. Herling clearly stated in his testimony that NERC Category C standard violations cannot be resolved by an unplanned curtailment of load because the proposition is fundamentally contrary to NERC Reliability Standards and to PJM's planning processes. PPL Electric St. 7-RJ, p. 3. Mr. Herling explained that PJM's interpretation of the NERC Category C criteria is consistent with that of other Regional Transmission Organizations. That is, NERC Category C criteria only permit consequential load loss (*i.e.*, load loss that is a function of system design, not operator action.) R.D., p. 117, p. 52, fn. 30, PPL Electric M.B. fn. 37.

In the *TrAILCo Order* the Commission confirmed Mr. Herling's analysis relative to load shedding, when it quoted the following statement by TrAIL Co.:

The RD erroneously rejected the correct application of operating and testing criteria that have been applied consistently in PJM system for many years and adopted an incorrect application of those criteria. [internal cites omitted] As PJM Vice President Herling testified, ECC's suggestion (which the RD adopted) that no criteria violation exists so long as there is some combination of redispatch available anywhere within PJM only invites a whole host of operational conditions that would not be controllable without load shedding. Load shedding is a polite term for rolling blackouts, . . . . The Commission, PJM, Allegheny Power and TrAILCo have an obligation to provide reliable electric service and act on that basis, rather than not acting on a theoretical possibility that the Pennsylvania 502 Junction Facilities might not be needed.

*TrAILCo. Order*, pp. 31 (citations omitted). Further, the Commission concluded that "we agree with TrAILCo's argument that the use of manual system adjustments (*i.e.*, operator load shedding) to alleviate the modeled violations simply invites a host of additional system problems with attendant negative economic impacts." *TrAILCo. Order*, p. 31. Despite OCA's arguments to the contrary, it is clear that PJM, other powerpools and the Commission agree that "load shedding" is not an appropriate transmission planning mechanism.

### III. CONCLUSION

Wherefore, for all the foregoing reasons, PPL Electric Utilities Corporation respectfully requests that the Recommended Decision of Administrative Law Judge Susan D. Colwell issued on November 13, 2009, be modified to remove the conditions and findings to which PPL Electric Utilities Corporation has excepted and affirm the remaining portions of the Recommended Decision.

Respectfully submitted,



David B. MacGregor (ID # 28804)  
Post & Schell, P.C.  
Four Penn Center  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2808  
Phone: 215-587-1197  
Fax: 215-320-4879  
E-mail: [dmacgregor@postschell.com](mailto:dmacgregor@postschell.com)

Paul E. Russell (ID # 21643)  
Jesse A. Dillon (ID # 47580)  
PPL Services Corporation  
Office of General Counsel  
Two North Ninth Street  
Allentown, PA 18106  
Phone: 610-774-4254  
Fax: 610-774-6726  
E-mail: [perussell@pplweb.com](mailto:perussell@pplweb.com)  
E-mail: [jadillon@pplweb.com](mailto:jadillon@pplweb.com)

Curtis S. Renner  
Watson & Renner  
1400 16<sup>th</sup> Street, NW  
Suite 350  
Washington, DC 20036  
Phone: 202-737-6302  
E-mail: [crenner@w-r.com](mailto:crenner@w-r.com)

Of Counsel:

Post & Schell, P.C.

Date: December 3, 2009

Michael W. Gang (ID # 25670)  
John H. Isom (ID # 16569)  
Andrew S. Tubbs (ID #80310)  
Christopher T. Wright (ID # 203412)  
Post & Schell, P.C.  
17 North Second Street  
12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601  
Phone: 717-731-1970  
Fax: 717-731-1985  
E-mail: [mgang@postschell.com](mailto:mgang@postschell.com)  
E-mail: [jisom@postschell.com](mailto:jisom@postschell.com)  
E-mail: [atubbs@postschell.com](mailto:atubbs@postschell.com)  
E-mail: [cwright@postschell.com](mailto:cwright@postschell.com)

Attorneys for PPL Electric Utilities Corporation