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December 14, 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, *et al.*  
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 Reply to PPL Electric Utilities Corp.'s Exceptions in the above-referenced matter, along with the Certificate of Service and the Efiling confirmation sheet. This letter, Certificate and Reply are contemporaneously being served on all parties per the attached certificate of service.

Respectfully,

A handwritten signature in black ink, appearing to read 'P. M. Schmidt', written in a cursive style.

Paul M. Schmidt

Enclosures

cc: Certificate of Service list (as per Certificate)

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re: Application of PPL Electric Utilities Corporation for  
Approval of the Siting and Construction of the Pennsylvania  
Portion of the Proposed Susquehanna-Roseland 500 kV  
Transmission Line

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Docket Nos.  
A-2009-2082652, *et al.*

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CERTIFICATE OF SERVICE

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I hereby certify that on this day I have caused to be served true copies of the Saw Creek Estates Community Association, Inc.'s ("SCECA") Reply to PPL Electric Utilities Corp.'s Exceptions, cover letter to James J. McNulty, and this Certificate upon the 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 on the attached Service List.



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*Attorneys for:*  
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Dated: December 14, 2009

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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  
REPLY TO PPL ELECTRIC UTILITY'S EXCEPTIONS TO THE  
RECOMMENDED DECISION**

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Dated: December 14, 2009

Filed: Electronically

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## I. INTRODUCTION

On December 3, 2009, the active Parties in this matter filed Exceptions to the November 13, 2009, Recommended Decision (“RD”) of Administrative Law Judge (“ALJ”) Susan Colwell issued in this proceeding. The Saw Creek Estates Community Association, Inc. (“SCECA”) now files these Replies to the Exceptions of PPL Electric Utilities Corporation (“PPL”). In PPL’s Exceptions, PPL opposes the conditions the ALJ proposed in the RD. In general, these Replies to PPL’s Exceptions support the condition that PPL have all required permits in hand before beginning construction of any part of the Susquehanna-Roseland (“S-R”) Line, and offers additional arguments and explanations as to why the Commission should reject PPL’s Exceptions on this point. These Replies also argue against PPL’s Exception to the proposed expiration of Commission approval, and PPL’s request that it be allowed to commence construction within six months of obtaining approvals, no matter when that might be.

## II. SCECA’S REPLIES TO PPL EXCEPTIONS NOS. 1 THROUGH 3, WHICH ARGUE THAT PPL ELECTRIC SHOULD BE PERMITTED TO START CONSTRUCTION OF THE WALLENPAUPACK-BUSHKILL AND OTHER SEGMENTS OF THE S-R LINE BEFORE THE NATIONAL PARK SERVICE AND OTHER AGENCIES ISSUE ALL NECESSARY PERMITS

### A. By PPL’s Own Admissions, It’s Application is Deficient and Cannot be Approved

PPL makes the fatal admission that it neglected to identify all permits and other approvals necessary for construction of the S-R Line. *See* PPL Exceptions, pp.25, 30 (“PPL Electric has provided a partial list of the agencies involved in permitting of the construction. This list, however, is not complete”) (citation omitted). However, the Siting Regulations expressly require that “[a]n 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. 52 Pa. Code Section 57.72(c). PPL's sudden admission, while revealing, fails to explain exactly which permits and other approvals PPL neglected to identify. Therefore, it is impossible to determine their significance with respect to the Commission's consideration of this Application. Because PPL so blatantly missed this requirement, rather than allow PPL to commence construction immediately, the Commission should deny PPL's Application.

B. PPL's Attempt to Cast this Issue as One Improperly Raised Too Late by Other Parties is Specious

PPL claims other parties, including SCECA, have improperly and untimely raised the argument that PPL cannot initiate construction of any portion of the S-R Line until PPL has obtained all federal approvals. *See* PPL Exceptions, p.13. Yet, PPL correctly contradicts this assertion by admitting that “[t]he issue of timing was complicated in this proceeding by PPL Electric’s request to start construction immediately on a specific 28-mile segment of the proposed line.” *See* PPL Exceptions, p.4. That request, juxtaposed against the requirement in the Siting Regulations that the Commission not approve the application until all necessary approvals are granted, should have made PPL aware of the need to overcome *Maryland Conservation Council, Inc. v. Gilchrist*, 808 F2d 1039 (4<sup>th</sup> Cir. 1986). *See* 52 Pa. Code Section 57.76(a) (directing that the Commission must find and determine that the proposed project will be in compliance with all applicable statutes and regulation). PPL is therefore solely to blame for the failure of PPL to introduce sufficient evidence and argument to do so. The ALJ properly found that immediate initiation of construction would improperly influence the National Parks

Service (“NPS”).<sup>1</sup> See RD at 267. PPL cannot point to any evidence of record to overcome this finding.

C. PPL’s Claim of Emergency Is Not Supported by the Record or Law

PPL’s contention that the Wallenpaupack-Bushkill (“W-B”) Line needs immediate attention is belied by PPL’s own testimony. This is so for several reasons. First, the W-B Line is about 80 years old. PPL Exceptions, p.8. There is not a single piece of evidence in the record which identifies any particular insurmountable failure looming on the immediate horizon. PPL even admits that “there is no emergency today.” PPL Exceptions, p.9. Based on a review of the facts presented, the ALJ also concluded that “there is no emergency.” RD, p.25. PPL has maintained and repaired the line for 80 years. PPL Exceptions, p.9; PPL St. 5-R, p.10. PPL provides no suggestion that it cannot continue to do so for two or three more. The ALJ’s findings in this regard are amply supported by the record, and should be adopted.

PPL’s claim that beginning construction on the W-B Line is necessary in order to satisfy PJM’s deadline also fails. See PPL Exceptions, p.2. Fundamentally, PJM has no legal authority over this Commission; therefore, PJM and PPL must accommodate the Commission’s proper application of its rules. Factually, the very best PPL can claim immediate construction will do is “enhance the possibility of meeting the in-service date.” PPL Exceptions, p.9. This begs the question: “by how much?” By 3 months? 1 month? And, why can’t PPL simultaneously construct that section later, if and when it obtains approval and constructs the segment which is under NPS review?

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<sup>1</sup> This is so regardless of whether PPL agrees not to accelerate construction of the portion through Saw Creek Estates.

In SCECA's briefs and exceptions, SCECA has already pointed out PPL's failure to provide construction details, including a schedule and quantification of anticipated events. PPL declined to provide this information at its own peril. PPL has failed to support its contention that immediate construction of the W-B Line will significantly improve its ability to complete the S-R Line sooner. Its request to do so should therefore be denied.

PPL's claimed need to commence construction immediately fails for other reasons as well. First, although PPL insists the NPS will not render a decision on the project until March, 2011 (*see* PPL Exceptions, p.10), PPL cites no evidence for this claim, and none exists. There is nothing in the record to prove that an NPS decision will not be rendered in late 2010, early 2010, or at any other time. PPL's arguments on this point are therefore nothing more than a false cry of "wolf." Conversely, PPL also fails to identify any evidence that parties which might appeal the NPS decision, or any other agency action, would be granted *supersedeas* of the appealed action. Therefore, unless PPL is willing to stipulate that any appealed agency action will be stayed until all appeals are exhausted, its protracted scheduling predictions which incorporate time for appeals, are unsupported. *See* PPL Exceptions, p.33.

D. The Record Lacks Evidence to Support PPL's Claim that Immediate Construction Will Not be A Waste if Other Approvals are not Obtained

PPL claims that there will be virtually no waste of it begins construction now but must abandon or alter the current S-R Line proposal. *See* PPL Exceptions, pp.11, 21. However, PPL cannot demonstrate that the construction it proposes to immediately undertake would not cause significant waste if the S-R Line cannot be built as planned. PPL's contention that "most of its investment would not be wasted" lacks citation to any part of the extensive record in this matter. *See* PPL Exceptions, p.21.

As SCECA explained in its Exceptions, simply rebuilding the existing line would allow significantly shorter towers than the S-R Line. Therefore the extra height and more substantial tower supports necessary for the S-R Line would require additional, ultimately wasted, funds if the S-R Line is not built as proposed. Additionally, PPL has not provided a scintilla of evidence as to why replacing the existing single-circuit W-B Line will require two circuits both capable of accommodating 500 kV. Therefore, the addition of the second circuit, and the incremental construction necessary to accommodate 500 kV (to which PPL admits at PPL Exceptions, p.21) would be a waste absent construction of the S-R Line. PPL should not be permitted to construct 190 foot towers, or a double-circuit line accommodating 500 kV, unless the S-R Line is a certainty.

PPL makes the startling suggestion that it can conceivably find an alternative to traversing the Delaware Water Gap National Recreation Area (“DEWA”), and that therefore it would not be wasting resources in the event it initiates construction now but later finds that it cannot pass the S-R Line through DEWA. *See* PPL Exceptions, p.22. PPL’s contention stands in stark contrast to its assertions that it cannot circumvent Saw Creek Estates, and reveals the fallacy of that assertion. PPL can likely accomplish both if it puts its mind to the task.<sup>2</sup> However, it certainly cannot circumvent DEWA without submitting another application to the Commission; therefore, the suggestion that this would automatically be a means to save the S-R Line if PPL cannot pass it through DEWA is false. Accordingly, PPL cannot point to this as a clear means to avoid wasting resources if PPL cannot use DEWA. PPL therefore should either await NPS’s approval before commencing construction, or else find a way around DEWA and submit its proposal to the Commission.

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<sup>2</sup> PPL should therefore be forced to find a way around Saw Creek.

PPL also suggests that the NPS has signaled its approval of the S-R Line. PPL Exceptions, pp.22-23. This suggestion is preposterous. The NPS has done nothing more than make clear that it will not prejudge the project. For PPL to suggest more is shocking. PPL's lack of candor on this point makes clear that PPL cannot be relied upon to voluntarily await "reasonable assurances" from the NPS that the S-R Line can be constructed through the DEWA. *See* PPL Exceptions, p.6.

Finally, PPL also has not included in this Application a request to operate the existing line at 500kV, but has instead portrayed the line as being rebuilt to the same load for which it is currently used – 230 kV. PPL has not done any analysis of the S-R Line's impacts if the existing line is rebuilt and operated at 500kV. Having failed to make such a demonstration, PPL should not be permitted to built that circuit to accommodate 500 kV, or to operate it at that load.

E. PPL's Contention that the Commission Cannot Consider the Lack of Federal Approvals is Unsupported and Illogical

PPL argues that the Commission should avoid the issue of whether construction can begin without federal approvals, because "issues related to federal permitting under the NEPA should be left to the federal permitting agencies and the federal courts." *See* PPL Exceptions, p.14. This argument is ill-conceived. Clearly, the Commission has the authority, and in fact the duty, to confirm the existence of all necessary permits for this Application. *See* 52 Pa. Code Section 57.76(a) (directing that the Commission must find and determine that the proposed project will be in compliance with all applicable statutes and regulation). PPL ignores this requirement, and fails to cite any authority to support its notion that the Commission should do otherwise. PPL also confuses the Commission's determination here of whether the existence of federal approval is necessary with a federal agency's determination of whether the substantive

and procedural prerequisites to federal approval have been met.<sup>3</sup> PPL's argument misses this distinction and should be dismissed out of hand.

PPL joins this argument with a similarly misplaced argument that the RD essentially enjoins PPL from initiating construction until federal approvals have been obtained. SCECA respectfully suggests that the Commission take judicial notice of the sizeable distinction between denying approval of an application and granting injunctive relief. The showings necessary for the two distinct matters are far from equivalent. Despite the many cases PPL cites regarding injunctions, they simply have no bearing on the Commission's pending ruling on whether PPL's requested approvals can be granted considering the legal mandates of the Commission's regulations and cases such as *Gilchrist*.

## II. SCECA'S REPLY TO PPL EXCEPTION NO. 4, WHICH ARGUES THAT THE COMMISSION'S APPROVAL SHOULD NOT EXPIRE

### PPL's Offer to Accept Open-Ended Commission Approval Proposes Bad Public Policy and Should be Rejected

PPL offers to accept open-ended Commission approval, with the only qualification being that if and when PPL receives all other necessary approvals, PPL must initiate construction within six months. SCECA respectfully submits that the Commission should not grant open-ended approvals of applications. Such an open-ended approval would grant the applicant *carte blanche* authority to suspend the approved project indefinitely. By simply delaying submissions for other approvals, or not contesting a petition for *supersedeas*, the applicant could easily control the timing of the project. And, any other approvals which expire could simply be applied for again. The result would be perpetual uncertainty for residents, services users, and countless

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<sup>3</sup> Surprisingly, PPL itself claims to have sufficient expertise with regard to the substantive elements of federal approvals to suggest the NPS will grant PPL's application. See PPL Exceptions, p.23.

other affected parties. Extended delays would also allow commencement of construction after facts of record, and perhaps even legal requirements, have long gone stale.

Instead of being granted perpetual control of the timing of construction, PPL should be subject to a certain deadline to commence construction. If PPL finds that it cannot do so, it should then be allowed to request an extension for cause. This procedure would ensure that when construction is commenced, the facts and law upon which the Commission granted approval are still relevant.

### III. CONCLUSION

For the reasons set forth above and set forth in the SCECA's Main Brief and Reply Brief, SCECA respectfully submits that PPL's Application should be denied. The Commission should reject the RD's recommendation that PPL's Application for the S-R Line be approved.

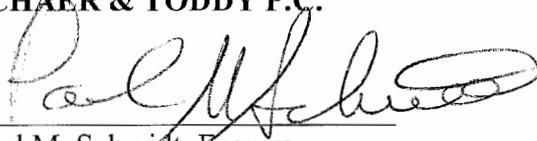
Alternatively, if the Commission approves PPL's Application for the S-R Line, SCECA submits that the ALJ was correct in concluding that PPL's Application to construct the S-R Line cannot be approved unless all other approvals have been procured. SCECA requests that the Commission accept the ALJ's Recommended Decision on this issue. Additionally, if the Commission approves PPL's Application, SCECA respectfully requests that the Commission make that approval contingent on PPL routing the S-R Line around Saw Creek Estates.

Respectfully submitted,

For Saw Creek Estates Community Association, Inc.

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