



December 3, 2009

Via First Class Mail

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

**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  
A-2009-2082382**

**Our File No. 24068**

Dear Secretary McNulty:

On behalf of the Saw Creek Estates Community Association, Inc. ("SCECA"), enclosed please find an original copy of SCECA's Exceptions in the above-referenced matter, along with the Certificate of Service of the Exceptions, and the Efiling confirmation sheet. This letter, Certificate and Exceptions are contemporaneously being served on all parties per the attached certificate of service.

Respectfully,

Paul M. Schmidt

Enclosures

cc: Certificate of Service list (as per Certificate)



## SERVICE LIST

Via First Class Mail and Email of Letter, Certificate, and Exceptions

<p>Honorable Susan D. Colwell, ALJ Office of Administrative Law Judge Pennsylvania Public Utility Commission Commonwealth Keystone Building 400 North Street Harrisburg, PA 17120</p>	
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**THE SAW CREEK ESTATES COMMUNITY ASSOCIATION, INC'S  
EXCEPTIONS TO THE RECOMMENDED DECISION**

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Dated: December 3, 2009

Filed: Electronically

## I. INTRODUCTION

The Saw Creek Estates Community Association, Inc. (“SCECA”) submits these Exceptions to the November 13, 2009, Recommended Decision (“RD”) of the presiding Administrative Law Judge (“ALJ”) in the above-captioned matter. This matter concerns, *inter alia*, the Application (“Application”) of PPL Electric Utilities Corporation (“PPL”) for the proposed Susquehanna-Roseland 500 kV Transmission Line (the “S-R Line”).

The errors in the RD, and the record constructed by PPL, fall into three categories. First, PPL had a duty to fully analyze and discuss risks and inconveniences caused by the S-R Line. “The Public Utility Law ... is concerned with the convenience, accommodation, safety, and protection of persons who may come into contact with the utility’s facilities, not only with persons served by a utility.” *West Penn Power Company, v. Pennsylvania Public Utility Commission*, 199 Pa.Super. 25, 32, 184 A.2d 143, 146 (Pa. Super. 1962) (emphasis added). Unfortunately, as explained below, PPL’s Application, written statements, exhibits, and testimony at the hearing in this matter failed to sufficiently discuss and evaluate the inconveniences and dangers of the S-R Line. The RD fails to recognize this shortcoming.

PPL’s failure precludes the Commission from making the necessary determination under 52 Pa. Code § 57.76(a)(2) that the proposed S-R Line will not present an unreasonable risk of danger to the health and safety of the public, or unreasonably inconvenience the public.<sup>1</sup> In fact, when properly considered, these risks are unreasonable, and the Application should be denied. For this reason, the RD’s Conclusion of Law (“CL”) 4 is incorrect. That Conclusion holds that PPL Electric Utilities Corporation has sustained its burden of proving that it is entitled to the siting and construction of the Pennsylvania portion of the Susquehanna-Roseland 500 kV

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<sup>1</sup> In the following discussion, health and safety are addressed predominantly in the section entitled “Safety”; however, construction health and safety issues are addressed separately in the section entitled “Construction.”

Transmission Line in portions of Lackawanna, Luzerne, Monroe, Pike and Wayne Counties consistent with its application as amended.”

Second, PPL had a duty to evaluate every reasonable alternative to minimize dangers and inconveniences, including by evaluating reasonable alternative locations for the S-R Line. 52 Pa. Code § 57.75(e)(4). Instead, PPL failed to evaluate certain areas which appear to be reasonable alternatives to siting the proposed S-R Line through the Saw Creek community and, again, the RD fails to recognize the deficiency. For this reason, the RD’s Conclusion of Law No. 11 is in error. That Conclusion erroneously held that “a reasonable effort has been made to reduce the impact on the environment to a minimum....” Therefore, the Application should be denied.

Finally, PPL was required, but failed, to demonstrate that the harms would be clearly outweighed by the benefits to be derived from the S-R Line, and the RD erroneously concluded that “the environmental harm is clearly outweighed by the benefits to be derived from the facilities to be constructed.” RD, CL.11. In fact, the harms greatly outweigh the benefits. For this reason, too, the Application should be denied.

Had the RD properly required sufficient demonstrations by PPL, and properly evaluated the evidence, it would have concluded that the Application must be denied due to the extensive unreasonable risks the S-R Line presents. The Pennsylvania Superior Court has noted that there are situations where “the route selected for the line should so offend the fundamental purposes of the [Public Utility Law] as to warrant the withholding of approval by the Commission. Such is the situation in the case at bar.” *West Penn*, 199 Pa. Super. at 30, 184 A2d at 146. Just as in *West Penn*, PPL’s application in this matter should be denied.

## II. EXCEPTIONS

### C. SITING

The Saw Creek Estates community is a densely populated community containing approximately 3,000 lots, 2,700 residences, and nearly 10,000 residents. RD, p.221. About 625 of Saw Creek Estates' residents are children. SCECA Initial Brief ("MB"), p.54; Tr.454. The community is located on both sides of Saw Creek, just north of Bushkill, PA, and includes both stream-front sites as well as dramatic ridge-top sites featuring extraordinary views. SCECA ,B. FF 3; SCECA St.3 at p.2.

The ALJ accurately captured the nature of the Saw Creek community:

They are a cross-section of the American middle class, they have worked hard to create this community, and they are frightened, outraged, worried and upset that a big company that has provided it nothing, not even service (it is Metropolitan Edison's service territory) can threaten the tranquility and familiarity of its everyday life with a major construction project and a permanent blot on its landscape.

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.

They invited me to tour their community and see for myself the issues that they face. I saw the steep roads with sharp turns, the rocky mountainous terrain, the outstanding amenities offered to the residents, and I saw them gathering at their communal mail boxes to put their children on the school buses. I stood on Mr. Hopkins' deck as he explained to me that his "view was the house and the house was the view," and he pointed out that the tips of the existing 230 kV towers were just visible above the treeline in the distance. His house, he stated firmly, would be worthless if there were towers and conductors a hundred feet higher there. I saw the houses built with their back walls abutting the uncleared portion of the existing right-of-way, and their backyards actually located in the right-of-way itself. I heard the worry in their voices as they expressed their frustration at not knowing exactly what to expect.

RD, pp.239-240.

Exception 1. Safety – The ALJ Erred in Concluding that the Risk of Tower Failure Is Acceptable

Saw Creek community residents expressed their well-founded fears of a tower collapse if the S-R Line is completed. SCECA MB, FF 12; Tr.108, 130-32, 140, 185-87, 224-25, 286-93, 463, 466-67, 497-98, and 500. The record contains substantial evidence of the dangers if a tower were to collapse. The towers of the existing 230 kV line are approximately 83 feet tall and are set within a 200 foot right-of-way; however, the proposed S-R towers would be as high as 195 feet tall. RD FF.363 and 373. Many homes in the Saw Creek community are situated immediately adjacent to the edge of the existing 200 foot right-of-way (one hundred feet from the centerline), and many have yards and decks which extend into the right-of-way. *See* SCECA MB, FF.14-15; OCA St. 1, pp.13-14; Tr. 459, 463, 468, 482-83, 497-98, 500, and 516; Site Visit Photograph Nos. 3340, 3343, 3345, 3351, 3369, 3472, 3377, 3396, 3397, 3402, 3410, 3414, 3416, 3423, 3428, 3439, 3441, 3458, 3448, 3455, 3457, and 3462; ECC Cross Ex. 6, June 23, 2008, presentation, at pp.24, 25. At least 31 Saw Creek community homes will be within the fall distance of PPL's proposed towers. SCECA MB, FF.16; SCECA Surreb. St., p.13-14.

Substantial evidence in the record demonstrates the risk of tower failure along the S-R Line. In 1998, 130 transmission towers were destroyed as a result of an ice storm. SCECA MB, p.16; OCA Cross Ex. 9; Tr.1048-49. In another storm event, 30 towers failed. SCECA MB, p.16; OCA Cross Ex. 10; Tr.1051. Even PPL's own witness admitted that, on two prior occasions as recent as 2006 and 2007, PPL's tubular steel towers – the same type of tower PPL proposes to use in Saw Creek – failed. SCECA MB, FF.23; J. Keeler, Tr.1074. The ALJ dismisses this evidence by relying on PPL's claim that it will not locate towers where their foundations will be washed out, and PPL's claim that it has previously constructed towers such

that homes lie within their fall distance. RD, FF.197-99; 220-25. These promises ignore the simple fact that, despite the best of intentions, electrical transmission towers do sometimes fail. PPL essentially insists that, although in prior transmission line projects it mistakenly promised its towers would not fail, in the current project the Commission should accept PPL's promises without question. With the steep terrain, close proximity of homes, and high number of close homes, the risk of catastrophic damage, injury and death from tower failure is too great to accept assurances in lieu of analysis, or to capriciously deem unreasonable risks reasonable.

The AJL did recognize that, under the Commission's Siting Regulations, "the existence of overwhelming safety hazards on a portion of [a new line] might prove insurmountable when choosing one of the identified alternatives." RD, p.200. Unfortunately, the ALJ then crafted a different standard to evaluate the S-R Line, testing the Application not against the Siting Regulations, but against the assumed impacts of PPL's hypothetical upgrade of the existing 230 kV line. RD, p.209. This improper standard rests on two erroneous assumptions. First, the ALJ mistakenly accepts PPL's claim that "there are only two options for the Saw Creek Estates: (1) replacement of the existing 230 kV line's 80 foot transmission towers with the 190 foot towers needed to accommodate a 500 kV line as proposed in this project, or (2) replacement of the existing 230 kV line's 80 foot transmission towers with the 140 foot towers needed to accommodate a 230 kV line under present NESC standards." RD, p.79; RD, FF.26. Second, the ALJ assumes that the S-R Line would have the same impact as an upgrade to the 230 kV line. This is incorrect, as discussed further below.

The ALJ applies this erroneous standard throughout the RD, reasoning later that "It is self-evident that utility infrastructure facilities will need to be replaced periodically, and any expectation that these towers and conductors would remain as they were built forever is not

realistic.” RD, p.239. This reasoning fails to recognize that PPL is not proposing just an upgrade to the 230 kV line, but rather a new line which is subject to examination under the Commission’s Siting Regulations. If the proposed S-R Line does not satisfy those regulations, the ALJ is not at liberty to craft an unwritten loophole to nonetheless allow its construction simply because it will be placed on existing rights-of-way. The regulations do not contain such an exemption.

The RD also mistakenly suggests that the residents of Saw Creek are to blame for moving along the existing transmission line, when in fact many of the impacts which the proposed S-R Line would cause are not caused by the existing lines, or were not known risks until after the existing line and homes were built. SCECA MB, FF.24; Tr.1169. The ALJ’s reasoning ignores the other side of the coin – each resident is protected by the Siting Regulations from unreasonable impacts caused by the construction of a new 500 kV line, and PPL has always known its new lines are subject to those regulations. Having chosen its own course, PPL should not be cut any breaks at the expense of Saw Creek residents.

Even assuming for the moment that the design of a replacement 230 kV line through Saw Creek were relevant to this proceeding, that design would be very different from what PPL claims. In fact, the replacement design could employ towers of virtually the same height as the current towers in the Saw Creek community. OCA MB, pp.50-51; OCA St. 1 at 20-22; OCA St. 1-S at 8.

Had the ALJ employed the correct standard, the outcome of the RD surely would have been quite different. The ALJ noted:

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.

RD, pp.240-41. The Commission should now employ the correct standard, and deny the Application.

Exception 2. Health – The ALJ Erred by Improperly Rejecting Evidence of the Risks of Diseases Caused By Magnetic Fields

With respect to the risk of diseases caused by Electric and Magnetic Fields (EMFs), SCECA presented substantial evidence to support a finding the S-R Line will produce magnetic fields which pose an unreasonable risk of disease. Epidemiological studies demonstrate an increased risk of various diseases due to exposure to power line magnetic fields well below those calculated to be generated by the S-R Line. SCECA MB, FF.59-65; SCECA St. 2., p.5-6; SCECA St. 2-R, Tr.1088, 1092-95, 1100, 1127. Consistent with several meta-analyses of multiple studies, the National Research Council concluded “that the link between wire code grading and childhood leukemia is statistically significant, (unlikely to have arisen from chance) is robust in the sense that eliminating any single study from the group does not alter the conclusions that associations exist.” SCECA MB, FF.70; Tr.1137-38. Based on the various studies on power line EMFs and childhood leukemia, power frequency magnetic fields are a probable cause of childhood leukemia, with elevated risks resulting from magnetic field levels of 2 to 4 mG. SCECA MB, FF.73; Tr.1118.

In evaluating evidence concerning diseases caused by magnetic fields, the ALJ committed several errors. The ALJ first erred in determining that Saw Creek residents forfeited any claim that EMF levels from the proposed line will be unacceptable. The ALJ stated that “[e]ach of these home buyers has, in effect, agreed to the hazards – real or not – posed by the existing transmission line. Each one has already agreed to the existing levels of EMF and has forfeited any credible claim that the existing level is unacceptable. It is only the difference between the existing level and the actual resulting level of EMF which is properly in controversy

here.” RD, p.209. This conclusion is misguided for several reasons. First, it lacks any factual basis to conclude that the residents, or the public in general, were or should have been aware of the risks of magnetic field when they moved into their homes. Second, it lacks any support at law – the Siting Regulations say nothing about only evaluating incremental changes in impacts.

The ALJ also erred in accepting erroneous bases on which the AJL founded the determination that magnetic fields do not present an unreasonable risk of disease.<sup>2</sup> First, the ALJ relied upon the opinion of PPL’s witness that laboratory tests of animals and cells “have not shown consistent effects.... Even when exposed to very high doses by these low frequency electromagnetic fields, they’ve not been able to duplicate the health conditions and concerns that we see in the epidemiological studies.” Tr.1179 (emphasis added); *see* RD, pp.210-11.

Importantly, in making this statement, PPL’s witness does concede that epidemiological studies, do show an association. SCECA MB, p.24. Additionally, the fact that not every study shows positive effects in no way diminishes the fact that most studies do find DNA damage, because variation can result from different cells, different exposures and different methods. SCECA MB, FF.78; SCECA Surreb. St. 2R, pp.3-4.

The ALJ additionally accepted the erroneous contention that the results of epidemiological studies on childhood leukemia are “inconsistent.” RD, FF.251-57; Tr.1179. On the contrary, the results are not unanimous, but they are consistent. SCECA MB, p.25; SCECA Surreb. St. R-2, p.5-6. Many reputable organizations agree. For this reason, a 2007 World Health Organization (“WHO”) report states: epidemiological studies do “show an association

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<sup>2</sup> It bears noting that PPL failed to present the true, ultimate normal load it will place on the S-R Line, and the resultant magnetic field levels. Therefore, the most the Commission can determine is that eventually the proposed S-R lines will be operated normally at somewhere below the summer normal rating, in which case the resultant calculated magnetic field is nearly 204 mG at 15 ft from the centerline on the 500 kV side. SCECA MB, FF.29-40; Tr.1138, 1144; SCECA Att. DWF-2. Additionally, under certain emergency situations, the highest magnetic field level is calculated to reach over 275 mG, at 20 feet from the centerline on the 500 kV side. SCECA MB, FF.41-43; Tr.1138; SCECA Att. DWF-2.

between ELF magnetic field exposure and an increased risk of childhood leukemia.” SCECA MB, FF.84; SCECA Surreb. St. R-2, p.6.

Finally, the ALJ erroneously accepted as relevant various standards related to EMF exposure which PPL cited. This compares apples to oranges, because those standards are not intended to protect against long-term disease, but rather are either based on non-health-related goals, or are intended to protect against acute health impacts like “startle shock,” pain, or cardiac excitation. SCECA MB, FF.88; PPL Cross-examination Ex. 7; Tr.1194, 1196. In the end, the ALJ chose to ignore evidence SCECA submitted, and accept evidence PPL submitted; however, the bases for doing so are erroneous, as demonstrated above. Furthermore, even if there were some legitimacy to those bases, they would not rise to the level of proving that the risks of disease to the many Saw Creek residents living up against the S-R Line right-of-way are not unreasonable.<sup>3</sup> Because PPL failed to make such a demonstration, the Commission must deny the Application. From a legal standpoint, to do otherwise would circumvent the Siting Regulations. From a human standpoint, to do otherwise would make guinea pigs out of the residents of Saw Creek.

Exception 3. The ALJ Erred By Not Recognizing that PPL Failed to Sufficiently Evaluate Alternative Potential Locations for the S-R Line in Order to Minimize Adverse Effects

PPL has an intensified burden to show on the record that the environment has been considered in its planning and that every reasonable effort has been made to reduce the environmental impacts to a minimum. *Re Overhead Electric Transmission Lines, supra*, at \*14 (emphasis added). After a hearing, the Commission can only grant the application if it

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<sup>3</sup> PPL is not advocating, and the ALJ has not concluded, that medical science has proved that power lines do not cause human diseases. SCECA MB, FF.10. Accordingly, the ALJ erroneously concludes that PPL need not have considered fears residents legitimately suffer over concerns they will develop diseases caused by magnetic fields. RD, p.219.

determines the proposed line will 1) not create an unreasonable risk of danger to the health and safety of the public, and 2) have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives. 52 Pa. Code § 57.76(a)(2) and (4) (emphasis added). But, such is not the case.

i. PPL's Link Selection Process Was Deficient

PPL's analysis of potential routes for the S-R Line purportedly consisted of three main steps. First, PPL claims to have elected PPL's "project area." Second, it claims to have identified "large area constraints" within that area by reviewing maps and aerial photographs. This "paper" review led to PPL identifying three potential main routes, identified as Routes A, B, and C, which circumvented those large area constraints. RD, FF. 140-45, and p.166-67; Tr.973-74. PPL claims it then identified alternative potential "links" along these three delineated routes. RD, FF.140-45, and p.166-67; Tr.976-77.

These last two steps present two of the critical flaws in PPL's evaluation, which the ALJ ignored. Although the identification of large area constraints left PPL with limited areas in which to place the S-R Line, PPL arbitrarily limited its options even further by only selecting very narrow links it delineated for further field evaluation. RD, FF. 140-45, and p.166-67; Tr.974, 978. Furthermore, in the face of significant risks presented by placing the S-R Line through Saw Creek, PPL steadfastly maintained its blinders, only considering the narrow links it had previously identified, rather than removing its blinders and considering the broader open areas between "large area constraints." SCECA MB, FF.14-18; RD, FF. 140-45, and p.166-67. PPL's "field" evaluation of potential links and routes consisted only of driving a car along either public roads or PPL's existing right-of-ways. It did not traverse any areas not accessible by either public road or PPL's existing right-of-ways. SCECA MB, pp.30-31; Tr.974, 978. PPL

apparently categorically rejected any potential links which would require it to obtain a property owner's permission to view, or to stray from its delineated links. This lack of true exploration and field work prevented PPL from identifying additional alternative links, and from seeing where it could modify a proposed link to circumvent a "small area constraint" rather than simply discard the proposed link. In short, PPL could not have evaluated every reasonable alternative.

ii. The ALJ Erred In Not Requiring That PPL Meaningfully Consider Areas East of Saw Creek

On behalf of SCECA, Dr. Moscovici identified additional alternative routes which would eliminate the need to cross the Saw Creek Community, and cause minimal impact on the DE Water Gap national Recreation Area, protected regions, wetlands and riparian buffers and homes. He roughly depicted these on a map as Alternative Links A and B. RD, FF.287; SCECA MB, pp.33-34; SCECA R-5, p.5.

Unfortunately, PPL never meaningfully evaluated Alternative Links A and B. The only thing PPL did was to summarily conclude that they encroached on existing features. *See* RD, pp.238-39. This conclusion was erroneous because Dr. Moscovici stated from the start that his depictions of Alternative Links A and B were "rough", meaning that the lines he drew did not represent exact locations. In reviewing those rough alternative links, PPL made no attempt to fine-tune them to see if PPL could avoid existing features. SCECA MB, p.34; Tr.987. PPL failed to acknowledge the vast open areas nearby, or explain why the alternatives cannot be adjusted slightly to use those open areas. SCECA MB, pp.34-35; *see* PPL Ex. PS-2.<sup>4</sup>

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<sup>4</sup> The ALJ mistakenly placed the burden on the non-PPL parties to evaluate alternatives to routes A, B and C. *See* RD, p.181, 237. However, as a legal point, no other party has that burden. As a practical point, no other party could perform that evaluation. On behalf of SCEDCA, Dr. Moscovici explained that this would be a difficult task. SCECA MB, p.34; SCECA St. R-5, pp.5-6.

Instead, with respect to Alternative Route A, PPL's witness, Peter Sparhawk, baldly claimed that it was "similar in concept" to an "eastern" route PPL had examined but "never seriously considered because he speculated that such a route "likely would interfere with any redevelopment plans for the Tamiment property" and lead to "difficult re-entry." SCECA MB, p.34; PPL St. RJ3, p.3 (emphasis added). PPL never supported this assertion, and never explained why a developer would care whether a portion of its property generates income in part from PPL, rather than exclusively from homeowners. SCECA MB, pp.34-35; PPL St. RJ3, p.3. Shouldn't PPL at least make some modicum of effort to value the costs of acquiring rights, and overcoming the unexplained "difficulty" of re-entry? Shouldn't PPL take a close look at these issues, weigh them, and arrive at a legitimate, thoughtful decision? Yet, nowhere does PPL do this, and the ALJ mistakenly acquiesced.

PPL had a duty to fully evaluate these reasonable alternatives in order to minimize the dangers of the S-R Line to Saw Creek residents, and to fully document that evaluation on the record. *See Re Overhead Electric Transmission Lines, supra*; 52 Pa. Code § 57.75(e)(2), (3) and (4). PPL's failure precludes the Commission from making the necessary determination that the proposed line 1) will not create an unreasonable risk of danger to the health and safety of the public, and 2) will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives. 52 Pa. Code § 57.76(a)(2) and (4) (emphasis added). Accordingly, PPL's application should be denied.

Even PPL's limited analyses of areas near Saw Creek failed to mention or weigh the impacts to Saw Creek, or compare those impacts from one potential link to the next. As indicated *supra*, those concerns include increased risks of cancer, childhood leukemia, and other health affects resulting from exposure to magnetic fields, the dangers of tower collapse, potential

injury and death caused by construction activities, noise and shock during blasting and drilling, reduced property values, and the offensive marring of the attractive viewsapes in the area. Because PPL failed to weigh these impacts, PPL cannot credibly suggest that circumventing Saw Creek will not minimize adverse impacts. PPL instead chose to avoid this analysis by arguing that the impacts of circumventing Saw Creek are “unnecessary because PPL Electric already owns sufficient rights-of-way through the Saw Creek Estates development for the Susquehanna-Roseland Transmission Line.” SCECA MB, p.37; *id.* at p.4.

The ALJ erred by allowing PPL to escape such a comparative analysis of potential links in the Saw Creek area – every potential link. The Commission recently admonished a transmission siting applicant for its scant examination of alternative routes, and instructed that in future applications the applicant must “provide better alternative route descriptions and discussion of comparative merits of alternative routes.” *See In Re: Application of Trans-Allegheny Interstate Line Company (TrAILCo)*, 2008 Pa. PUC LEXIS 3, \*63-64. In other words, PPL must necessarily have performed a sufficiently detailed analysis of impacts, and a sufficiently detailed comparison of those impacts among every reasonable available alternative route.<sup>5</sup>

#### Exception 4. Real Estate Values

- i. The ALJ Erroneously Concluded the Proposed Line Will Have No Negative Impact on Property Values in the Saw Creek Community

The record contains extensive evidence that construction of the S-R Line will cause harm and inconvenience in the form of decreased property values in the Saw Creek Area. Numerous

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<sup>5</sup> According to Mr. Keeler, PPL purportedly decided to increase tower height and reverse phasing in order to reduce ground-level EMFs, which increased the S-R project costs by 5%. Tr.1072. If true, this would be an increased cost of \$ 60 million. Why hasn't PPL instead meaningfully considered spending a fraction of this amount to circumvent the Saw Creek community?

lay individuals testified to this. SCECA MB, p.39; Tr.97, 105-06, 119, 125, 185-87, 200, 203, 205, 207-08, 253, 284-85, 294-97, 309, 317-19, 323-26, 503. Several real estate professionals also provided lay testimony that this would occur, that they were already encountering buyers who were dissuaded by the S-R Line, and that prices could be reduced by as much as 50%. SCECA BM, FF.130-31; Tr.119, 129-30. SCECA's expert appraiser, Mr. Andrew R. Haakenson, MAI, provided testimony which confirmed and validated the views expressed by Saw Creek residents. SCECA MB, FF.164; SCECA St. 3, p.1; SCECA Ex. ARH-1, Tr.1929-30.

The ALJ correctly recognized one of the impacts the S-R Line will have on properties: FHA and VA or any type of HUD-related mortgage financing is not available for homes within the "fall distance" of any type of transmission tower. Thirty-one properties will not qualify for these mortgages after the towers are replaced. MB, FF. 315; SCECA Stmt. 3 at 14.

Inexplicably, the ALJ apparently concluded, erroneously, that this disqualification would not deter potential buyers and negatively impact property values. The proposed S-R Line also presents serious temporary impacts which, the ALJ did find, will impact property values. MB, FF.385.

Mr. Haakenson testified that a review of appraisal literature revealed no study which directly addresses the situation at Saw Creek; that is, the replacement of long-standing familiar infrastructure with markedly larger and more substantial infrastructure. SCECA MB, p.157; SCECA St.3 at p.4. Studies do exist on the effects of existing high-voltage transmission lines (HVTL). An increasing number of such studies show "a small diminution in value attributable to the close proximity of these lines." SCECA MB, FF.158; SCECA St.3 at p.5 (citing *Power Lines and Property Values Revisited*, J.M. Pitts and T.O. Jackson, *The Appraisal Journal*, Fall,

2007). The studies that the effects of HVTL on residential properties are determined by five interplaying factors:

1. proximity to towers and lines;
2. the view of towers and lines;
3. the type and size of HVTL structures;
4. the appearance of easement landscaping; and
5. surrounding topography.

*Id.* In studies where negative impacts are evident, they show an “average discount of between 1% and 10% of property value...” for properties abutting an HVTL right of way, and that this negative impact is likely to be more pronounced in a slow market. *Id.*

Mr. Haakenson identified over half a dozen reasons why the proposed S-R Line will impact property values. SCECA MB, FF.161-67; SCECA St.3, pp.15-17. Given these sources of impacts to property values of Saw Creek residents, and SCECA itself, PPL should have made a reasonable effort to evaluate alternative locations for the S-R Line in order to minimize these land use impacts, and weighed these impacts during its comparison of various alternatives. *See* 52 Pa. Code § 57.76(a)(2) and (4); *Pa. DER v. Pa. PUC, supra*. Only then would PPL have satisfied its duty to evaluate every reasonable alternative to minimize them. *See Re Overhead Electric Transmission Lines, supra*; 52 Pa. Code § 57.75(e)(3)(i) and (4). Only then could the Commission make the necessary determination that the proposed line will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives. 52 Pa. Code § 57.76(a)(4) (emphasis added). Accordingly, PPL’s application should be denied.

The ALJ erroneously rejects Mr. Haakenson’s opinion, and adopts those of PPL’s experts. In doing so, the ALJ ignored the concessions of one of those experts that about half of the studies concerning electrical transmission lines and property values have found that

transmission lines have a negative effect on property values, and that the studies which found a negative effect found an effect somewhere below 10%, usually in the range of 3% to 6%.

SCECA MB, pp.45-46; Tr.1861, 1858.

The ALJ also ignored the fatal flaws in the methods and conclusions of PPL's experts. First, PPL's Mr. Bates relies on a study which is of questionable relevance because it fails to demonstrate visual impacts of power lines, does not address pre- and post-upgrade conditions, and was subject to numerous questionable data manipulations, and did not take into account numerous relevant factors, including topography, which PPL's own expert conceded was particularly important. SCECA MB, FF.47-48; SCECA Surreb. St., pp.7 and 9; Tr.1863-71. Second, the ALJ accepted the conclusions of PPL's Mr. Dominy despite the fact that Mr. Dominy's study did not test the pre-upgrade and post-upgrade conditions he, and the ALJ, assert it did, and the fact that his study suffers from numerous unexplained and undocumented data manipulations which effectively eviscerate its relevance and reliability. SCECA MB, pp.48-49 50-51; *see, e.g.*, Tr. 1884-85, 1901-02; SCECA Surreb. St. 3, pp.9-10.

One particularly egregious aspect of Mr. Dominy's methodology is that, for each of his case studies, he plotted the market value of the home versus the property's distance to power lines, and the results were scattered – “they were spread throughout” his graph. SCECA MB, p.48-49; Tr.1889. He conceded that, instead of performing a mathematical calculation to determine the average of the many dots, he simply “eyeballed” the scatter plot of dots to determine whether there was an overall difference between the values of homes near transmission lines versus homes away from transmission lines. SCECA MB, p.48-49; Tr.1889. Miraculously, he claims that after “eyeballing” as many as several hundred dots on a scatter plot, he was able to emphatically conclude that the data in his case studies did not demonstrate that the

upgrade of the transmission line had any measureable impact on property value. SCECA MB, p.48-49; PPL Reuttal St. 21-R, p.5. There is simply no way that Mr. Dominy can render an accurate opinion as to the impacts of rights-of-way using this gross and arbitrary method of evaluation the spread of dots. For this reason, his testimony should have been given no weight.

A second egregious flaw in Mr. Dominy's study which the ALJ ignored is that none of the study areas involved a review of property sales before and after an upgrade (or even an initial facility construction). SCECA MB, pp.50-51; SCECA Surreb. St. 3, pp.9-10. A third flaw which the ALJ ignored is that Mr. Dominy's study rests on a profoundly misplaced assumption. It rests on the pure assumption that if PPL's S-R Line proposal has any impact on property values, the impacts should have begun as soon as PPL announced the S-R Line proposal. SCECA MB, pp.50-51; Tr.1893-94. Conversely, with respect to his Orange, CT study area, he completely dismissed the possibility that those sales were all "post-upgrade" sales, even though each one of them occurred subsequent to project approval and most of them occurred subsequent to the commencement of construction. SCECA MB, 50-51; Tr.1905-06.

Mr. Dominy did concede several important points which indicate the heightened impact the proposed S-R Line would have in Saw Creek versus other areas. He agreed that certain factors of a property might have a great influence on price in one neighborhood, but less influence on price in another neighborhood. SCECA MB., p.48; Tr.1904. He conceded that the quality of the view at a property could have a greater influence on price than it would in another neighborhood. SCECA MB., p.48; Tr.1905. Given that so many residents testified that the view was an important reason for them to move to Saw Creek, and given the undeniable beauty of the area as revealed during the site visit, it is apparent that the greatly increased tower height of 190 feet will undoubtedly have a significant negative impact on Saw Creek property values. The

ALJ erred in reaching a different conclusion, and in failing to include the impact on property values in a weighing of impacts caused by the S-R Line.

Exception 5. Viewshed – The ALJ Erred by Not Requiring PPL to Adequately Reveal and Weigh Impacts on the Viewshed

Spoliation of the viewshed is a significant concern of Saw Creek residents. SCECA MB, p.53; Tr.105, 120, 121-24, 130-32, 185-87, 200, 203, 214, 220, 224-25, 253, 272, 282-83, 298-301, 302-03, 317-19, 342-46, 350, 352, 462, 466, 491, 503, 509-514. In many locations, the existing towers rise to approximately the same height as the surrounding treetops, but the proposed towers would rise well above the treetops and be visible through the Saw Creek community, and beyond. RD, FF.314 and p.222; *see, e.g.*, Site Visit Photograph Nos. 3162, 3163, 3166, 3206, 3211, 3214, 3260, 3279, 3306, and 3355; Tr. 447-48, 450-51, 459, 476-79, 503, 509-14. The ALJ correctly noted that “aesthetics and visual impact of a transmission line is influenced by multiple factors: the landscape character of the surrounding area, the viewer's activities and scenic expectation, the visual integrity and visual absorption potential of the landscape, and the visibility of the line. MB, FF 185. The ALJ did note that the visual impacts of the proposed towers will be very significant. *See* RB, FF.363-65. However, the record lacks the required visual depiction of what viewsheds will look like if the S-R Line is built in or near Saw Creek, and fails to evaluate these factors or weigh them as compared to other locations. *See* 52 Pa. Code § 57.75(e)(3)(x) and (4); *Pa. DER v. Pa. PUC, supra*. Therefore, the Commission is unable to determine the comparative visual impacts among various alternatives, and ensure that PPL has minimized them. Accordingly, PPL’s application should be denied.

SCECA has an additional basis to take exception with the RD’s findings and conclusions with respect to viewsheds. SCECA actually served the Surrebuttal Testimony of an additional witness not named in the RD - SCECA St. No. R-4, Surrebuttal Testimony of Albert J. Spinelli,

Jr. That evidence related to viewsheds, and included renderings of what the landscape would look like after construction of the proposed S-R Line towers. However, the ALJ directed that SCECA could not move to admit this testimony on its behalf. *See* Tr. pp.782-83. Instead, the Presiding Office allowed that Mr. Spinnelli could move to admit this testimony on his own behalf. *Id.* However, Mr. Spinelli elected not to do so. SCECA RB, p.1. As a result, SCECA suffered the loss of this evidence. This decision of the ALJ was in error.

The ALJ's decision not to allow SCECA to introduce Mr. Spinelli's testimony stemmed from another erroneous decision of the ALJ. The ALJ determined, by interlocutory order, that residents of SCECA could only participate in this hearing by filing their own individual protests, or by being represented by SCECA. If they did the former, they could not serve as a witness for SCECA. *See* Pre-Hearing Order No. 4. However, an individual may be part of a group appearing as a party, and also appear on their own behalf. Additionally, any party is free to call any individual as a witness. There is no bar to either of these practices; therefore, the ALJ's decision was in error.

The ALJ also rendered an earlier interlocutory order in error. The ALJ required SCECA to produce its membership list for examination. *See* Pre-Hearing Order No. 4. This decision also was in error. The Order violated SCECA's legitimate interest in maintaining the confidentiality of its member list. Many of the bases for this interest have long been recognized by the United States Supreme Court as reasons for its holding that, whether an association is representing the interests of its members or itself, a state cannot compel the association to produce its membership list absent sufficient justification. *See NAACP v. Patterson*, 357 U.S. 449 (1958). In the present matter, the SCECA is asserting the interests of its members through "associational standing", as allowed in *New York State Club Ass'n, Inc. v. City of New York*, 487

U.S. 1 (1988), and *NAACP*, 357 U.S. at 459, and is asserting its own interests as allowed in *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 299 n. 11 (1979).

While these erroneous decisions may not have ultimately impacted the final outcome of this matter, for the benefit of future litigants and the soundness of Commission decisions, SCECA respectfully requests that the Commission address them.

Exception 6. Construction Issues – The ALJ Erred by Allowing PPL to Substitutite Assurances It Will Do Its Best For The Required Demonstration That Risks Will Not Be Unreasonable

Nowhere is the record in this matter more deficient than with respect to construction risks. The Siting Regulations explicitly require applicants to make known the safety risks of a proposed line. *See* 52 Pa. Code § 57.75(e)(2). An applicant cannot leapfrog this requirement and simply provide assurances that it will do its best to avoid or mitigate any dangers. The Siting Regulations also require the Commission to determine, based on substantial evidence, that those risks are not unreasonable. The relevant provisions require the following of the Commission:

The Commission will not grant the application, either as proposed or as modified, unless it finds and determines as to the proposed HV line:

...

(2) That it will not create an unreasonable risk of danger to the health and safety of the public.

52 Pa. Code § 57.76(a) (emphasis added). However, applicants must evaluate and minimize more than safety risks – they must also evaluate and minimize adverse effects on the quality of human life. When it adopted the regulations, the Commission stated:

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

*Re Proposed Electric Regulation*, 49 Pa. P.U.C. 709, 710 (1976) (emphasis added). All parties admit that the safety risks and adverse effects on the quality of life of Saw Creek residents will be significant. The question is whether they have been properly quantified or otherwise evaluated, and whether they are unreasonable. Unfortunately, the neither PPL nor the ALJ make this determination.

The dangers to health and safety during construction are substantial. Trucks will permeate the community. RD, FF.10 and 316; *see* SCECA Ex. ARH-3. They will use narrow roads on which the community's approximately 625 children walk, where the topography is very steep. RD, FF.10 and 316; Tr.454, 494-95, 508; *see, e.g.*, Site Tour Photograph Nos. 3257, 3303, 3310, 3314, 3435, and 3465. PPL must create additional access roads; remove conductors, towers and foundations; drill out and blast out solid rock; and install new foundations, towers and conductors. RD, FF.381 and p.195; Tr. 922-23, 929-30. PPL admits that construction poses risks such as dropping a conductor to the ground, or the malfunctioning of heavy equipment. SCECA MB, p.35; Tr. 920-21. PPL also admits that helicopters used during construction may have to make an emergency landing. SCECA MB, pp.55-56; Tr.802-05; OCA Cross Ex. 1. The ALJ properly found that:

Actual construction time has been estimated by PPL at one year. This will involve a serious increase in road traffic, movement of construction material and equipment, and the necessity to stage and store materials and equipment on parts of the existing right of way which now are essentially vacant land. Movement of heavy equipment and materials over Saw Creek's roads will also create a continuing hazard for residents, visitors, and for Saw Creeks maintenance and security personnel during construction. The existing road network is entirely two-lane, asphalt, built to a light-duty residential standard not regulated by PennDOT. The roads have minimal clear sight distances at many corners, few vehicle-width shoulders, and are accessed by at least one driveway per residence, many of which are at steep grades where they meet the roads. Construction activity will also result in the daily entry and exit of construction workers, presumably in their private vehicles. As there is little or no street parking available, parking will have to be provided, presumably on the right of way.

MB, FF.385.

Despite being aware of these impacts and dangers, PPL has done nothing to quantify or otherwise evaluate them. SCECA MB, p.56; Tr.918. PPL still has not determined how many access roads it will have to clear or build. SCECA MB, p.56; Tr.929. PPL has not determined the extent of blasting which will take place in the Saw Creek area, or the degree of resultant vibrations in people's homes. SCECA MB, p.56; Tr.923. PPL has not evaluated the impacts of blasting out rock, removing rubble, and transporting it through the Saw Creek community. SCECA MB, p.56; Tr. 924. PPL has not done anything to evaluate the amount of truck traffic which would occur through Saw Creek. SCECA MB, p.56; Tr.924. PPL also does not yet know the extent to which it may need helicopters to bring into Saw Creek conductors, heavy equipment, or towers for the proposed line. SCECA MB, p.56; Tr.926-27. Yet, PPL admits that "any reasonable siting process" must consider inconvenience and safety risks to the public posed by construction. SCECA MB, p.56; PPL St. 1R, p.3.

In the face of these significant dangers and inconveniences, PPL had a duty to fully analyze, quantify and discuss them on the record pursuant to 52 Pa. Code § 57.75(e)(2). PPL's failure to do results in an absence of evidence, and renders its Application deficient. This failure also precludes the Commission from making the necessary determination under 52 Pa. Code § 57.76(a)(2) that the proposed S-R Line does not present an unreasonable risk of danger to health and safety of the public.

The ALJ overlooks the lack of substantial evidence regarding construction impacts and inconveniences by mistakenly focusing on PPL's assurance that it will minimize impacts by following a safety manual and employing safety officers. RD, FF.375-76, 378, 381. The ALJ also focused on PPL's claims that it will repair any damage. RD, FF. 380, 382. However, the

Siting Regulations do not permit PPL or the ALJ to substitute these assurances for detailed evaluation and quantification of dangers. Furthermore, PPL's assurances ring hollow: PPL admitted it has no prior experience constructing a project of this size in such a densely populated area. SCECA MB, FF.223; Tr.140-41, 205, 282-83, 501. Therefore, the Commission should deny PPL's Application for lack of substantial evidence to support a determination that the risk of dangers to health and safety are not unreasonable.

### III. CONCLUSION

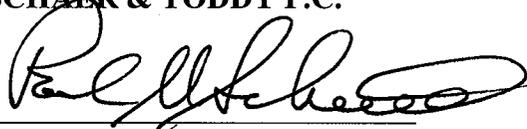
For the above reasons, the Exceptions of SCECA should be granted, and the Application of PPL should be denied.

Respectfully submitted,

For Saw Creek Estates Community Association, Inc.

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