

COMMONWEALTH OF PENNSYLVANIA



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March 1, 2010

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

Dear Secretary McNulty:

Enclosed for filing is the Petition for Reconsideration or Clarification of the Office of Consumer Advocate, in the above-referenced proceeding.

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

Respectfully Submitted,

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

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

Enclosure

cc: Honorable Susan D. Colwell
Office of Special Assistants

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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. Coccodrill, 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

PETITION OF THE OFFICE OF
CONSUMER ADVOCATE FOR
RECONSIDERATION OR CLARIFICATION

The Office of Consumer Advocate (OCA) hereby submits this Petition pursuant to Sections 5.41 and 5.572 of the Public Utility Commission's (Commission) regulations. 52 Pa. Code §§ 5.41, 5.572. The OCA requests that the Commission reconsider and/or clarify its Order entered February 12, 2010 in the above-captioned case regarding permits and authorizations necessary for the commencement of construction.

I. INTRODUCTION

On February 12, 2010, the Commission entered an Opinion and Order (Order) in the above-captioned consolidated proceeding. The Order addressed the Application of PPL Electric Utilities Corporation (PPL or Company) to construct the Susquehanna to Roseland 500kV transmission line project (SR500) within Pennsylvania. The OCA seeks reconsideration and/or clarification of the Commission's Order as it relates to the permits and authorizations needed by PPL prior to the commencement of construction of the SR500 project in Pennsylvania. Reconsideration and/or clarification is necessary because the OCA submits that the Commission's Order is unclear as to whether PPL can begin construction on any part of the proposed project in Pennsylvania, other than the Wallenpaupack to Bushkill section, *before* the National Park Service (NPS) reaches a decision on the federal permit necessary for PPL to cross

the Delaware Water Gap National Recreation Area (DEWA). If the Commission's Order is construed to allow construction on segments of the 500kV line in Pennsylvania before the NPS permit issue is resolved, then the OCA respectfully seeks reconsideration on that issue, as apparently key evidence and facts provided by the OCA, and ALJ Colwell's Recommended Decision on this issue, have been overlooked by the Commission.

II. STANDARD OF REVIEW

As set forth in Duick v. Pennsylvania Gas and Water Co., 56 Pa.P.U.C. 553 (1985), the standards for granting a petition for reconsideration are as follows:

A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was stated that “[p]arties ..., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them ...” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

56 Pa.P.U.C. at 559 (quoting Pennsylvania R.R. Co. v. Pa. Pub. Util. Comm'n, 118 Pa. Super. 380, 179 A. 850 (1935)) (emphasis added).

In this Petition, the OCA raises points not previously heard or considered and which the Commission may have overlooked. The OCA seeks reconsideration and/or clarification of the Order as it relates to the Section entitled “Permits Necessary for the Commencement of Construction.” Order at 121-128. Specifically, this section of the Order, under “Disposition of the Issue” fails to address and apparently overlooked one of the OCA's

key arguments – that PPL should not be allowed to commence construction of its proposed 500kV line *anywhere* in Pennsylvania until all major authorizations are obtained, chief amongst these being the permit from the National Park Service (NPS) to cross the DEWA at the location proposed by PPL for Route B – the route approved by the Commission.

The section of the Order in question is as follows:

We agree with PPL’s reasoning in its opposition to this apparent condition. PPL notes that no Party proposed this condition and there is no record support for such a condition. Also, PPL claims that such a condition is completely unprecedented and improperly injects the Commission into managing utility planning and construction of transmission projects.

Accordingly, we shall grant, in part, and deny, in part, the Exceptions of PPL on this issue and adopt the ALJ’s recommendation as modified herein. PPL must receive the necessary NPS permit prior to construction of the Wallenpaupack-Bushkill Segment through the Delaware Water Gap Recreation Area, however, PPL may otherwise commence construction on the S-R Line as the other necessary permits are secured.

Order at 128.¹ In her R.D. ALJ Colwell adopted the OCA’s position and recommended that PPL not be allowed to commence construction anywhere on the line until all permits were obtained.

As to the Wallenpaupack to Bushkill section, the ALJ recommended:

7. That the request of PPL Electric Utilities Corporation to replace the 230 kV line from Wallenpaupack to Bushkill in kind is granted but construction shall not commence until PPL Electric

¹ PPL had filed exceptions to this part of the R.D., in part due to a concern that the “all approvals necessary” language in the ALJ’s R.D. could be interpreted to mean that all required permits, including “ministerial permits” had to be in hand before PPL began construction anywhere on the proposed project. PPL went on to explain how certain “ministerial permits,” like street occupancy permits or stream crossing permits are obtained on an as-needed basis, sometimes only a short period of time before they are actually needed. PPL explained that such permits may only be valid for a short period of time. If ALJ Colwell’s R.D. was interpreted in this manner, then PPL argued that the project could never proceed because the Company could never obtain all the necessary ministerial permits for the entire line. In its Reply Exceptions, the OCA stated that it had no objections to the clarifications that PPL sought as to the “ministerial permit” issue, as the issue raised by the OCA was related to major authorizations such as securing the NPS permit. OCA Reply Exceptions at 1-2, filed December 14, 2009. This issue of “ministerial permits” is unrelated to the current OCA request for clarification or reconsideration. To be clear, it is the OCA’s position that PPL should not be allowed to commence construction on any part of the SR500 line in Pennsylvania before the NPS permit issue is resolved. If PPL obtains the NPS permit, then the OCA has no objections to PPL proceeding to obtain the ministerial permits on an as-needed basis.

Utilities Corporation has obtained or been denied all approvals necessary for construction of the Susquehanna-Roseland 500 kV Transmission Line.

R.D. at 297.

While Ordering Paragraph 7 dealt with the Wallenpaupack to Bushkill portion of the line, the ALJ recognized and addressed the OCA's arguments on this issue in the context of the entire Pennsylvania portion of the line at several places in the Recommended Decision (R.D.), such as the following:

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 (emphasis added). See also R.D. at 267, 288 and 297.

The OCA respectfully submits that the Order as to both the condition referenced and the segment of the line are unclear. The Order could be read as limiting commencement of construction only to the Wallenpaupack to Bushkill section of the line, prior to a resolution of the NPS permit issue, rather than prohibiting the start of construction as to the entirety of the line in Pennsylvania as recommended by ALJ Colwell and the OCA. Additionally, the Order provides that "no Party proposed this condition", which indicates that the Order failed to recognize the OCA's position on this issue or address the condition recommended by the OCA and ALJ Colwell that no construction begin in Pennsylvania until the NPS permit issue is resolved. It is essential to recognize that all proposed construction in Pennsylvania along Route B – the route approved by the Commission – is dependent on PPL's ability to cross the DEWA at the location proposed to NPS. If the NPS permit is denied, then any construction of 500kV infrastructure on

the Pennsylvania side of the Delaware River would not serve its intended purpose.² As such, the OCA submits that the Commission clarify and/or reconsider its Order.

The Introduction section of the OCA's Main Brief clearly set out its position on this issue:

Moreover, any approval of this Application that may be forthcoming must be (1) ... (2) conditioned on PPL's receipt of all federal permits required to construct the SR500 Line through the Delaware Water Gap National Recreation Area (DEWA) *prior to commencing construction of the line.*

OCA Main Brief at 4-5 (emphasis added). The OCA will explain its position in detail in the remainder of this Petition. For the reasons set forth below, the OCA submits that the Commission should grant reconsideration or clarification of the issues raised in this Petition and adopt the OCA's position, as recommended by ALJ Colwell, that PPL must have the NPS permit in hand before any construction on the SR500 Project is started in Pennsylvania.

III. RECONSIDERATION AND/OR CLARIFICATION

- A. The Commission Should Reconsider And/Or Clarify Its Determination On The Issue Of What Permits And Authorizations Are Needed Before PPL Can Commence Construction Of Any Part Of The SR500 Project In Pennsylvania. Order at 121-28.

Throughout this proceeding the OCA argued that PPL should not be authorized to start construction on this project, anywhere in Pennsylvania, unless and until all required permits were obtained to construct the SR500 Line through the DEWA. In the R. D., ALJ Colwell provided the following as to the commencement of construction before all permits were in place:

To avoid the appearance that this Commission is attempting to influence the permitting process of the federal government, PPL

² The issue of rebuilding the existing 230kV transmission line between Wallenpaupack and Bushkill is a separate, but also important issue. If the National Park Service does not approve a permit for a 500kV line, as PPL has proposed, then the OCA has demonstrated that the Company may be able to rebuild the existing 230kV line in a much less intrusive manner. See OCA St. 1 at 20-22; OCA Reply Brief at 50-52. This would be particularly important in the Saw Creek Estates area, which is part of the existing Wallenpaupack to Bushkill section.

Electric should not be given permission to begin construction on the Wallenpaupack-Bushkill line *until all permits are in place*.

R.D. at 267 (emphasis added) (footnote omitted).

For the reasons set forth in this Recommended Decision, I recommend that the Commission make the necessary findings to approve this project *after all necessary permits have been obtained for the entire line*.

R.D. at 288 (emphasis added).

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

R.D. at 297 (emphasis added). In reviewing the R.D., the OCA found that ALJ Colwell agreed with the OCA on this issue, and in its Exceptions, the OCA provided the following:

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).

OCA Exceptions at 1, filed December 3, 2009.³

The NPS permit issue was a major component of the OCA’s position in this case, that being if the Commission decided to grant the PPL Application, then such authority should only be exercised if PPL was successful in obtaining the permit from the NPS to cross the DEWA. As ALJ Colwell correctly recognized, starting construction before all required authorizations were in hand could subject the ratepayers to great risk because if the Project were abandoned PPL would still be able to collect its construction costs. R.D. at 278.

³ Again, the OCA agrees with PPL that the reference to “all necessary permits” should not include ministerial permits as discussed herein at footnote 1.

The relevant part of the Order in question provides:

We agree with PPL's reasoning in its opposition to this apparent condition. *PPL notes that no Party proposed this condition and there is no record support for such a condition.* Also, PPL claims that such a condition is completely unprecedented and improperly injects the Commission into managing utility planning and construction of transmission projects.

Accordingly, we shall grant, in part, and deny, in part, the Exceptions of PPL on this issue and adopt the ALJ's recommendation as modified herein. PPL must receive the necessary NPS permit prior to construction of the Wallenpaupack-Bushkill Segment through the Delaware Water Gap Recreation Area, however, *PPL may otherwise commence construction on the S-R Line as the other necessary permits are secured.*

Order at 128 (emphasis added).

In the OCA's view, the emphasized language shown above illustrates the core of the need for clarification or reconsideration in this matter. The OCA raised the issue of the need for the NPS permit before any construction commences since the NPS permit does not just affect the Wallenpaupack to Bushkill section of this Project – it affects the entire routing of the 500kV line in Pennsylvania. ALJ Colwell clearly acknowledged this point. See R.D. at 267, 278, 288 and 297. The OCA set forth its position on this issue in its Main and Reply Briefs, in part as follows:

Any failure to obtain necessary state or federal approvals for this segment of the line would likely change the route contained in the Pennsylvania and New Jersey regulatory filings since the DEWA is where the SR500 line will cross from Pennsylvania into New Jersey

OCA Main Brief at 81;

Whether or not prior federal approval is mandated by law, however, as a practical matter, it makes no sense for PPL to commence construction of the Pennsylvania portion of the line unless and until PPL has the requisite authority to complete the line to New Jersey. Pennsylvania residents and consumers should

not be required to bear the environmental and economic costs of a transmission line to nowhere

OCA Main Brief at 95;

All capital costs and expenses incurred associated with the SR500 Project are recoverable through FERC formula rates, even if the project were to be abandoned for reasons beyond PPL's control

OCA Main Brief at 98;

In response to DEWA permitting issues, the OCA recommended that any approval by this Commission should contain the condition that no actual construction begins until all federal permitting issues are resolved. This condition is reasonable in that a failure, or extended delay, in obtaining required federal permits will cause Pennsylvania residents and ratepayers to bear unreasonable environmental and economic costs for a transmission line that cannot possibly reach its intended destination

OCA Reply Brief at 43-44.

This issue was also addressed by the record evidence in this matter. See PPL St. No. 1-RJ at 6-7; Tr. at 814-817. As the evidence shows, allowing construction of a 500kV line anywhere on Route B in Pennsylvania without the ability to cross the DEWA would result in a very expensive line to nowhere. Under the FERC ratemaking approval, this expense will be borne by PJM ratepayers – not by PPL.

The OCA submits that the Commission's Order, as discussed herein, portrays an apparent oversight as to the record evidence in this matter, the ALJ's R.D. and the OCA's position. This oversight is potentially critical, as in the OCA's view, any money spent on the Pennsylvania segment of the 500kV line is at risk (to the ratepayers) until the NPS reaches a decision on this matter. The OCA respectfully requests the Commission to reconsider the Order in this regard, and to reinstate ALJ Colwell's recommendations as they relate to the NPS permit issue detailed herein.

IV. CONCLUSION

For these reasons, the OCA respectfully requests that the Commission reconsider and or clarify its decision as set forth above.

Respectfully Submitted,



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Dated: March 1, 2010

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CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing documents, the
Petition for Reconsideration or Clarification of the Office of Consumer Advocate, upon parties of
record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating
to service by a participant), in the manner and upon the persons listed below:

Dated this 1st day of March 2010.

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