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December 14, 2009

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, *et al.*

Dear Secretary McNulty:

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

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

Respectfully Submitted,

Dianne E. Dusman
Senior Assistant Consumer Advocate
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Enclosure
cc: Honorable Susan D. Colwell
Office of Special Assistants
00120615.docx

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of PPL Electric Utilities Corporation Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the Pennsylvania Portion of the Proposed Susquehanna-Roseland 500 kV Transmission Line in Portions of Lackawanna, Luzerne, Monroe, Pike and Wayne Counties, Pennsylvania	:	Docket No. A-2009-2082652
Petition of PPL Electric Utilities Corporation for a Finding that a Building to Shelter Equipment at the 500-230 kV Substation to be Constructed in the Borough of Blakely, Lackawanna County, Pennsylvania is Reasonably Necessary for the Convenience or Welfare of the Public	:	A-2009-2082832
Application of PPL Electric Utilities Corporation Under 15 Pa. C.S. §§1511(c) for a Finding and Determination that the Service to be Furnished by the Applicant Through Its Proposed Exercise of the Power of Eminent Domain to Acquire a Right-Of-Way and Easement Over and Across the Lands of the Property Owners Listed Below For the Proposed Susquehanna-Roseland 500 kV Transmission Line In Portions of Lackawanna, Luzerne, Monroe, Pike and Wayne Counties, Pennsylvania is Necessary or Proper for the Service, Accommodation, Convenience or Safety of the Public	:	
Chaudari Family Limited Partnership, David Murphy, and Marguerite T. Kranick	:	A-2009-2088297
HaRa Corporation	:	A-2009-2088337
Richard Coccodrilli, Jr., Jeffrey J. Coccodrili, Jr, Ryan T. Coccodrilli, and Joseph Williams	:	A-2009-2088327
D&L Realty Company	:	A-2009-2088340
Kenneth Powell and Linda Powell	:	A-2009-2088359

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

REPLY EXCEPTIONS OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: December 14, 2009

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I. INTRODUCTION

On December 3, 2009, the active parties filed Exceptions to the November 13, 2009 Recommended Decision of Administrative Law Judge Susan Colwell issued in this proceeding. The OCA now files these Reply Exceptions in response to the Exceptions of PPL Electric Utilities Corporation (PPL), in which the Company takes issue with the conditions set forth in the Recommended Decision and two Findings of Fact. In general, these Reply Exceptions support the condition that PPL have all major permits in hand before beginning construction of any part of the SR500 Line and offer additional argument and explanation as to why the Commission should reject PPL's Exceptions on this point

On the ultimate issue, the ALJ was correct in conditioning her recommendation that "the Commission make the necessary findings to approve this project *after all necessary permits have been obtained for the entire line.*" R.D. at 288 (emphasis added). In short, this condition recognizes a flaw in PPL's Application, in that PPL has not yet obtained, and may not be able to obtain, the federal permits necessary for the Susquehanna to Roseland line to be placed in service if routed through the Delaware Water Gap National Recreation Area (DEWA). The proposed conditions allow PPL time to attempt to procure these permits and recognizes that federal law and agencies have a critical position in the approval process for the proposed line.

The crux of the problem presented is that PPL wants the Commission to permit PPL to begin construction of the SR500 Project in advance of knowing precisely what size and where any proposed transmission line may lawfully be built. The outcome of the federal permitting procedure for the two segments of the SR500 that run through the DEWA could require a complete rerouting of the SR500 line and a completely new set of regulatory siting approvals in Pennsylvania and New Jersey. While PPL suggests that "reasonable assurances" of

forthcoming National Park Service (NPS) permits would be adequate to justify Commission approval, DEWA Superintendent Mr. Donohue testified that the NPS would not prejudge its permit process. Tr. at 376. In any event, the "reasonable assurances" suggested by PPL are simply not legally sufficient. To grant this application at this juncture would risk imposing substantial unnecessary costs on ratepayers, and social and environmental costs on the citizens of Pennsylvania.

The Commission should require final approval of all federal permits prior to commencement of construction.[1] In the Recommended Decision, the ALJ correctly summarized the OCA concerns regarding the federal permits that are critical to commencement of the SR500 construction. The ALJ wrote:

> A critical point made by the OCA is that the Company will recover its costs associated with this line even if it is abandoned before completion. Therefore, the Company has nothing to lose by beginning to build the line before all of the permits are in place. PJM ratepayers, however, will be left paying for it. This is another reason to require that the Company have all permits in place before beginning construction.

R.D. at 278. The OCA urges the Commission to issue an Order respectful of this consideration. Allowing construction to begin on a project of the magnitude of the SR500, costing $1.2 billion, without knowing with certainty whether it can be completed as proposed, could result in a waste of scarce resources and would defy common sense.

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[1] In its Exception No. 3, PPL argues that its ability to obtain ministerial permits should not be included in the conditions imposed in the approval of this project. See, e.g., PPL Exc. at 30. Provided the Commission retains conditions relating to required federal permits that control the scope and overall success of the Susquehanna to Roseland line, the OCA does not oppose PPL's suggested modification to clarify the issue regarding ministerial permits. In addition, the OCA does not oppose the PPL suggestion in its Exception No. 4 regarding the six-month expiration of any Commission approval. PPL Exc. at 34. The condition suggested by PPL would require PPL to begin construction within six months of obtaining final Pennsylvania, New Jersey, and federal DEWA approvals, if forthcoming, subject to exhaustion of appeals.

II. REPLY EXCEPTIONS

OCA Reply to PPL Exc. Nos. 1-4: Requesting Permission to Begin Construction of the Wallenpaupack-Bushkill Segment of the SR 500 Line Prior to Obtaining Required National Park Service Permits: The ALJ's Recommended Conditions are Reasonable, Practical, and in Accord with Applicable Law. (PPL Exc. at 8-17; R.D. at 248-267; OCA M.B. at 80-95; OCA R.B. at 43-48).

A. Introduction.

The PPL Exceptions address the Recommended Decision's conditional approval of the SR500 line with interrelated arguments and interrelated Exceptions. PPL argues that construction of the Wallenpaupack-Bushkill segment of the SR500 line should begin in the first quarter of 2010 and should not wait until PPL has the required federal DEWA permits in hand. PPL Exc. at 8-17. PPL next argues that it should not be prevented from beginning construction of the Wallenpaupack-Bushkill segment of the SR500 line until all permits are obtained. PPL Exc. at 25-28. PPL then argues that it should be permitted to begin construction of any portion of the SR500 line for which it has obtained the required permits. PPL Exc. at 28-32. All of these arguments are designed to overcome the condition that PPL secure required permits before beginning construction on any part of the line. All of PPL's Exceptions should be rejected.

B. The Rebuild of the Existing *230 kV* Wallenpaupack-Bushkill Line Cannot Serve as a Justification for the Immediate Construction of a *500 kV* Line along This Segment of the Proposed SR500 line, Before PPL Has Shown It Can Do So Lawfully.

PPL opens its Exceptions with a claim of immediate necessity for the construction of at least one of the two proposed 500 kV lines because of the deteriorated condition of PPL's existing 230 kV Wallenpaupack-Bushkill facilities. PPL Exc. at 4, 5, 8, 9, 11, 23. While the ALJ determined that replacement of the line in the winter of 2010 was unnecessary, R.D. at 267, PPL now paints the condition of the existing line as requiring urgency arguing that, while "there is no emergency today," the Wallenpaupack-Bushkill PPL facility is "on borrowed time," is

"badly deteriorated," is in "very poor condition" and "could fail at any time." PPL Exc. at 4, 5.[2] PPL attempts to place responsibility for jeopardizing service on the Commission, if it accepts the condition recommended by the ALJ, because of construction delays. PPL Exc. at 8. It is PPL who has delayed in the repairs and upgrade of this line and then wrapped the project into this bigger 1,000 kV SR500 Project.[3] If PPL believes that a failure could occur at any time, the OCA submits that this Application proceeding was not an appropriate forum to develop solutions to this situation.

C. The PPL 1st Quarter 2010 Construction Deadline to Meet the PJM June 1, 2012 In-service Date is Irrelevant, as the PJM In-service Date Holds no Legal Significance and is Based on Outdated Assumptions.

PPL argues that regardless of what happens with DEWA permits, the Commission should allow it to begin construction on the Wallenpaupack to Bushkill segment of the line "as soon as practical," *i.e.*, in early 2010, to assist it in meeting the June 1, 2012 in-service date requested by PJM. PPL Exc. at 9-10. PPL argues that it expects the DEWA permitting process will not be finalized before March 2011 and waiting for DEWA approvals could delay its June 2012 project in-service date by as much as a year. PPL Exc. at 10.

The OCA would note that the PJM requested in-service date is not a legal requirement and does not obligate the Commission to approve the Application. The OCA agrees with the ALJ's conclusion that "the Company's PJM deadline cannot be the deciding factor in a

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[2] The Commission should note that the claimed need for the SR500 line, inclusive of the replacement of the Wallenpaupack to Bushkill segment, was first determined by PJM through the 2008 RTEP process. R.D. at 21. This fact, combined with the recognized need to reconductor the aged segment, could have led PPL to begin to investigate the permitting processes for the SR500 project more than two years ago. Indeed, if the necessity for replacing the vintage segment was previously identified to be in the 1993 to 1998 timeframe, permitting requirements and the timing involved in procuring them could have been investigated long ago, because as PPL has recognized, this segment itself traverses the DEWA. OCA Exc. at 29.

[3] PPL has acknowledged that it believes there is only a 25% chance of the SR500 Project meeting the projected in-service date of June 2012. OCA Cross Exh. 2; Tr. at 809-810. Given this acknowledgement, PPL should already have some plan in place to meet any reliability concerns resulting from delays in the administrative and appeal processes.

Commission adjudication." R.D. at 267. While PPL may claim that the PJM in-service date lends authority to its request to begin immediate construction, this is not the law. The fact that the in-service date was given to PPL by PJM neither satisfies the PPL burden of proof on this issue nor justifies an immediate start, without requisite permits in place, in light of the law.

PPL can only begin construction of the line, if and when it is able to show that legal requirements have been met. Under the instant Application, to permit physical construction of the line prior to PPL's obtaining the required DEWA permits is to approve a $1.2 billion transmission line to nowhere. The DEWA permits are one of the largest, if not *the* largest, hurdles to placing the line in service. If the DEWA permits are not forthcoming, or impose significant alterations to the proposed corridor, the route of the Susquehanna to Roseland transmission line as presented in this Application would need to change. OCA M.B. at 81; OCA R.B. at 43. PPL expressly acknowledges this in its Exceptions. PPL Exc. at 22. The conditions imposed by the Recommended Decision recognize this critical fact about PPL's chosen route and serve the public interest accordingly. At this point, the record contains absolutely no hint whether DEWA permits will be forthcoming. To this extent, PPL has failed to meet the standard of 52 Pa. Code Section 57.72(c)(11) because it has not shown that it will meet these critical federal requirements.

In addition, PPL itself suggests that dramatic deviations from its proposed siting corridor could occur pursuant to the NNPS permitting process and National Environmental Protection Act (NEPA) study. PPL Exc. at 22 (proposing new corridor locations both north and south of its existing easement and proposed SR500 corridor). This is an acknowledgement on the part of PPL that the NPS has the authority not only to deny PPL permits, but also to condition any permit in a manner wholly inconsistent with the instant Application, including rerouting.

PPL's proposal of these options at this stage is also an acknowledgement that the proposed route remains speculative at this point in time. As the OCA pointed out in Briefs, a rerouting of the line would likely cause any Pennsylvania or New Jersey regulatory approvals to fail for legal or practical reasons. OCA M.B. at 80-82.

In addition, PPL's request to begin immediate construction without DEWA permits conflicts with its delay in seeking permits it clearly recognized were critical to the success of the line as early as March 10, 2008, but failed to submit to the NPS for approval until over a year later. PPL Electric Ex. No. 3; Tr. at 381, OCA M.B. at 90, 92. Indeed, as noted earlier, PPL's recognition that the Wallenpaupack to Bushkill segment needed to be replaced in the 1990s could have led PPL to investigate permitting requirements through the DEWA, and the time required for those processes, since that segment traverses the DEWA. Much like the "emergency" line rebuild argument discussed above, PPL here offers its failure to timely seek DEWA permits as a justification for "immediate" action on one of the most controversial parts of the Susquehanna to Roseland line. The Commission should deny this aspect of PPL's Exceptions.

D. The 1st Quarter 2010 Construction of the Wallenpaupack-Bushkill Segment Will Cause Significant and Perhaps Unnecessary Costs and Adverse Environmental and Safety Effects.

PPL argues that beginning construction in the immediate area of the DEWA prior to obtaining DEWA permits will not cause any significant adverse impacts, again ignoring that NPS permits are prerequisite to commencing and completing the Wallenpaupack to Bushkill segment itself. PPL Exc. at 11-25. PPL is in error on this point given that this segment of the SR500 line is the most controversial because of the environmental and safety issues surrounding the DEWA crossing and Saw Creek Estates. OCA M.B. at 86-90; OCA R.B. at 37-54; OCA

Exc. at 15-22, 29-30; R.D. at 218-70. The conditional approval recommended by the ALJ reflects an appropriate balancing of these potential harms with the public interest. The Commission should adopt these conditions subject to the clarifications provided by the OCA in its Exceptions.

Moreover, on the issue of the costs that will be incurred, it should be noted that PPL is not requesting permission to "rebuild" the existing 230 kV line "in kind" through this area prior to the construction of the SR500 line. PPL Exc. at 11; R.D. at 297. Rather, PPL seeks to construct a 500 kV line that it will operate at 230 kV for some indeterminate period. PPL Exc. at 11. The Recommended Decision recognized that the need for federal approval causes PPL's proposal to be speculative at this time:

> While the replacement of the facilities is certain, there is evidence that the size of the replacement facilities will depend on the voltage of the line. If the federal government denies access for the 500 kV line in this area, this line may remain 230 kV, and the Company's testimony indicates that towers are not required to be as high for 230 kV as they are for 500 kV.

R.D. at 267. Thus, it is unclear at this juncture what the NPS will allow; this introduces substantial uncertainty into this proceeding and increases the probability that construction costs will be incurred unnecessarily.[4] PPL's arguments that construction in advance of receipt of legally-required permits would cause "no adverse effects" should be rejected.

E. PPL is in Error To Argue that the Commission Should Ignore Federal Issues in this Proceeding.

PPL argues, in essence, that the Commission should not concern itself with the federal NPS permitting process. PPL Exc. at 14, 15. Instead, PPL requests that the Commission simply order that PPL obtain all necessary federal permits and allow PPL to proceed according

[4] The NPS permit application is for permission to construct the SR500 Project specifically; it is unclear whether PPL would have permission to reconstruct the 230 kV line "in kind" even if the SR500 permit application was granted.

to its own directives and "at its risk." PPL Exc. at 23. Unfortunately, it is not at PPL's risk, as the ALJ acknowledged, because the costs of building a line to nowhere will be borne by the ratepayers, not PPL.[5] R.D. at 278. PPL argues that it is "normal Commission practice" to approve applications in advance of permits being granted and that there is no reason to deviate from past practice here. PPL Exc. at 23-24. PPL does not address how these arguments square with Commission regulations requiring that an applicant show compliance with "all statutes and regulations," including those at the federal level. It is completely contradictory for PPL to acknowledge the necessity to show compliance with these federal requirements in its Application and to now argue that the Commission need not consider the same issues.

PPL proposes to build a $1.2 billion, 110 mile-long dual 500 kV transmission line on 190 foot-tall towers across two states and the Delaware River. The scale of the project places it squarely outside historical norms. Indeed, subjecting all ratepayers within PJM to the economic risk of a huge transmission line to nowhere is unacceptable without significant consideration of all relevant factors. R.D. at 278. PPL's position is not only contrary to the plain language of the Commission's regulations, but is also contrary to sound reasoning.

The bulk of PPL's arguments on these issues focus on the ALJ's consideration of Maryland Conservation Council, Inc. v. Gilchrist, 808 F.2d 1039 (4th Cir. 1986)(Gilchrist), and its progeny. The ALJ, the OCA, and PPL generally agree on what Gilchrist holds and that Gilchrist is valid law. R.D. at 259-67; OCA M.B. at 93-95; PPL Exc. at 14. PPL accurately describes that the basic reasoning in Gilchrist is "that the construction on any part of a project

[5] At the September 2009 hearings in this matter PPL acknowledged that it will recover 100 % of its expenses for the line, including construction work in progress. Tr. at 1945-46. PPL also acknowledged that it would obtain a rate of return in the range of 12.6 to 12.68 % on these amounts. Tr. at 1958. The OCA also notes that PPL will recover these amounts even if the line is never completed -- so long as the abandonment of the line is beyond the control of PPL. See PPL Electric Utilities Corporation & Public Service Electric and Gas Company, 123 FERC ¶ 61,068 (2008).

may not begin if the construction would significantly limit the options of federal officials who have discretion over substantial portions of the project." PPL Exc. at 18. The ALJ's recommended conditions here will allow the DEWA permit process to occur uninhibited by the limitations of a new 1,000 kV line perched on DEWA's doorstep. The recommended condition shows respect for the federal decisionmaking process and insulates ratepayers and allcitizens from the costs and adverse effects of premature construction, should the NPS process result in a decision prohibiting PPL from going forward with the line as proposed.

The ALJ recognized that the Commission should not rush to judgment on what the NPS will do and should not permit PPL to do so. The ALJ recognized the scenario presented in Gilchrist is remarkably similar to the scenario here and recommended that the Commission respect the NPS federal review process as a result. R.D.at 265. The ALJ reasoned that:

> While the PUC action is separate and apart for the action required by the DEWA, the PPL Electric action stemming from the PUC approval will result in a *Gilchrist* scenario by presenting DEWA officials with a *fait accompli*. This would be inconsistent with spirit of the NEPA, if not the actual application of it.
>
> ...
>
> If the Company constructs the 500 kV line and the upgraded line stands poised in the Pennsylvania border of the park, it may be construed as a coercive move which violates the spirit, if not the letter of NEPA. While Gilchrist is not controlling, by analogy it is persuasive.

R.D. at 265 (emphasis in original). The ALJ added:

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

R.D. at 267. The ALJ's proposed condition also recognizes that PPL asks the Commission to assist it in accomplishing a regulatory, as well as practical, *fait accompli*. PPL argues that the NPS did not request such a condition and that the condition is therefore unnecessary. PPL Exc.

at 22-23. The NPS made clear that it could not have made the type of request PPL suggests, however, because the NPS is also a decisionmaker under federal law, and it has not yet conducted its analysis in the matter. At the DEWA site visit, DEWA Superintendent Donahue testified:

> Now, because I do have a role in the decision-making and the recommendation regarding the proposal, I will not speak about the proposal in a negative or positive fashion.

Tr. at 376. What PPL fails to adequately acknowledge is that Mr. Donahue will participate in a decision that will either "green-light," impose conditions, or foreclose construction of the SR500 line, as proposed. Superintendent Donahue's statement reflects prudent restraint as a federal decisionmaker. Here, he expresses an unwillingness to prejudge the PPL application without acquiring required and necessary information -- in particular, the information and analysis required by NEPA in the Environmental Impact Statement he described in his February 27, 2009 letter to the Commission. OCA M.B. at 89; OCA Cross Ex. No. 3 at 2. Indeed, this is no different from an ALJ or Commissioner refraining from publicly announcing a stance on a pending matter. In the context of this proceeding, NPS silence on the ultimate issue is understandable and contrasts sharply with PPL's contentions that this Commission should simply assume that the permits will be granted and allow it to go forward with construction. The OCA submits, however, that the ALJ has proposed a reasonable approach to balancing all the issues that bear on PPL's failure to show that it has or will obtain the required federal permits for the construction of the SR500 line.

As a part of its response to the ALJ's consideration of the DEWA issues, PPL argues that the Commission should not issue an "injunction" preventing PPL from beginning construction along the Wallenpaupack-Bushkill segment and provides citation to NEPA-related

cases involving injunctions. PPL Exc. at 15-17. Characterizing the recommended conditions as an injunction fails to recognize the Commission holds ultimate approval authority over any Application submitted to it for approval, and is free to condition its approval as necessary to serve the public interest. The PPL argument suggests that only unconditional Commission approval of all applications put before it is proper. The argument simply overlooks the scope of Commission authority. There can be no serious argument that this proceeding will determine whether PPL may begin construction of any part of the SR500 line within the non-federal lands of Pennsylvania and, if so, under what conditions. No injunction has been requested or granted, and the Commission would be acting squarely within its power to accept the conditions recommended by the ALJ.

F. PPL is in Error When it Asserts that it is Inappropriate to Raise Legal Issues in Briefs.

As the ALJ noted, PPL did not address the OCA's argument that the Commission should not permit PPL to begin construction until all federal permits are in place. R.D. at 259. PPL has now responded to the OCA's position on this issue, with which the ALJ agreed, in Exceptions. PPL now argues that the DEWA federal legal issues raised by the OCA in its Main Brief should have been raised by a fact witness at hearings in this matter. PPL Exc. at 13, fn. 1. This notion should be rejected. Briefs are the appropriate time to present legal arguments. The OCA raised the federal legal issues when and where it was appropriate to do so.[6] Moreover, the Commission should note that it is incumbent upon the Applicant to fully apprise itself of any and

[6] OCA witness Lanzalotta testified that "it would seem imprudent to start construction on the S/R line before all necessary approvals and permits are obtained." OCA St. No. 1-S at 10. PPL witness Smith responded to this testimony in rejoinder. PPL St. 1-RJ at 6-7. The issues regarding the timing and routing associated with a NEPA study and the procurement of NPS permits were investigated through the course of this proceeding and PPL had ample opportunities to cross-examine and respond in testimony on the issues.

all legal issues surrounding a transmission project of this magnitude prior to submitting an application to the Commission.

PPL also argues that it had no notice otherwise of these issues. PPL Exc. at 13. The OCA would point out that PPL discussed NEPA and the DEWA federal permitting issues in its initial Application. PPL Application, Appendix E-6. Indeed, PPL witness Mr. Smith offered testimony on cross-examination at the September 2009 hearings that PPL was working on NEPA issues regarding the DEWA with the NPS officials in both Pennsylvania and Washington D.C.. Tr. at 814-817. PPL had the same (if not more) information, the same opportunity to research any and all NEPA issues, and the same opportunity to present its positions on legal issues in briefs and it failed to do so. The Commission should flatly reject the notion that it should ignore a valid and highly relevant legal issue in its deliberations because the Applicant claims that case law underlying the issue was raised for the first time in brief.[7]

REPLY TO PPL EXCEPTION 5: The ALJ's Findings of Fact Nos. 112 and 113 Are Correct. (PPL Exc. at 35-39; R.D. at 25; OCA M.B. at 65-69; R.B. at 20-24).

A. Introduction.

PPL argues in its Exceptions that Findings of Fact No. 112 and 113 in the Recommended Decision are "not accurate." PPL Exc. at 36. The ALJ found as follows:

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[7] Additionally, the Commission HV line siting regulations from Section 57.72 provide: (c) An application shall contain: ... (11) A list of the local, State and Federal governmental agencies which have requirements which shall be met in connection with the construction or maintenance of the proposed HV line and a list of documents which have been or are required to be filed with those agencies in connection with the siting and construction of the proposed HV line. 52 Pa. Code § 57.72. Section 57.72(c)(11) provides for Commission examination of pertinent federal issues within the context of HV transmission line applications.

Further, to approve an application under these sections, Section 57.76(a) directs that the Commission must find and determine that the proposed project will be in compliance with all applicable statutes and regulations providing for the protection of all these categories of resources, and that the proposal will have a minimal adverse environmental impact. 52 Pa. Code § 57.76(a)(3), (4). Notably, the phrase "applicable statutes and regulations" is not limited to *state* statutes and regulations. As the ALJ recognized in her discussion of the parties' positions, the applicable federal environmental statutes, regulations and case law interpreting them are of great importance here. R.D. at 255-67.

> 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.
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> 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.

R.D. at 25. PPL is wrong on both counts. These two findings of fact are completely accurate and fully supported by the evidentiary record. PPL's attempts to explain these alleged inaccuracies are without merit and only further serve to show why the Category C5 potential reliability violations listed in PPL Exhibit PFM-3 should be given little weight in determining whether there is a need for the SR500 Project. Similar to the reasoning and arguments employed in the Company's Main Brief on the Category C5 issue, PPL's Exceptions once again attempt to rebut the OCA's arguments by completely ignoring the evidence. In this Reply Exception, the OCA will explain why the above-quoted Findings of Fact are accurate, and will also further illustrate why the Category C5 potential reliability violations provide no support for a finding of need for the SR500 Project.

In the rebuttal testimony phase of this case, PPL substantially modified the evidence previously offered in support of the claimed need for the SR500 Project by introducing ten (10) Category C5 "double circuit tower contingency" potential reliability violations. PPL St. 8-R; PPL Exh. PFM-3. These Category C5 violations were not included as part of the Company's original Application nor in PPL's Direct Testimony. OCA St. 1-S at 2. OCA witness Peter Lanzalotta testified that these Category C5 violations were much less likely to occur than the single contingency violations found in PPL Exhibits PFM-1 and PFM-2, and that because of the improbable nature of this type of event the North American Electric Reliability Corporation

(NERC) standards allow for load to be shed following Category C5 events. OCA St. 1-S at 2-4. In its Exceptions, PPL argues that this load shedding can only occur as "a function of system design, not operator action." PPL Exc. at 37. The record in this case, however, will show that PPL is incorrect, as the Company allowed for *no* loss of load in its studies supporting potential C5 violations, whether consequential or resulting from system design or operator action. PPL has no reasonable argument available to rebut Finding of Fact number 113.

ALJ Colwell agreed with the OCA that PPL failed to allow for any loss of load when it developed its Category C contingencies, even though the NERC standards provide that some loss of load for the highly unlikely Category C5 events is acceptable and even though PJM considers a consequential load loss of up to 300MW acceptable for these type of Category C5 contingencies. The record on this point is clear. In developing its list of Category C5 potential reliability violations as listed in PPL Exhibit PFM-3, the Company used a standard that allowed for *no loss of load.* OCA St.1-S at 3-4. PPL used a more stringent standard in developing its list of Category C5 violations in Exhibit PFM-3 than what is required. OCA M.B. at 65-69; OCA R.B. at 20-24; OCA Exceptions at 12-14. Thus, these potential Category C5 reliability violations listed in Exhibit PFM-3 must be afforded little weight, if any, in assessing the need for the SR500 Project, and provide further evidence as to why a current, inclusive retool study is required in this proceeding. Accordingly, PPL's Exception on this issue is in error and must be denied.

B. The ALJ's Finding Of Fact No. 112 Is Accurate As Stated.

In its Exceptions, PPL argues that Finding of Fact No. 112 is inaccurate. Finding of Fact No. 112 provides:

> 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.

R.D. at 25. PPL argues that Finding of Fact No. 112 is in error because it fails to include the word "planned." PPL Exc. at 38. According to PPL, this finding of fact "could be construed as inconsistent with the ALJ's disposition of the need issues raised in this proceeding." PPL Exc. at 35. The word "planned," however, is really not relevant to the argument that PPL then attempts to make on the following pages of its Exceptions. The OCA agrees that as part of the transmission system testing parameters, load shedding in response to a Category C5 event would be "planned" and also would be "controlled" as the NERC standard for Category C5 events provides. See OCA Exhibit PJL-4.[8] The relevant issue is whether load can be curtailed by operator action, as part of the testing process in response to a Category C5 event.

As OCA witness Lanzalotta explained and as the chart in OCA Exhibit PJL-4 shows, NERC reliability standards for single contingency events like those found in PPL Exhibits PFM-1 and PFM-2 do not allow for the loss of load. OCA St. 1-S at 2-3; Exhibit PJL-4. For Category C5 events, however, those found in PPL Exhibit PFM-3, the NERC reliability standards specifically provide in footnote c:

> Depending on system design and expected impacts, the controlled interruption of electric supply to customers (load shedding), the planned removal from service of certain generators, and/or the curtailment of contracted Firm (non-recallable reserved) electric power transfers may be necessary to maintain the overall reliability of the interconnected transmission systems.

[8] As discussed herein, PPL's argument is not really about whether load shedding is "planned" or not, but rather whether load shedding must be done automatically – without any type of operator involvement. The OCA submits that PPL's argument here, at its core, is that only automatic actions are "planned" and that operator controlled load shedding, if it were to occur, would not be "planned" in advance. PPL's argument on this point is without merit.

OCA St. 1-S at 3-4, 6-7; Exhibit PJL-4. Thus, Mr. Lanzalotta testified that in response to a Category C5 event, testing parameters must recognize that some controlled shedding of load may occur in order to stabilize the system and this action is completely consistent with the NERC reliability standards. Mr. Lanzalotta testified that this controlled load shedding may occur either through operator action, or as the system becomes more technologically advanced, through the use of automatic controls. OCA St. 1-S at 4, fn 9.

PJM witness Herling, however, testified that load could only be shed in response to a Category C5 event if the system was designed (and PPL's system is apparently not so designed) to automatically provide this level of protection, but not, as Mr. Lanzalotta suggested, by operator action. PPL Exc. at 37. In its Exceptions, PPL argues that ALJ Colwell adopted the Company's reasoning on this point. PPL Exc. at 36. As support for this argument, the Company points to the Recommended Decision where Mr. Herling's testimony is cited. PPL Exc. at 37. PPL's reliance on this part of the Recommended Decision is misplaced.

ALJ Colwell recited sections of the Parties' arguments verbatim from their briefs and then, at times, shifted to a discussion of those issues. The cited parts of the Recommended Decision that PPL claims supports its argument are portions of the Recommended Decision reciting PPL's position. The specific findings and holdings of the ALJ are reflected in the Findings of Fact and the ALJ's specific discussion of the issues. The ALJ's Finding of Fact number 112 is based upon the evidence presented. PPL's arguments that the word "planned" should be included therein to align with the ALJ's conclusions on this issue somehow are incorrect and, as the following section will show, are immaterial.

C. The ALJ's Finding Of Fact No. 113 Is Accurate, But Is Overlooked In The ALJ's Analysis Of The Category C5 Potential Reliability Violations.

In its Exceptions, PPL argued that Finding of Fact No. 113 is inaccurate. Finding of Fact No. 113 states as follows:

> 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.

R.D. at 25. PPL argues that this finding of fact is in error because PPL's application of the Category C5 reliability standards is in accord with NERC requirements. PPL Exc. at 35-36. The Company's statements to this effect in its Exceptions are inapposite and are clearly in error. The OCA provided unrebutted record evidence to show that PPL did not allow for *any load loss* when it analyzed and created its list of ten Category C5 potential reliability violations found in Exhibit PFM-3. OCA St. 1-S at 2-4; OCA Exh. PJL-4; OCA R.B. at 20-24 (the NERC standard provides that some loss of load associated with a C5 event is acceptable). This fact seriously calls into question the validity of any of the Category C5 potential reliability violations found in Exhibit PFM-3, but, unfortunately, this critical evidence was apparently overlooked by ALJ Colwell, as there is no mention of it in the discussion of the Category C5 contingencies in the Recommended Decision. OCA R.B. at 20-24.

As discussed above, the NERC standard for Category C5 events allows for the loss of load in order to stabilize the system. OCA St. 1-S at 3-4, 6-7; Exhibit PJL-4. PJM witness Herling described the two situations where load could be shed in accord with the NERC category C5 standards, in his opinion: (1) through the use of protective relays that would automatically drop load in order to maintain system reliability, and (2) through consequential load loss, as where a customer's load is connected to the grid only through one tower with two

lines and the tower goes out of service. PPL Exceptions at 37-38; OCA R.B. at 20-24. PJM witness Herling also explained that in PJM, a consequential load loss of up to 300MW for a category C5 event is considered acceptable. PPL Exceptions at 38, fn 10. To be very clear on this point, according to PJM, in PPL's service territory, during testing of the transmission system if a Category C5 event results in less than a 300MW consequential loss of load – *there is no potential reliability violation.* As Mr. Herling testified:

> Q. Is the planning for no loss of load more expensive than permitting 300 megawatts of consequential load loss in such contingencies?
>
> A. If we were to not allow consequential load loss, yes, absolutely, we would be required to build additional feeds to those loads to ensure that they were not dropped as a result of one of these events.

Tr. at 1311; OCA R.B. at 23. As Finding of Fact No. 113 states and OCA witness Lanzalotta testified, however, *no load loss was considered acceptable* when the Company created its list of Category C5 violations in Exhibit PFM-3. OCA St. 1-S at 4; OCA R.B. at 20-24; R.D. at 25. The ALJ's finding of fact on this issue is accurate.

When ALJ Colwell analyzed and discussed the Category C5 potential reliability violations, this important piece of evidence was either overlooked or misinterpreted. See OCA R.B. at 20-24 for a complete discussion. Because the potential violations found in Exhibit PFM-3 were developed using a more stringent standard than is required by either NERC or PJM, there is no way on this record to ascertain whether *any* C5 reliability violations exist. As such, the importance of having the Company develop and submit a current, inclusive retool study, as the OCA's witnesses testified, takes on even greater significance in the need determination for the SR500 Project. The OCA submits that PPL's Exception to Finding of Fact No. 113 is in error and must be denied.

D. Conclusion.

Findings of Fact Nos. 112 and 113 are accurate. The OCA submits that for all the reasons found in the OCA's Main and Reply Briefs, the OCA Exceptions and herein, PPL's Exceptions on this issue must be denied and the need for a current, inclusive retool study must be reviewed.

III. CONCLUSION

For the reasons set forth above, and for the reasons set forth in the OCA's Main Brief and Reply Brief, the OCA respectfully submits that the ALJ was correct in concluding that PPL's Application to construct the SR500 Project should be approved only after all federal approvals have been procured. The OCA requests that the Commission accept the ALJ's Recommended Decision on this issue. The OCA respectfully requests also that the Commission: (1) either deny the Application at this time or provide PPL the opportunity to supplement the record with a current, inclusive retool study as the OCA has outlined herein; and (2) order PPL to reroute the SR500 Project around Saw Creek Estates if at any time the Commission authorizes the Project to proceed.

Respectfully Submitted,

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Dated: December 14, 2009
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CERTIFICATE OF SERVICE

Applications of PPL Electric Utilities Corporation Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the Pennsylvania 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.*

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

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