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File #: 2507/140066

May 17, 2010

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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 Effort Mountain #1 & #2 138 kV Taps In Chestnuthill And Polk Townships, Monroe County, Pennsylvania - Docket No. A-2010-2152104

Petition Of PPL Electric Utilities Corporation For A Finding That A Building To Shelter Control Equipment At The Effort Mountain Substation To Be Constructed In Chestnuthill Township, Monroe County, Pennsylvania Is Reasonably Necessary For The Convenience Or Welfare Of The Public - Docket No. A-2010-2153061

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 Larue High For The Proposed Effort Mountain #1 & #2 138 kV Taps In Chestnuthill And Polk Townships, Monroe County, Pennsylvania Is Necessary Or Proper For The Service, Accommodation, Convenience Or Safety Of The Public - Docket No. A-2010-2163154

Albert Barney v. PPL Electric Utilities Corporation - Docket No. C-2009-2107073

Dear Secretary Chiavetta:

May 17, 2010
Page 2

Enclosed for filing is the original Answer of PPL Electric Utilities Corporation to the Motion for Continuance of Larue High in the above-referenced proceedings. As indicated on the certificate of service, copies have been provided to the parties in the manner indicated.

Respectfully Submitted,


Christopher T. Wright

CTW/skr
Enclosures
cc: 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).

VIA E-MAIL & HAND DELIVERY

Honorable Wayne L. Weismandel
Administrative Law Judge
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor West
PO Box 3265
Harrisburg, PA 17105-3265

VIA FIRST CLASS MAIL

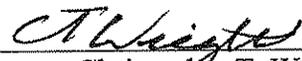
Larue High
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Albert Barney
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Kunkletown, PA 18058

Suzanne A. Hart
RR 1 Box 279
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Joseph P. Hanyon, Esquire
Merwine, Hanyon & Kaspszyk, LLP
HC 89, Box 105, Rt. 940
Pocono Summit, PA 18346

Date: May 17, 2010



Christopher T. Wright

**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 : A-2010-2152104
Construction Of The Effort Mountain #1 & #2 :
138 kV Taps In Chestnuthill And Polk Townships :
Monroe County, Pennsylvania :

Petition Of PPL electric Utilities Corporation :
For A Finding That A Building To Shelter Control :
Equipment At The Effort Mountain Substation :
To Be Constructed In Chestnuthill Township, : A-2010-2153061
Monroe County, Pennsylvania Is Reasonably :
Necessary For The Convenience Or Welfare :
Of The Public :

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 : A-2010-2163154
The Lands Of **Larue High** For The Proposed :
Effort Mountain #1 & #2 138 kV Taps In :
Chestnuthill And Polk Townships, Monroe County, :
Pennsylvania Is Necessary Or Proper For The :
Service, Accommodation, Convenience Or Safety :
Of The Public :

Albert Barney :
 :
 v. : C-2009-2107073
 :
 PPL Electric Utilities Corporation :

**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION
TO THE MOTION FOR CONTINUANCE OF LARUE HIGH**

TO ADMINISTRATIVE LAW JUDGE WAYNE L. WEISMANDEL:

PPL Electric Utilities Corporation (“PPL Electric”), by and through its attorneys, hereby files, pursuant to Section 5.103 of the Rules of Administrative Practice and Procedure of the Pennsylvania Public Utility Commission (“Commission”), 52 Pa. Code § 5.103, this Answer to the Motion for Continuance of Larue High. For the reasons explained below, Ms. High’s Motion for Continuance is untimely and without merit.

Ms. High’s Motion for Continuance was sent originally via facsimile transmission to Administrative Law Judge Wayne L. Weismandel (“ALJ”) on the day of the Initial Prehearing Conference, March 23, 2010. The ALJ provided a copy of the Motion for Continuance to PPL Electric. On March 29, 2010, PPL Electric received a cover letter dated March 26, 2010, enclosing the Motion for Continuance. Notably, the cover letter attached to the March 26, 2010 Motion seeks a continuance of the Initial Prehearing Conference that was held on March 23, 2010. To the extent that Ms. High seeks a continuance of the Initial Prehearing Conference, said request is moot.

For reasons unknown to PPL Electric, Ms. High’s Motion for Continuance was not filed and docketed with the Secretary’s Office until April 26, 2010. PPL Electric is answering the Motion for Continuance at this time in response to the acceptance of the Motion by the Commission for docketing. PPL Electric herein files this Answer to Ms. High’s Motion for

Continuance and requests that it be denied. In support thereof, PPL Electric responds to each of the separately number paragraphs of Ms. High's Motion as follows:

1. Admitted in part and denied in part. It is admitted that a Notice of Appearance was sent to the ALJ contemporaneously with the Motion for Continuance. PPL Electric is without sufficient information or knowledge to form a belief as to the truth of the averment regarding the conflict of interest of Ms. High's counsel and, therefore, denies the same.

2. Denied. PPL Electric is without sufficient information or knowledge to form a belief as to the truth of the averments set forth in Paragraph 2 of Ms. High's Motion. By way of further response, Ms. High had adequate advance notice of this proceeding and her eleventh-hour request for a continuance therefore should be denied.

On January 15, 2010, PPL Electric filed the "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 Effort Mountain #1 & #2 138 kV Taps in Chestnuthill and Polk Townships, Monroe County, Pennsylvania," at Docket No. A-2010-2152104 ("Siting Application"). On March 4, 2010, PPL Electric filed the "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 Larue High for the Proposed Effort Mountain #1 & #2 138 kV Taps in Chestnuthill and Polk Townships, Monroe County, Pennsylvania Is Necessary or Proper for the Service, Accommodation, Convenience or Safety of the Public" at Docket No. A-2010-2163154 ("Condemnation Application"). (These filings are hereinafter, collectively referred to as the "Applications.") These Applications were

served on Ms. High via Certified Mail Return Receipt Requested. Additionally, as explained in the Condemnation Application, prior to filing, PPL Electric met with Ms. High in an attempt to negotiate the right-of-way necessary for the aerial crossing of her property. Further, PPL Electric previously disclosed to Ms. High that PPL Electric may seek to obtain a right-of-way and easement across her property by eminent domain and provided information concerning the power of eminent domain through the form of notice specified by the Commission at 52 Pa. Code § 57.91.

In addition, PPL Electric filed a Motion to Consolidate the above-captioned matters on March 10, 2010, which was served on Ms. High via First Class Mail. Further, on March 10, 2010, Ms. High was served with a Notice of the Initial Prehearing Conference (“Notice”) in this matter, which was held on March 23, 2010. Also, on March 12, 2010, Ms. High was served with a Prehearing Conference Order. Therein, the ALJ proposed a tentative litigation schedule and requested that “on or before March 23, 2010, parties shall file and serve an Initial Prehearing Conference memoranda which shall include ... [a]ny recommended changes to the presiding Administrative Law Judge’s tentative schedule....” *See* Prehearing Conference Order, ¶ 3. Ms. High did not file an Initial Prehearing Conference memoranda suggesting changes to the ALJ’s tentative schedule. Based on the foregoing, Ms. High had adequate notice of this proceeding and her request for a continuance is untimely and should be denied.

Further, Ms. High’s Motion fails to identify which aspect of the litigation schedule she desires to have continued and, instead, generally requests a continuance of unidentified deadlines in this proceeding for some unspecified time. Under the Commission’s regulations, a motion “must set forth the ruling or relief sought ... and the statutory or other authority upon which it relies.” 52 Pa. Code § 5.103(a). Upon a review of Ms. High’s Motion for Continuance in its

entirety, it appears that Ms. High is seeking a continuance of the Prehearing Conference, which was held on March 23, 2010. *See also* “Appendix A” (cover letter dated March 26, 2010, indicating Ms. High was seeking a continuance of the March 23, 2010 Initial Prehearing Conference). Thus, Ms. High’s Motion for Continuance is moot.

3. Admitted in part and denied in part. PPL Electric is without sufficient information or knowledge to form a belief as to the truth of the averment regarding if and when the filings in this matter were provided to Ms. High’s counsel and, therefore, denies the same. It is admitted that Ms. High was served with the Notice of the Initial Prehearing Conference in this matter, which was held on March 23, 2010. It is also admitted that PPL Electric properly served all filings in this matter which could affect Ms. High. *See* 52 Pa. Code §§ 1.54, 5.41(b). Indeed, as explained above in Paragraph 2, *supra*, the Applications were served on Ms. High via Certified Mail Return Receipt Requested in accordance with the Commission’s regulations.

4. Denied. PPL Electric is without sufficient information or knowledge to form a belief as to the truth of the averment in Paragraph 4 of Ms. High’s Motion that her counsel “is not learned in the procedures of service and rules of civil procedure for the Public Utility Commission” and, therefore, denies the same. It is also denied that the Applications or Notice of the Initial Prehearing Conference contained any errors. Such a bald assertion, without more, is an insufficient basis to support a continuance in this matter. Further, this allegation in no way diminishes or refutes the fact that Ms. High was properly served each of these documents in accordance with the Commission’s regulations.

By way of further response, it is denied that the Applications and Notice of the Initial Prehearing Conference violate Ms. High’s right to procedural due process. As explained by the Commonwealth Court of Pennsylvania, due process in administrative proceedings requires

notice and an opportunity to be heard. *Vaders v. Pa. State Horse Racing Commission*, 964 A.2d 56, 58 (Pa. Cmwlth. 2009) (citing 2 Pa.C.S. § 504; *Grossman v. State Bd. of Psychology*, 825 A.2d 748 (Pa. Cmwlth. 2003); *Gruff v. Department of State*, 913 A.2d 1008 (Pa. Cmwlth. 2006)). Here, Ms. High was properly served and provided with adequate notice of these matters, and has the opportunity to be heard in accordance with the litigation schedule adopted by the ALJ in the Scheduling and Briefing Order, dated March 25, 2010.

5. Admitted in part and denied in part. It is admitted that the Applications were served upon Ms. High without docket numbers. The Applications were filed with the Commission and, as set forth in each of the attached Certificates of Service, a true and correct copy of each was contemporaneously served on Ms. High in accordance with 52 Pa. Code § 1.54. The Applications were served on Ms. High without docket numbers because docket numbers are not instantaneously assigned to matters when filed with the Commission.

It is also admitted that the Applications did not include a notice to plead. However, unlike motions that require a notice to respond, *see* 52 Pa. Code § 5.103(b), there is no requirement under the Commission regulations to include a notice to plead with any of the Applications filed by PPL Electric. By way of further response, it is denied that the failure to include a notice to plead, which is not required by the Commission's regulations, constitutes a denial of procedural due process. *See Vaders v. Pa. State Horse Racing Commission*, 964 A.2d 56, 58 (Pa. Cmwlth. 2009) (due process in administrative proceedings requires notice and an opportunity to be heard).

It is also denied that this proceeding involves a potential deprivation of property rights without due process of law. As explained above, Ms. High has undeniably received adequate notice and has a meaningful opportunity to participate in this proceeding. Although the litigation

schedule has been set, Ms. High has every opportunity to not only challenge the case of PPL Electric, but also to introduce evidence and testimony to support her position in accordance with the previously approved litigation scheduled.¹ Based on the foregoing, Ms. High's alleged deprivation of property rights without due process of law is without merit.

6. Denied. Paragraph 6 references a "subsequent document" and states that it is attached to Ms. High's Motion. However, no such document is attached to the Motion and PPL Electric is without sufficient information or knowledge to form a belief as to the truth of the averments in Paragraph 6 of Ms. High's Motion regarding this unidentified document and, therefore, denies the same. By way of further response, the documents were served on Ms. High simultaneously when they were filed with the Commission. The Commission does not instantaneously assign docket numbers to matters; however, true and correct copies of each of the relevant filings in this proceeding were served on Ms. High as set forth in each of the attached Certificates of Service and in accordance with 52 Pa. Code § 1.54.

7. Admitted in part and denied in part. It is admitted that the Notice of Initial Prehearing Conference, dated March 10, 2010, contained the correct docket numbers and indicated that the Initial Prehearing Conference was scheduled for March 23, 2010. It is also admitted that the captions set forth in the Notice of the Prehearing Conference did not contain Ms. High's name. It is denied, however, that Ms. High did not receive adequate notice in this proceeding.

¹ Further, even if the Commission determines that the service is necessary to the public, this does not mean that a public utility may then simply take the subject property. Rather, after receiving Commission approval, the public utility must then follow the proper procedures for condemnation proceedings. *See* 15 Pa.C.S. § 1511(g). Obtaining the approval of the Commission is a preliminary step a public utility must take before it files appropriate documents with the relevant court of common pleas for the condemnation of property rights for the construction of aerial facilities.

By way of further response, all relevant filings were properly served on Ms. High, including the Condemnation Application which contained her name in the caption. Ms. High was also served the Motion to Consolidate, which consolidated the Condemnation Application with the above-captioned matters. Further, Ms. High was properly served with the Prehearing Order, which contained Ms. High's name in the caption and ordered that the initial Prehearing Conference would be on March 23, 2010. Additionally, the Prehearing Order instructed that Ms. High was entitled to represent herself or may be represented by an attorney. *See* Prehearing Conference Order, p. 3. Finally, the Prehearing Conference Order advised that a “[f]ailure of a party to attend the Initial Prehearing Conference, without good cause shown, shall constitute a waiver of all objections to the agreements reached, and to an order or ruling with respect thereto.” *Id.* It cannot be reasonably argued that Ms. High was not provided adequate notice of this proceeding. Ms. High was properly served with the Applications, the Notice of the Initial Prehearing Conference, and the Prehearing Conference Order. Her failure to take any steps to preserve her interests in this proceeding is an insufficient basis to support a continuance of the litigation schedule.

8. Denied. Paragraph 8 of Ms. High's Motion is a conclusion of law to which no response is required. To the extent a responsive pleading is necessary, PPL Electric denies the same. By way of further response, for the reasons set forth above, which are incorporated as if set forth fully herein, PPL Electric denies that Ms. High's due process rights have been violated in this proceeding.

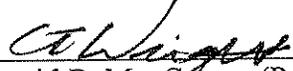
9. Admitted in part and denied in part. Although it was sent to the ALJ via facsimile transmission on March 23, 2010, and docketed on April 26, 2010, the cover letter to Ms. High's Motion is dated March 29, 2010. Due to the confusion regarding the dates referenced in the

Motion and the filing date, it is denied that counsel for Ms. High contacted counsel for PPL Electric “yesterday afternoon.” It is admitted, however, that counsel for Ms. High contacted counsel for PPL Electric in the afternoon of March 22, 2010. It is also admitted that PPL Electric did not concur in the continuance of the litigation schedule in this proceeding. By way of further response, as indicated in the Siting Application, the distribution lines serving the Sun Valley/Jonas area are presently operating near or at their capacity during peak periods. Operating these facilities beyond their planning ratings will overheat the lines and anneal the conductors, which could result in an outage of the facilities. Indeed, the project has an in-service date of November, 2011. Therefore, in order to assure that PPL Electric’s transmission and distribution systems can supply load reliably to the Sun Valley/Jonas areas during summer and winter peak conditions, PPL Electric must undertake the project as soon as practical to meet the in-service date. Accordingly, PPL Electric believes that this proceeding should remain on the previously approved litigation schedule.

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that Administrative Law Judge Wayne L. Weismandel deny the Motion for Continuance of Larue High and order that the above-captioned consolidated matter proceed according to the schedule established in the Scheduling and Briefing Order, dated March 25, 2010.

Respectfully submitted,

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Dated: May 17, 2010

Attorneys for PPL Electric Utilities Corporation

Appendix A



MAR 29 2010

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March 26, 2010

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Harrisburg, PA 17101-1601

**Re: Docket No. A-2010-2163154
Appl. Of PPL Electric Utilities
And lands of Larue High**

Dear Mr. Isom:

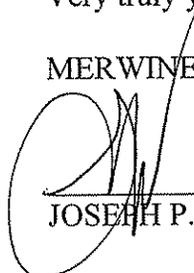
Please be advised that this office represents Larue High in the above referenced matter. Enclosed please find a copy of a Praecipe for Entry of Appearance and a Motion for Continuance which has been filed requesting the hearing scheduled on March 23, 2010 be continued.

Thank you for your attention to this matter.

Very truly yours,

MERWINE, HANYON & KASPSZYK, LLP

By:



JOSEPH P. HANYON, ESQ.

Enclosure
JPH/fd