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March 9, 2010

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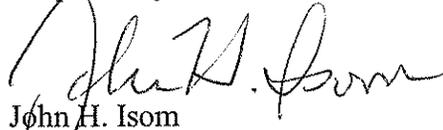
**RE: Application of PPL Electric Utilities Corporation Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the Pennsylvania Portion of The Proposed Susquehanna-Roseland 500 kV Transmission Line in Portions of Lackawanna, Luzerne, Monroe, Pike and Wayne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

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Dear Secretary McNulty:

Enclosed for filing is the original Answer of PPL Electric Utilities Corporation to the "Petition of the Office of Consumer Advocate for Reconsideration or Clarification" in the above-referenced proceeding. As indicated on the certificate of service, copies are being provided to the parties in the manner indicated.

Respectfully Submitted,



John H. Isom

JHI/jl

Enclosures

cc: Honorable Susan D. Colwell  
Cheryl Walker Davis, Office of Special Assistants  
Certificate of Service

## CERTIFICATE OF SERVICE

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

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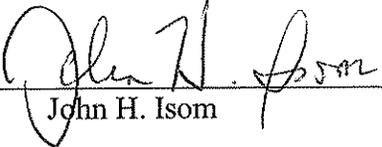
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Date: March 9, 2010

  
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John H. Isom

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of PPL Electric Utilities :  
Corporation Filed Pursuant to 52 Pa. Code :  
Chapter 57, Subchapter G, for Approval of the : Docket Nos. A-2009-2082652;  
Siting and Construction of the Pennsylvania : A-2009-2082832; A-2009-2088297;  
Portion of The Proposed Susquehanna- : A-2009-2088337; A-2009-2088327  
Roseland 500 kV Transmission Line in : A-2009-2088340; A-2009-2088359;  
Portions of Lackawanna, Luzerne, Monroe, : A-2009-2088312; A-2009-2088360  
Pike and Wayne Counties, Pennsylvania, *et al.* :

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**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION  
TO THE “PETITION OF THE OFFICE OF CONSUMER ADVOCATE  
FOR RECONSIDERATION OR CLARIFICATION”**

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TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

**INTRODUCTION**

PPL Electric Utilities Corporation (“PPL Electric”) hereby files this Answer to the “Petition of the Office of Consumer Advocate for Reconsideration or Clarification” (“Petition”) that was filed March 1, 2010. There, the Office of Consumer Advocate (“OCA”) seeks reconsideration or clarification of the Pennsylvania Public Utility Commission’s (“Commission”) Opinion and Order that was entered in the above-captioned proceeding on February 12, 2010 (“Order”). Specifically, OCA seeks reconsideration or clarification of the rejection of its contention that no construction on any portion of the proposed Susquehanna-Roseland 500 kV Transmission Line (“S-R Transmission Line”) should commence until the National Park Service (“NPS”) permitting process for the portion of the line that extends through the Delaware Water Gap National Recreation Area (“DEWA”) into New Jersey has been completed.

## OCA'S PETITION SHOULD BE DENIED

The OCA's Petition should be denied because it does not meet the standards for reconsideration or clarification. It does not meet the standard for reconsideration because it raises no new or novel arguments. *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. PUC 553 (1985). Rather, the Petition simply restates a minor and secondary argument, which in any event is without merit. While the Commission did not directly address OCA's minor, secondary argument, it is well-settled that the Commission is not required to address every point raised by every party, especially in a substantial and complex case such as a major transmission line siting proceeding. Further, the Commission did thoroughly address and analyze the fundamental issue of when PPL Electric should be permitted to commence construction. Order, pp. 121-28. OCA's Petition does not meet the standard for clarification because the Commission's Order is not in any way ambiguous or inconsistent. In the Petition, the OCA did not point out any inconsistency or ambiguity in the Order. The fact that the OCA does not agree with the Order does not make it unclear.

It is clear that the Commission devoted substantial attention to the question of when construction should commence vis-à-vis the permitting process. Order, pp. 121-28. At the end of this thorough discussion and thoughtful analysis, the Commission concluded:

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 the 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, p. 128.

The overall issue raised in OCA's Petition is when PPL Electric should be permitted to commence construction of the S-R Transmission Line. OCA contends that PPL Electric should not be allowed to commence construction of any portion of the Line until it has obtained from the NPS the permits necessary to construct the Line in the DEWA. Significantly, in fact, neither OCA nor any other party raised this issue at all in the evidence presented in this proceeding.<sup>1</sup> Rather, in support of its position on the overall issue, OCA raised two arguments in briefs. First, OCA relied principally upon a line of cases arising under the National Environmental Policy Act, 42 U.S.C.A. §§ 4321, 4331-35 ("NEPA"), as interpreted by the United States Court of Appeals for the Fourth Circuit in *Maryland Conservation Council, Inc. v. Gilchrist*, 808 F.2d 1039 (4<sup>th</sup> Cir. 1986). See OCA Main Brief, pp. 85-95. The Commission expressly addressed this argument and rejected it. Order, pp. 121-22, 127. Consequently, there is no basis for any contention that the Commission overlooked or misunderstood OCA contentions under the NEPA.

OCA's second and only other argument for delaying the commencement of all construction until the NPS permits are obtained is that, if the S-R Transmission Line is started but cannot be completed because permits necessary to construct the Line through the DEWA cannot be obtained from the NPS, then there is a risk that ratepayers might bear the cost of the incomplete line through transmission rates. The OCA is factually correct that the Commission did not address this minor sub-issue in the Order, but that fact provides no basis for the grant of reconsideration. Although OCA filed more than 211 pages of briefs, exceptions and replies to

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<sup>1</sup> In the Petition, OCA erroneously states that the issue "was also addressed by the record evidence in this matter." Petition, p. 8. Thereafter, OCA cites two passages in support of its statement. Curiously, those passages are from testimonies of PPL Electric, not OCA. More importantly, however, even those two passages clearly refer to the issue of whether PPL Electric should be permitted to start immediately construction of the segment of the S-R Transmission Line between the Wallenpaupack Hydroelectric Station and the Bushkill Substation, and not to other portions of the S-R Transmission Line.

exceptions, in its Petition, OCA could identify only three short passages totaling less than one half of one page in which it raised this argument. OCA Petition, pp. 7-8. In contrast, OCA devoted 11 pages of its Main Brief and six pages of its Replies to Exceptions to its argument under NEPA. OCA's contention regarding transmission rates was, at most, a minor sub-issue and a small portion of its arguments regarding the timing of commencement of construction. Moreover, the OCA's argument regarding the cost of an unfinished transmission line was not raised in evidence. Neither OCA nor any other party produced any evidence that PPL Electric should be barred from starting construction on any portion of the S-R Transmission Line until the NPS permitting process for the DEWA has been completed.

Therefore, in relying on a minor and secondary argument in support of its Petition, OCA has overlooked the Commission's admonition that:

It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. *Wheeling & Lake Erie Railway Co. v. Pa. PUC*, 778 A.2d 785, 794 (Pa. Cmwlth. 201), also see, generally, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Order, pp. 7-8.

OCA attempts to buttress its Petition by quoting a short phrase from the Order to the effect that no party contended that construction of any portion of the S-R Transmission Line should not be commenced until all permits are obtained from the NPS. Petition, p. 4, quoting Order, p. 128. OCA's characterization of this portion of the Order is misleading for two reasons. First, the Commission clearly addressed and rejected OCA's proposed condition that PPL Electric be barred from initiating construction of any portion of the S-R Transmission Line until the NPS permitting process for the DEWA has been completed. Order, pp. 121-22, 128. Second, the Commission's statement that "no Party proposed this condition" is merely a short-

hand summary of PPL Electric's contentions; it is not an explanation of the basis for the Commission's decision on the subject. In fact, on this issue, PPL Electric stated the following: "Significantly, no witness in the proceeding suggested such a condition. Instead, the condition was raised for the first time in OCA's Main Brief; thereafter, Saw Creek Estates and the Energy Conservation Council included the issue in their Reply Briefs." PPL Electric Exceptions, p. 26. As explained below, PPL Electric's above-quoted statement is correct, and it is clear that any deviation in the Order from that quotation had no effect upon the Commission's conclusions. The Commission's slight misstatement in its summary of PPL Electric's contentions provides no basis for reconsideration or clarification.

#### **OCA'S CONTENTIONS ARE MERITLESS**

If the Commission does decide to consider, for a second time, the merits of OCA's arguments on when construction may commence, it should conclude that OCA's arguments are without merit.

OCA's Petition is improper because it asks the Commission to step outside its normal and proper role in transmission line siting proceedings. The primary role of the Commission in transmission line siting cases is to review a proposed transmission line and approve it or reject it. The principal issues are whether the line is reasonably necessary and whether the electric utility has selected a reasonable route for the line. 52 Pa. Code § 57.76. Normally, once a line has been approved by the Commission, it is left up to the electric utility to obtain any other necessary approvals and permits and to design and construct the line. Issues regarding what permits are required, when they should be applied for, when to start construction and how to time and stage construction are left to the utility's discretion and are generally not reviewed by the Commission. *See, e.g., Application of PPL Electric Utilities Corp. for Approval of the Siting and*

*Reconstruction of the Proposed Coopersburg #1 and #2 138/69 kV Tap*, Docket No. A-2008-2022941 (July 24, 2009).

Standard Commission practice, as reflected in the siting regulations and all prior transmission line siting orders, is for the Commission to approve the project and then leave it to the utility to construct the project. Indeed, the Commission's regulations contain no provisions relating to the actual construction scheduling. The Commission's determinations are limited to issues of need, route selection, public safety, lawfulness and environmental impact. 52 Pa. Code §57.76. Based upon PPL Electric's review of Commission orders in prior transmission line siting cases, PPL Electric has not found any order which contains a condition similar to that requested by the OCA in its briefs and in the Petition. Instead, the only condition that is typically imposed regarding construction requires the utility to comply with any restrictions in the permits required for the project. This restriction, which ensures that the transmission line will be constructed in a lawful manner, was properly imposed by this Commission in this proceeding. Order, p. 142, ¶7.B. PPL Electric has not objected to this condition.

Further, it is important that PPL Electric commence construction as soon as practical in order to resolve numerous electric transmission service reliability issues and to provide other benefits to the public. The primary purpose of the S-R Transmission Line is to enable PPL Electric and other electric utility members of PJM to continue to provide adequate and reliable transmission service. PJM, PPL Electric and other PJM members and stakeholders have determined, through the FERC-approved Regional Transmission Expansion Plan ("RTEP") process which has been approved by the Federal Energy Regulatory Commission ("FERC"), that the S-R Transmission Line is required in order for PPL Electric and PJM to continue to provide reliable and adequate transmission service and to resolve the multiple violations of the North

American Electric Reliability Corporation (“NERC”) reliability standards. These multiple violations have been substantial and persistent; they have been identified in three consecutive annual RTEPs. The S-R Transmission Line is the only solution that will resolve all of the violations of mandatory NERC reliability standards.

The delay that would be caused by the acceptance of the condition requested by OCA in the Petition is especially crucial with regard to reliability of service. PJM directed PPL Electric to build the S-R Transmission Line with specified in-service date of June 1, 2012, when violations of the mandatory NERC reliability criteria are projected to commence. PPL Electric has projected, and no party has contested, that construction of the S-R Transmission Line will require approximately 27 months. PPL Electric understands that the NPS will issue permits to cross the DEWA in April, 2012. If PPL Electric is not permitted to commence construction of any portion of the S-R Transmission Line until the NPS permits are issued, it will be impossible for PPL Electric to achieve the required June 1, 2012 in-service date. Instead, using a construction duration of 27 months and an NPS permit date of April 2012, the in-service date will be July, 2014, more than two years after the required in-service date when NERC reliability violations are projected to commence.

In this regard, it must be observed that the date when the NPS will issue permits for the S-R Transmission Line to cross the DEWA is an estimate only; the exact date cannot be predicted with confidence at this time. It is possible that the permits will be issued at a later date, further delaying the in-service of the transmission line.

The S-R Transmission Line is important for reasons beyond reliability. First, the S-R Transmission Line, in conjunction with other major RTEP projects, is expected to reduce

congestion costs in PJM, including a reduction in congestion costs on the order of \$150 million annually in the PPL Electric transmission zone alone.

Second, the S-R Transmission Line will interconnect the PPL Electric Susquehanna 500 kV Switchyard to a new 500-230 kV substation at Lackawanna. The Lackawanna Substation will improve voltage in the Lackawanna County and Luzerne County area. This voltage improvement will be important because, based on PPL Electric's regional planning process, the voltage in this part of PPL Electric's service territory will fall to unacceptable levels at the Lackawanna, Stanton and Jenkins 230 kV regional substations under certain operating conditions. Connecting the S-R Transmission Line with the 230 kV transmission system at the Lackawanna Substation will resolve these issues in providing more robust transmission system. There is no reason for these real and substantial benefits to be delayed as a result of OCA's Petition.

The OCA's Petition is improper for the further reason that it is simply an attempt by OCA to litigate at the Commission issues that are properly considered by and decided by other governmental entities. For example, OCA believes that ratepayers should not pay for transmission facilities "to nowhere." OCA, however, ignores that fact that the issue of whether PPL Electric should recover its revenue requirement associated with facilities, used or unused, for transmission of electricity in interstate commerce is properly dealt with pursuant to the Open Access Transmission Tariff ("OATT") of PJM Interconnection LLC ("PJM") that is filed with and subject to the exclusive jurisdiction of the FERC. It is for FERC to decide whether PPL Electric will allowed to recover revenue requirements associated with the transmission facilities, not this Commission. If OCA were to object to recovery by PPL Electric of any transmission revenue requirement, it has the right and the ability to raise such questions before the FERC. It

should not advance its concerns by asking the Commission to adopt unwarranted and unprecedented conditions on beginning construction of a transmission line.

Approval of OCA's Petition would have the further effect of defeating federal policy to promote investment in electric transmission infrastructure. By submitting the Petition, OCA seeks to delay the initiation of construction of the S-R Transmission Line, which is a major project to reinforce the electric transmission infrastructure in the territory served by the PJM. Construction of such infrastructure is to be encouraged pursuant to a national policy to improve electric transmission infrastructure.

On July 20, 2006, FERC issued Order No. 679 which amended its regulations to establish incentive-based rate treatments for a transmission of electric energy in interstate commerce. *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs ¶31,222 (2006), *Order on Reh'g*, Order No. 679-A, FERC Stats. & Regs ¶31,236, *Order on Reh'g*, 119 FERC ¶61,062 (2007). Order No. 679 is "intended to encourage transmission infrastructure investment." This encouragement is consistent with Section 219 of the Federal Power Act, which is titled "Transmission Infrastructure Investment." 16 U.S.C. § 824s. This section requires, *inter alia*, that FERC issue a rule promoting capital investment in the enlargement, improvement, maintenance, and operation of all transmission facilities and encourage deployment of transmission technologies to increase the capacity and efficiency of existing transmission facilities and include the operation of the facilities.

FERC has often repeated that the goal of Section 219 of the Federal Power Act and Order No. 679 is to "encourage transmission investment ." *See, e.g., PPL Electric Utilities Corp.*, 123 FERC, ¶61,068 at P 38 (2008), *Southern California Edison Co.*, 121 FERC, ¶61,168 at P 60 (2007). As FERC explained, Order No. 679 identifies several policies, including incentive rates,

to, encourage unique transmission investments or otherwise remove impediments to such investment. Order No. 679 at P. 26. For example, FERC permits an incentive based return on equity for new investments in transmission facilities and has determined that such an incentive meets requirements of Section 219 to provide a return on equity that attracts new investment in transmission facilities. OCA should not be permitted to defeat federal policy established by Congress under the Federal Power Act to encourage investment in electric transmission infrastructure.

Through the Petition, OCA also seeks to enforce its opinion, that the Commission rejected, that PPL Electric should not be permitted to commence construction of any portion of the S-R Transmission Line before the permits for construction in the DEWA are obtained from the NPS pursuant to the NEPA. OCA Main Brief, pp. 85-95. Two points are important in this context. First, OCA is incorrect. For the reasons explained in PPL Electric's Exceptions at pp. 13-25, NEPA as interpreted by the United States Court of Appeals for the 4<sup>th</sup> Circuit in *Maryland Conservation Council, Inc. v. Gilchrist*, 808 F.2d 1039 (4<sup>th</sup> Cir. 1986) does not mandate that result. Those explanations will not be repeated here. Second, issues of how NEPA should be applied to the S-R Transmission Line, if at all, should not be decided by this Commission. Significantly, all of the court decisions cited by OCA and others (OCA Main Brief, pp. 93-95, Saw Creek Reply Brief, pp. 22-23, and the Environmental Conservation Council Reply Brief, pp. 9-10; Recommended Decision, pp. 259-67) are decisions of federal trial or appellate courts. It is exclusively the federal courts that have interpreted and applied principles arising under NEPA determine whether construction may commence or continue. Issues arising under NEPA are federal and should be resolved by federal agencies and courts. It is the federal court system, and not the Commission, that has jurisdiction to determine whether

such a prohibition is appropriate to protect the federal permitting process. There is no basis for a state administrative agency to attempt to enforce OCA's perception of NEPA and rights arising under it. Significantly, no party has cited any case in which a state agency has sought to protect the federal permitting under the NEPA even though the NEPA has been in effect for more than 40 years. OCA's attempt through the Petition to entangle the Commission in these federal issues should be rejected.

In addition, OCA's concerns about a transmission line to "nowhere" are greatly exaggerated. OCA based its concern on its statement that: "[I]t 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." Petition, p. 4. This statement is simply incorrect. Indeed, OCA can make such a contention only by ignoring the explanations that PPL Electric has provided in this proceeding.

The specific location within the DEWA where the S-R Transmission Line crosses the Delaware River does not affect routing of the Line to the west of Wallenpaupack. Even if the NPS were to require PPL Electric to relocate the crossing to an alternative area within the DEWA, PPL Electric would still be able to use the entire length of the S-R Transmission Line from the Susquehanna Switchyard to the Wallenpaupack Hydroelectric Plant. Tr. 816-17. No portion of this segment of the S-R Transmission Line would have to be modified; no investment would be wasted.

All of the S-R Transmission Line west of the Wallenpaupack substation would be used because it is necessary to transmit the electricity from the Susquehanna Switchyard to Wallenpaupack regardless of the point in the DEWA where the Delaware River will be crossed. As presently routed, from Wallenpaupack, the S-R Transmission Line proceeds in a generally

southerly direction to the Bushkill Substation, where it turns in a generally easterly direction to cross the Delaware River. From Wallenpaupack to Bushkill, the S-R Transmission Line roughly parallels the Delaware River and the western border of the DEWA. If the NPS were to require PPL Electric to relocate the Delaware River crossing to another location within the DEWA, PPL Electric would simply have the S-R Transmission Line turn east to cross the Delaware River at the new location selected by the NPS. Admittedly, under those circumstances, PPL Electric would have to come before this Commission again for approval to cross the Delaware River at the new location, but the entire portion of the S-R Transmission Line from the Susquehanna Switchyard to the Wallenpaupack Hydroelectric Plant would still be used and would not have to be modified. Tr. 817.

WHEREFORE, for the foregoing reasons PPL Electric Utilities Corporation respectfully requests that the "Petition of the Office of Consumer Advocate for Reconsideration on Clarification" be denied.

Respectfully submitted,



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Date: March 9, 2010

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