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November 12, 2010

BY HAND

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 Nos. A-2010-2152104, A-2010-2153061, A-2010-2163154 and C-2009-2107073**

Dear Secretary Chiavetta:

Enclosed for filing, please find the Reply of PPL Electric Utilities Corporation to Exceptions of Other Parties in the above-referenced proceeding. As indicated on the certificate of service, copies have been provided to the parties in the manner indicated.

Respectfully Submitted,

John H. Isom

JHI/skr

Enclosures

cc: Honorable Wayne L. Weismandel  
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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Date: November 12, 2010

  
\_\_\_\_\_  
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 Siting and Construction of the Effort Mountain #1 & #2 138 kV Taps in Chestnuthill and Polk Townships, Monroe County, Pennsylvania, <i>et al.</i>	:	Docket Nos. A-2010-2152104; A-2010-2153061; A-2010-2163154; C-2009-2107073
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**REPLY OF PPL ELECTRIC UTILITIES CORPORATION  
TO EXCEPTIONS OF OTHER PARTIES**

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**TABLE OF CONTENTS**

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIES.....ii

I. INTRODUCTION AND BACKGROUND .....1

II. SUMMARY OF PPL ELECTRIC’S REPLY TO EXCEPTIONS.....4

III. PPL ELECTRIC’S REPLY TO EXCEPTIONS.....5

    A. THE EXCEPTIONS OF MS. HIGH AND MS. HART REGARDING THE NEED FOR THE EFFORT MOUNTAIN TAPS ARE WITHOUT MERIT AND SHOULD BE REJECTED.....5

    B. THE EXCEPTIONS OF MS. HIGH AND MS. HART REGARDING THE SITING OF THE EFFORT MOUNTAIN TAPS ARE WITHOUT MERIT AND SHOULD BE REJECTED.....9

    C. THE EXCEPTIONS REGARDING THE SAFETY OF THE EFFORT MOUNTAIN TAPS ARE WITHOUT MERIT AND SHOULD BE REJECTED.....14

    D. THE EXCEPTIONS OF MR. SCHELLER REGARDING THE CONSIDERATION OF THE PROTEST AND OTHER DOCUMENTS FILED AFTER THE CLOSE OF THE RECORD ARE WITHOUT MERIT AND SHOULD BE REJECTED.....17

IV. CONCLUSION.....20

**TABLE OF AUTHORITIES**

**PENNSYLVANIA CASES**

*Brown v. Commonwealth*, 940 A.2d 610 (Pa. Cmwlth. 2008).....7

*Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999).....7

*Dee-Dee Cab, Inc. v. Pa. PUC*, 817 A.2d 593 (Pa. Cmwlth. 2003), *appeal denied*,  
836 A.2d 123 (Pa. 2003).....19

*Energy Conservation Council of Pa. v. Pa. PUC*, 995 A.2d 465 (Pa. Cmwlth.  
2010).....10

*Lee v. Pennsylvania Board of Probation and Parole*, 885 A.2d 634 (Pa. Cmwlth.  
2005).....11

*O'Connor v. Pa. PUC*, 582 A.2d 427 (Pa. Cmwlth. 1990).....10

*Paxtowne v. Pa. PUC*, 398 A.2d 254 (Pa. Cmwlth. 1979).....9

*Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600 (Pa. Cmwlth. 1990).....7

*Stone v. Pa. PUC*, 162 A.2d 18 (Pa. Super. 1960).....9

*Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366 (Pa.  
Cmwlth. 1976).....11

**ADMINISTRATIVE AGENCY CASES**

*Application of the City of Harrisburg to Discontinue Or Abandon the Provision  
of Water Service*, Docket No. A-221400F2000, 2001 Pa. PUC LEXIS 13 at  
\*23-25 (April 23, 2001).....7

*Application of PP&L for Approval to Locate and Construct a 138 kV  
Transmission Line Between West Allentown and Salisbury Substations*,  
Docket No. A-00104160 (July 20, 1984).....15

*Application of PP&L for Authorization to Locate and Construct its Hamlin 138  
kV Electric Transmission Line*, Docket No. A-00101826 (April 3, 1981).....15

*Application of PPL Electric Utilities Corporation*, Docket Nos. A-2009-2082652,  
*et al.*, 2009 Pa. PUC LEXIS 262 at \*327-28 (November 12, 2009).....16

<i>Application of West Penn Power Company for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code, Docket No. R-00973981, 1998 Pa. PUC LEXIS 168 (May 29, 1998)</i> .....	8
<i>Certification Application of Pennsylvania Power &amp; Light Company Filed Pursuant to 52 Pa. Code Chapter 57, 1994 Pa. PUC LEXIS 65, *67-69 (October 21, 1994)</i> .....	16
<i>Enron Capital &amp; Trade Resources Corporation v. The Peoples Natural Gas Company, Peoples Industrial et al., Docket No. R-00973928C0001, 1998 Pa. PUC LEXIS 199 (August 24, 1998)</i> .....	19
<i>Investigation on Commission Motion of the Safety of the Cabett-Wylei Ridge 500 kV Transmission Line, I.D. 236 (Sept. 18, 1981)</i> .....	15
<i>Larken v. Philadelphia Electric Co., 39 Pa. PUC 777 (1961)</i> .....	15
<i>Manu, et. al, v. AT&amp;T Communications of Pennsylvania, Inc., et al., Docket Nos. F-09029141, et al., 1994 Pa. PUC LEXIS 25 (May 4, 1994)</i> .....	8
<i>Pa. P.U.C. v. Duquesne Light Company, Docket Nos. R-860378, et al., 1987 Pa. PUC LEXIS 342, 63 Pa. PUC 337 (March 10, 1987)</i> .....	8

**PENNSYLVANIA STATUTES**

66 Pa.C.S. § 2804(1)(ii) .....	15
--------------------------------	----

**REGULATIONS**

52 Pa. Code § 5.535 .....	1
52 Pa. Code § 57.72(c)(10) .....	10
52 Pa. Code § 57.76(a)(2) .....	16

**MISCELLANEOUS**

40 Pa. Bulletin 686 .....	12, 18
40 Pa. Bulletin 687 .....	12, 18

## **I. INTRODUCTION AND BACKGROUND**

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) files this Reply to the Exceptions of LaRue High, Suzanne A. Hart, and Kurt Scheller pursuant to 52 Pa. Code § 5.535 and the Secretarial Letter dated October 14, 2010. The Recommended Decision (“R.D.”) of Administrative Law Judge Wayne L. Weismandel (“ALJ”) was issued by Secretarial Letter dated October 14, 2010. The R.D. recommended that the Commission approve the siting and construction of the Effort Mountain #1 & #2 138 kV Taps (“Effort Mountain Taps”). On November 3, 2010, Exceptions were filed by Ms. High, Ms. Hart, and Mr. Scheller. PPL Electric did not file Exceptions to the R.D.

This proceeding began on January 8, 2010, when PPL Electric filed with the Commission 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” (hereinafter the “Siting Application”), at Docket No. A-2010-2152104. (PPL Electric Ex. 1.) On January 15, 2010, PPL Electric filed the “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” (hereinafter, the “Zoning Petition”), at Docket No. A-2010-2153061. (PPL Electric Ex. 2.) 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” (hereinafter, the “Condemnation Application”), at Docket No. A-2010-2163154. (PPL Electric Ex. 3.) On March 11, 2010, the ALJ issued an order consolidating the proceedings.<sup>1</sup>

On January 30, 2010, a Protest to the Siting Application was filed by Ms. Hart. Following a Prehearing Conference held on May 23, 2010, the ALJ issued a Scheduling and Briefing Order establishing the procedural schedule for the above-consolidated matters. Pursuant thereto, written evidence was exchanged by certain of the Parties, and an evidentiary hearing was held before the ALJ on July 13, 2010. At the evidentiary hearing, the Parties produced oral testimony and moved into the record their respective testimonies and exhibits. The record was closed on August 25, 2010.

Pursuant to the Scheduling and Briefing Order, Initial Briefs were filed by PPL Electric, Ms. Hart, and Ms. High on or before August 11, 2010. Together with their Initial Briefs, both Ms. High and Ms. Hart submitted rejoinder testimony and various exhibits raising facts and issues that were not previously presented through direct or rebuttal testimony, or at the evidentiary hearing. On or before August 25, 2010, Reply Briefs were filed by PPL Electric, Ms. Hart, and Ms. High. Again, the Reply Briefs of Ms. High and Ms. Hart presented various facts and exhibits that were not previously presented through direct or rebuttal testimony, or at the evidentiary hearing.

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<sup>1</sup> On May 13, 2009, prior to the filings by PPL Electric, Albert Barney filed a Formal Complaint that pertains to the proposed Effort Mountain Taps, which was docketed at Docket No. C-2009-2107073. On June 3, 2009, PPL Electric filed an Answer and New Matter Responding to the Formal Complaint. On February 23, 2010, PPL Electric served Mr. Barney with complete copies of the Siting Application and Zoning Petition, together with the accompanying Exhibits and Appendices. The ALJ ultimately dismissed Mr. Barney’s Formal Complaint with prejudice for failure to prosecute. (R.D. at 54.) Mr. Barney has not filed Exceptions to the R.D.

On August 30, 2010, after the Briefs were filed and after the record was closed, PPL Electric was served with the Formal Complaint of Kurt Scheller, which was ultimately processed as a Protest to the Siting Application pursuant to a Secretarial Letter dated September 2, 2010. On September 16, 2010, PPL Electric filed Preliminary Objections and an Answer with New Matter to Mr. Scheller's Protest, explaining that Mr. Scheller's Protest to the Siting Application was untimely. Mr. Scheller filed a response to the Preliminary Objections and New Matter on September 21, 2010, arguing that he was protesting PPL Electric's Initial Brief and could not have filed a Protest or Complaint before the Brief was filed on August 11, 2010. (*See* Scheller Answer to Preliminary Objections, ¶ 4.)

On September 16, 2010, the ALJ issued the R.D. Therein, the ALJ addressed the arguments set forth in the Briefs and Reply Briefs of Ms. High and Ms. Hart. The ALJ considered and weighed all the evidence that was properly introduced into the record. Based thereon, the ALJ found that PPL Electric met its burden of proof and, therefore, recommended that the Public Utility Commission ("Commission") find that a building to shelter control equipment at the Effort Mountain Substation site in Chestnuthill Township, Monroe County, Pennsylvania is reasonably necessary for the convenience or welfare of the public and find that the service to be furnished through the exercise of the power of eminent domain to acquire rights-of-way the lands of Ms. High in Chestnuthill and Polk Townships, Monroe County, Pennsylvania is necessary or proper for the service, accommodation, convenience or safety of the public. The ALJ also recommended that the Commission approve the Siting Application, the Zoning Petition and the Condemnation Application.

Ms. High, Ms. Hart, and Mr. Scheller take exception to the ALJ's recommendation. For the reasons explained below, PPL Electric respectfully requests that the Commission deny the Exceptions of Ms. High, Ms. Hart, and Mr. Scheller.

## **II. SUMMARY OF PPL ELECTRIC'S REPLY TO EXCEPTIONS**

Ms. High and Ms. Hart take exception to the ALJ's conclusion that PPL Electric satisfied its burden of proof. Specifically, Ms. High and Ms. Hart assert that the ALJ erred in finding that the record supported the need, route selection, and safety of the proposed Effort Mountain Taps. The Exceptions of Ms. High and Ms. Hart are restatements of the numerous arguments raised in their Briefs, which were addressed in PPL Electric's Initial and Reply Briefs, as well as by the ALJ in the R.D. In short, Ms. High and Ms. Hart assert that the evidence introduced by PPL Electric is inaccurate and should be rejected. However, a review of the evidence of record reveals that PPL Electric established by a clear preponderance of the evidence that the Commission should grant the approvals and findings sought in these consolidated proceedings.

It is unrefuted that several distribution lines and transformers in the Sun Valley/Jonas area are overloaded, and that others will soon be overloaded as a result of load growth in the area. It is also unrefuted that the distribution system serving the Sun Valley/Jonas area requires reinforcement to resolve these reliability problems. The record evidence also demonstrates that PPL Electric's selection of the preferred electrical solution to resolve these reliability problems is reasonable, and that PPL Electric properly considered the electric power needs of the public, the state of the available technology, and the available alternatives. Further, the record evidence establishes that PPL Electric ultimately selected a route for the proposed Effort Mountain Taps that appropriately balances functional requirements, environmental impacts, social factors, and cost considerations. For these reasons, the record evidence supports the ALJ's finding that: (1)

the Effort Mountain Taps are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public; (2) the Effort Mountain Taps are not an unreasonable risk of danger to the health and safety of the public; and (3) that the selection of the modified Route B1 for the Effort Mountain Taps was reasonable. Accordingly, the Commission should adopt the recommendation of the ALJ and approve the siting and construction of the Effort Mountain Taps to relieve existing and projected overload conditions on the distribution lines and transformers currently serving the Sun Valley/Jonas area and to improve the reliability of service in the area.

Mr. Scheller also takes exceptions to the R.D. Mr. Scheller argues that the R.D. failed to take into consideration the Protest and other documents he filed after the record had closed. However, as explained below, Mr. Scheller received notice and an opportunity to participate in this proceeding but declined to do so. Mr. Scheller's filings were untimely and, therefore, the ALJ properly declined to consider them in the R.D.

### **III. PPL ELECTRIC'S REPLY TO EXCEPTIONS**

#### **A. The Exceptions Of Ms. High And Ms. Hart Regarding The Need For The Effort Mountain Taps Are Without Merit And Should Be Rejected.**

In their Exceptions, Ms. High and Ms. Hart challenge the ALJ's finding and determination that the Effort Mountain Taps are needed. However, Ms. Hart and Ms. High disregard, and fail to refute, the record evidence demonstrating that several distribution lines and transformers in the Sun Valley/Jonas area are presently overloaded, and that others that will soon be overloaded, as a result of load growth in the area. Accordingly, for the reasons that follow, the Commission should adopt the ALJ's recommendation that PPL has met its burden to prove the Effort Mountain Taps are necessary or proper to relieve existing and projected overload

conditions on the distribution lines and transformers currently serving the Sun Valley/Jonas area and to improve the reliability of service in the area.

The Sun Valley/Jonas area receives its distribution services from the Meckesville 69-12 kV Substation, and two 12 kV distribution lines, the Meckesville 69-1 and the Meckesville 69-2 12 kV distribution lines. PPL Electric explained that the load on the Meckesville 69-1 12 kV distribution line is projected to exceed the normal planning guideline in the winter of 2010-2011. The Meckesville 69-2 12 kV distribution line began to exceed its normal planning guidelines in 2006, and exceeded the emergency guideline in 2008. The load on the Meckesville 69-2 12 kV distribution line is projected to continue to increase in excess of the planning guidelines and ultimately exceed the thermal guideline in the winter of 2012-2013.<sup>2</sup> Similarly, the transformers at the Meckesville 69-12 kV Substation are projected to become overloaded in 2011. (See PPL Electric Initial Brief, Section VI.A.1.)

PPL Electric also explained that the load transfer capability in the Sun Valley/Jonas area is limited, especially at times of peak loads, because loads on neighboring circuits are also approaching their emergency planning guidelines. If additional load were transferred to these neighboring lines, they would exceed the emergency planning guidelines, which could result in their failure. Because there is limited capacity available to transfer load away from the transformers at the Meckesville 69-12 kV Substation to other transformers, a transformer failure at the Meckesville 69-12 kV Substation would lead to an extended outage for more than 3,000 customers until repairs could be made or a transformer could be replaced. (See PPL Electric Initial Brief, Section VI.A.1.)

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<sup>2</sup> The thermal guideline is the load at which the facility is in danger of melting. Operating these distribution lines beyond their planning guidelines will overheat the lines and anneal the conductors, which could result in an outage of the facilities.

Here, the ALJ carefully considered the evidence of record and accepted the evidence introduced by PPL Electric.<sup>3</sup> Based thereon, the ALJ concluded that the Effort Mountain Taps were reasonably necessary to relieve existing and projected overloaded conditions on the distribution lines and transformers currently serving the Sun Valley/Jonas area and to improve the reliability of service in the area. As explained above and in the Initial and Reply Briefs of PPL Electric, the ALJ's findings and determinations as to the need for the Effort Mountain Taps are supported by a preponderance of the record evidence.<sup>4</sup>

In their Exceptions, Ms. High and Ms. Hart contend that the ALJ erred in accepting PPL Electric's evidence regarding the need for the Effort Mountain Taps. The Exceptions of Ms. High and Ms. Hart are restatements of their Briefs, including: there are no outages in the Sun Valley/Jonas area; the Effort Mountain Taps will not serve the Sun Valley/Jonas area; there is no need in the area because of the downturn in the housing, job, and other economically related markets; the existing system can be upgraded; and the need can be resolved by implementing new technologies. In its Initial and Reply Briefs, PPL Electric responded to and addressed the various issues and contentions raised by Ms. High and Ms. Hart. (See PPL Electric Initial Brief, Section VI.A.3, VI.B.3, VI.B.4, and VI.D.2; see also PPL Electric Reply Brief, *passim*.)

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<sup>3</sup> "It is well settled that it is within the purview of the presiding ALJ to determine from the demeanor of witnesses, the credibility and candor of their testimony and to affix a certain weight to their testimony." *Application of the City of Harrisburg to Discontinue Or Abandon the Provision of Water Service*, Docket No. A-221400F2000, 2001 Pa. PUC LEXIS 13 at \*23-25 (April 23, 2001).

<sup>4</sup> It is well established that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

Similarly, the ALJ considered and addressed the contentions of Ms. High and Ms. Hart in the R.D. For the reasons set forth therein, Ms. High's and Ms. Hart's contentions are without merit and, more importantly, disregard the unrefuted fact that that some of the distribution facilities serving the Sun Valley/Jonas area are serving loads in excess of the planning guidelines and others soon will be.

In a new argument, Ms. High and Ms. Hart contend that the data justifying the Effort Mountain Taps is inaccurate, and even go so far as to imply that PPL Electric manipulated the data. This argument is being raised for the first time in Exceptions and, therefore should be rejected. It is well-settled that the Commission will not consider arguments raised for the first time in exceptions. *See, e.g., Application of West Penn Power Company for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code*, Docket No. R-00973981, 1998 Pa. PUC LEXIS 168 (May 29, 1998) (granting OCA's Motion to Strike extra-record evidence raised in Exceptions); *Manu, et. al, v. AT&T Communications of Pennsylvania, Inc., et al.*, Docket Nos. F-09029141, *et al.*, 1994 Pa. PUC LEXIS 25 (May 4, 1994) (refusing to consider allegations raised for the first time in exceptions on the basis of due process considerations); *Pa. P.U.C. v. Duquesne Light Company*, Docket Nos. R-860378, *et al.*, 1987 Pa. PUC LEXIS 342; 63 Pa. PUC 337 (March 10, 1987) (declining to entertain challenges raised for the first time in exceptions).

Further, despite their accusations to the contrary, there is absolutely nothing in the record to suggest that PPL Electric's detailed system planning process and application of its planning guidelines was inaccurate in this case or that PPL Electric somehow manipulated the data to justify the need for the Effort Mountain Taps. Indeed, there is nothing of record to contradict or otherwise refute the existing and projected loads on the Meckesville 69-12 kV Substation,

Meckesville 69-1 12 kV distribution line, and the Meckesville 69-2 12 kV distribution line that presently serve the Sun Valley/Jonas area.

Based on the foregoing, the Exceptions of Ms. High and Ms. Hart regarding the need for the Effort Mountain Taps are without merit and disregard the unrefuted record evidence demonstrating that several distribution lines and transformers in the Sun Valley/Jonas area are presently overloaded, and that others that will soon be overloaded, as a result of load growth in the area. Accordingly, the Commission should adopt the ALJ's recommendation that PPL Electric has met its burden to prove the Effort Mountain Taps are necessary or proper for service, accommodation, convenience, and safety of the public.

**B. The Exceptions Of Ms. High And Ms. Hart Regarding The Siting Of The Effort Mountain Taps Are Without Merit And Should Be Rejected.**

In their Exceptions, Ms. High and Ms. Hart challenge the ALJ's finding and determination that PPL Electric met its burden to prove that the selection of the modified Route B1 for the Effort Mountain Taps was reasonable. Ms. High and Ms. Hart further contend that additional public input hearings regarding the proposed route are necessary before the Commission may approve the route selected by PPL Electric. For the reasons that follow, the Exceptions of Ms. High and Ms. Hart are without merit and should be denied.

With respect to the Commission's approval of the route selection for HV transmission lines, the Commonwealth Court has explained that

[O]ur courts have held that "it is settled law that the designation of the route for [a HV] line [is] a matter for determination by [a utility's] management in the first instance, and [the utility's] conclusion will be upheld unless shown to be wanton or capricious." *Stone v. Pennsylvania Public Utility Commission*, 162 A.2d 18, 21 (Pa. Super. 1960). Thus, where the record establishes that the utility's route selection was reasonable, considering all the factors, its route will be upheld. *Paxtowne v. Pennsylvania Public Utility Commission*, 398 A.2d 254, 256 (Pa. Cmwlth. 1979). The mere existence of an alternative route does not invalidate the

utility's judgment. *O'Connor v. Pennsylvania Public Utility Commission*, 582 A.2d 427, 433 (Pa. Cmwlth. 1990). This reasoning is equally sound when considering whether a utility has complied with 52 Pa. Code § 57.72(c)(10), as the information required by this section goes towards establishing the reasonableness of the utility's route selection.

*Energy Conservation Council of Pa. v. Pa. PUC*, 995 A.2d 465, 479-480 (Pa. Cmwlth. 2010).

PPL Electric's siting analysis and route selection is explained in its Initial Brief. (See PPL Electric Initial Brief, Section VI.B.1.) As explained therein, PPL Electric retained the services of URS Corporation to facilitate its analysis of the route selection. Through a qualitative and quantitative siting analysis, the Siting Team identified alternative routes, which were modified based upon field surveys and an extensive public outreach program. Based on the quantitative and qualitative analyses explained in Exhibit D to PPL Electric Ex. 1, as well as the estimated costs of each alternative route (PPL Electric St. No. 3, p. 7), the Siting Team concluded that modified Route B1 was superior to the alternative routes. Route B1 has the least overall adverse impact of all the routes giving consideration to the many factors that enter into selecting a transmission line route. (PPL Electric St. No. 2, p. 17.)

The ALJ carefully considered the evidence of record and concluded that PPL Electric met its burden to prove that the selection of the modified Route B1 for the Effort Mountain Taps and was reasonable and not selected wantonly, capriciously, or arbitrarily. The ALJ further found that PPL Electric demonstrated that the modified Route B1 was superior to the other feasible alternatives. (R.D. at 52.) As explained above and in the Initial and Reply Briefs of PPL Electric, the ALJ's findings and determinations as to the siting of the Effort Mountain Taps are amply supported by the record evidence.

In their Exceptions, Ms. High and Ms. Hart contend that the ALJ erred in accepting PPL Electric's evidence regarding the route selection for the Effort Mountain Taps. The Exceptions

of Ms. High and Ms. Hart are restatements of their Briefs, including: Ms. High's current use of her land; invasive species within transmission line rights-of-way; proximity of the proposed line to Ms. High's home; and undergrounding of the HV transmission line. In its Initial and Reply Briefs, PPL Electric responded to the various issues and contentions raised by Ms. High and Ms. Hart. (See PPL Electric Initial Brief, Section VI.B.3, VI.B.4, and VI.D.2; see also PPL Electric Reply Brief, *passim*.) Similarly, the ALJ considered and addressed the contentions of Ms. High and Ms. Hart in the R.D., pp. 32-34, 41-44. For the reasons set forth therein, Ms. High's and Ms. Hart's contentions are without merit and, more importantly, disregard the evidence of record demonstrating that PPL Electric selected the modified Route B1 upon a detailed analysis of the alternative line routes, comments from the public, societal concerns, environmental impacts, engineering considerations, and costs.

In a new argument, Ms. High and Ms. Hart assert that additional public input hearings are necessary before the Commission may approve PPL Electric's selection of the modified Route B1 for the Effort Mountain Taps. In support, Ms. High asserts that the public input sought by PPL Electric was inadequate because those participating only sought "move [the Taps] away from them and closer to someone else." (High Exceptions, p. 8.) Ms. Hart goes to great lengths to assert that an alleged would-be protestor was purportedly discouraged from filing a protest by Commission staff. These new arguments and allegations of fact should be rejected for several reasons.

First, these arguments and allegations are based entirely on hearsay.<sup>5</sup> In support of their position, both Ms. High and Ms. Hart rely on off the record statements made by individuals that

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<sup>5</sup> Under what is commonly known as the "Walker Rule," hearsay evidence, properly objected to, is not competent evidence to support a finding before an administrative agency. Hearsay evidence, admitted without objection, will be given its natural probative effect and may support a (Continued on next page...)

could have been but were not called as witnesses to testify at the evidentiary hearings. Because there is no record evidence of these hearsay statements, the veracity of these arguments and allegations is unknown and should not be considered by this Commission

Second, these arguments and allegations are improperly being raised for the first time in Exceptions. As explained above, it is well-settled that the Commission will not consider any arguments based on extra-record evidence raised for the first time in exceptions. Because the record has closed, PPL Electric, the party with the burden of proof in this matter, is without a meaningful opportunity to respond with record evidence to these hearsay allegations raised for the first time in Exceptions.

Third, at no point during the proceeding was there a request for public input hearings. Ms. High and Ms. Hart ignore the fact that notice of this proceeding was provided by both PPL Electric and this Commission. PPL Electric published notice of the Siting Application three times in the *Pocono Record*, a newspaper of general circulation in the vicinity of the proposed Effort Mountain Taps.<sup>6</sup> Notice of the Siting Application was published in the Pennsylvania Bulletin. See 40 Pa. Bulletin 687, 40 Pa. Bulletin 686. In addition, owners of land that will be subject to the right-of-way for the Effort Mountain Taps were served individually. To the extent that other persons opposed or otherwise had a position on the route selected for the Effort Mountain Taps, they had notice and the opportunity to be heard in the proceeding before the ALJ. However, in order to participate and have their positions considered by this Commission,

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(...continued from previous page.)

finding of the administrative agency, if it is corroborated by any competent evidence in the record. However, a finding of fact based solely on hearsay will not stand. *Lee v. Pennsylvania Board of Probation and Parole*, 885 A.2d 634, 639 (Pa. Cmwlth. 2005) (citing *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976)).

<sup>6</sup> On March 12, 2010, PPL Electric filed with the Commission proofs that the notice was published.

persons opposing the Siting Application must file a protest, complaint, or intervention within the period proscribed by the Commission.

Fourth, notice of the Initial Prehearing Conference was served on all the parties of record, and was published in the Pennsylvania Bulletin. However, the only party that attended and participated in the Initial Prehearing Conference was PPL Electric. As a result, the ALJ properly concluded that a public input hearing was unnecessary. Given the lack of interest from both the parties of record and the general public, and the fact that no request for public input hearings was made during the proceeding, the ALJ's conclusion was not an abuse of discretion.

Finally, Ms. High and Ms. Hart disregard the fact that the preferred route for the Effort Mountain Taps was selected after an extensive public outreach program, which in fact resulted in modifications to the proposed and alternative routes. (*See* PPL Electric Initial Brief, Section VI.B.1.) PPL Electric fully complied with the Commission's regulations regarding notice of the Siting Application and engaged in extensive public outreach in siting the Effort Mountain Taps. Importantly, construction of the Effort Mountain Taps was scheduled to begin in October, 2010, in order to meet an in-service date of November, 2011. (PPL Electric St. No. 1, p. 3) Any further delay in this proceeding could jeopardize PPL Electric's ability to safe and reliable electric service to this area. PPL Electric should not be penalized for the failure of would-be opponents to the Siting Application to timely file a protest or intervention. For these reasons, the post-hearing request of Ms. High and Ms. Hart for a public input hearing should be denied.

Based on the foregoing, the Exceptions of Ms. High and Ms. Hart regarding the selection of the preferred route for the Effort Mountain Taps are without merit and disregard the unrefuted record evidence demonstrating that PPL Electric selected the modified Route B1 upon a detailed analysis of the alternative line routes, comments from the public, societal concerns,

environmental impacts, engineering considerations, and costs. Accordingly, for these reasons, the Commission should adopt the ALJ's recommendation that PPL has met its burden to prove that the selection of the modified Route B1 was reasonable and that the modified Route B1 was superior to the other feasible alternatives.

**C. The Exceptions Regarding The Safety Of The Effort Mountain Taps Are Without Merit And Should Be Rejected.**

In their Exceptions, Ms. High, Ms. Hart, and Mr. Scheller challenge the ALJ's finding and determination that PPL Electric met its burden to prove that the siting and construction of the Effort Mountain Taps in the modified Route B1 would not create an unreasonable risk of danger to the health and safety of the public. Specifically, all three raise the issue of existing agreements with landowners regarding the application of herbicides. Ms. Hart also raises the issues of electric and magnetic fields ("EMFs") and compliance with the National Electrical Safety Code ("NESC"). For the reasons that follow, the Exceptions of Ms. High, Ms. Hart, and Mr. Scheller are without merit and should be denied.

With respect to the application of herbicides, PPL Electric explained that it will use the techniques and methods set forth in its "Specification for Initial Clearing and Control and Maintenance of Vegetation on or Adjacent to Electric Line Right-of-Way through Use of Herbicides, Mechanical and Hand Clearing." (PPL Electric St. No. 2, p. 16.) Ms. High, Ms. Hart, and Mr. Scheller now assert that PPL Electric will not honor existing agreements with landowners regarding the application of herbicides. However, there is nothing in the record to suggest that PPL Electric will not honor its agreements with landowners. PPL Electric intends to honor all agreements with landowners in accordance with applicable federal and state laws and regulations. Further, this issue was not raised in either testimony or briefs of Ms. High, Ms. Hart, and Mr. Scheller. As explained above, it is well-settled that the Commission will not

consider any arguments based on extra-record evidence raised for the first time in exceptions. Accordingly, this unsubstantiated concern is without merit and should be denied.

Ms. Hart raises the issue of whether the Effort Mountain Taps will present an unreasonable risk to the safety of the public. Specifically, it appears that Ms. Hart takes issue with whether the Taps will be constructed in accordance with the NESC and, if so, whether the line would still present a safety issue. The unrefuted evidence is that Effort Mountain Taps will be designed and constructed according to, and will meet or exceed, all applicable NESC minimum standards. (See PPL Electric Initial Brief, Section VI.B.2.) There is nothing of record to suggest anything to the contrary.

In Pennsylvania, electric utilities are required to install and maintain transmission facilities in conformity with the NESC. 66 Pa.C.S. § 2804(1)(ii). The NESC establishes industry standards for safeguarding work crews and the general public against electrical hazards during construction, installation, operation and maintenance of conductors and equipment in electric supply stations and overhead electric supply lines. It includes work rules for the construction, maintenance and operation of electric supply lines and equipment. (PPL Electric St. No. 3, p. 5) Further, the Commission has found in numerous cases that transmission lines that meet or exceed the NESC requirements do not create an unreasonable risk or danger to the health and safety of the public.<sup>7</sup>

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<sup>7</sup> See *Investigation on Commission Motion of the Safety of the Cabett-Wylei Ridge 500 kV Transmission Line*, I.D. 236 (Sept. 18, 1981); *Application of PP&L for Approval to Locate and Construct a 138 kV Transmission Line Between West Allentown and Salisbury Substations*, Docket No. A-00104160 (July 20, 1984); *Application of PP&L for Authorization to Locate and Construct its Hamlin 138 kV Electric Transmission Line*, Docket No. A-00101826 (April 3, 1981); *Larken v. Philadelphia Electric Co.*, 39 Pa. PUC 777 (1961).

Ms. Hart next appears to take issue with whether the Effort Mountain Taps will be unsafe due to EMFs. PPL Electric explained that it will apply its Plan for Magnetic Field Management, upon which this Commission has commented favorably. *See Certification Application of Pennsylvania Power & Light Company Filed Pursuant to 52 Pa. Code Chapter 57, 1994 Pa. PUC LEXIS 65, \*67-69 (Oct. 21, 1994).*<sup>8</sup> Under its plan, PPL Electric will design and build the Effort Mountain Taps to reduce magnetic fields when such steps can be implemented at low or no cost and are consistent with functional requirements. (See PPL Electric Initial Brief, Section VI.B.2.b.) It should be noted that no other party introduced any evidence regarding EMFs.

The ALJ carefully considered the evidence of record and concluded that the siting and construction of the Effort Mountain Taps would not create an unreasonable risk of danger to the health and safety of the public. As explained above and in the Initial Brief of PPL Electric, the ALJ's findings and determinations as to the safety of the Effort Mountain Taps are supported by the record evidence. Accordingly, for these reasons, the Commission should adopt the ALJ's

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<sup>8</sup> The Commission recently approved the siting and construction of a HV transmission line in a proceeding that presented extensive evidence regarding EMFs. In a Recommended Decision that was affirmed by the Commission, ALJ Susan D. Colwell considered the extensive record on EMFs and held as follows:

Despite the lack of empirical evidence that the projected levels of EMF near the right-of-way may be harmful, PPL Electric has a Magnetic Field Management Program, Exhibit No. E-8 to the Siting Application, which it follows. PPL Electric Stmt. 5 at 6. The Program uses current, distance, phase arrangement, phase spacing, and current balance to reduce field levels of EMF where practical. The Company has satisfied the requirement that it "not create an unreasonable risk of danger to the health and safety of the public" under 52 Pa. Code § 57.76(a)(2) insofar as the exposure to EMF is perceived as a danger.

*Application of PPL Electric Utilities Corporation*, Docket Nos. A-2009-2082652, et al., 2009 Pa. PUC LEXIS 262 at \*327-28 (November 12, 2009) (Recommended Decision).

recommendation that PPL Electric has met its burden to prove that the modified Route B1 would not create an unreasonable risk of danger to the health and safety of the public.

**D. The Exceptions Of Mr. Scheller Regarding The Consideration Of The Protest And Other Documents Filed After The Close Of The Record Are Without Merit And Should Be Rejected.**

Mr. Scheller takes exception to the failure of the R.D. to consider and address his Protest and other documents filed after the record had closed. However, as explained below, Mr. Scheller received notice and an opportunity to participate in this proceeding but failed to do so. Mr. Scheller's filings were untimely and, therefore, the ALJ properly declined to consider them in the R.D.

On August 30, 2010, after all Briefs were filed and after the record was closed, PPL Electric was served with the Formal Complaint of Mr. Scheller, dated August 26, 2010. Mr. Scheller's Formal Complaint was ultimately processed as a Protest to the Siting Application pursuant to a Secretarial Letter dated September 2, 2010. On September 16, 2010, PPL Electric filed Preliminary Objections and an Answer with New Matter to Mr. Scheller's Protest, arguing that Mr. Scheller's Protest to the Siting Application was untimely. Mr. Scheller filed a response to the Preliminary Objections and New Matter on September 21, 2010, arguing that he was protesting PPL Electric's Initial Brief and could not have filed a Protest or Complaint before the Brief was filed on August 11, 2010. (*See* Scheller Answer to Preliminary Objections, ¶ 4.) However, Mr. Scheller's Formal Complaint/Protest and other documents were submitted too late to be given any substantive consideration in this matter.

This proceeding was initiated on January 8, 2010, when PPL Electric filed its Siting Application. Notice of the Siting Application was published on January 20, 27, and February 3, 2010, in the *Pocono Record*, a newspaper of general circulation in the vicinity of the proposed Effort Mountain Taps. Further, notice of the Siting Application was published in the

Pennsylvania Bulletin. *See* 40 Pa. Bulletin 687, 40 Pa. Bulletin 686. The Notice published in the Pennsylvania Bulletin set the relevant protest period, *i.e.*, on or before March 5, 2010, as well as the date for the prehearing conference.

To the extent that Mr. Scheller opposed or otherwise had a position on PPL Electric's request for Commission approval to site and construct the Effort Mountain Taps, Mr. Scheller had notice and the opportunity to be heard. However, in order to participate and have his contentions considered by this Commission, Mr. Scheller was required to timely file a protest, complaint, or intervention within the time period proscribed by the Commission. *See* 40 Pa. Bulletin 687 (formal protests and interventions must be filed on or before March 5, 2010). However, Mr. Scheller filed his Formal Complaint/Protest 5 months after the Commission's deadline for protests and interventions.

A prehearing conference was held on May 23, 2010, at which a litigation schedule was established. Pursuant to the litigation schedule, an evidentiary hearing was held on July 13, 2010, initial briefs were due on August 11, 2010, and reply briefs were due August 25, 2010. The record in this proceeding was closed on August 25, 2010. It was not until after the record closed that Mr. Scheller filed his protest. However, Mr. Scheller did not request, nor was he granted, the right to reopen the record. For these reasons, Mr. Scheller's Formal Complaint/Protest was untimely and the issues and allegations raised therein are not part of the record. Accordingly, the ALJ properly declined to give Mr. Scheller's filings substantive weight in the R.D.

Mr. Scheller's contention that he is protesting PPL Electric's Initial Brief is without merit. First, he is not a party to the proceeding and, therefore, is not entitled to file a reply brief.

Second, there is no procedural mechanism under the Commission's regulations for a non-party to file a response to a brief after the record has closed.

To permit Mr. Scheller to challenge the Siting Application after the record has closed would lead to nonsensical results. As this Commission has explained, "due process requires that the Parties have had the opportunity to examine the proposal during the evidentiary stages of this proceeding." *Enron Capital & Trade Resources Corporation v. The Peoples Natural Gas Company, Peoples Industrial et al.*, Docket No. R-00973928C0001, 1998 Pa. PUC LEXIS 199 (Order entered August 24, 1998). *See also Dee-Dee Cab, Inc. v. Pa. PUC*, 817 A.2d 593, 598 (Pa. Cmwlth. 2003), *appeal denied*, 836 A.2d 123 (Pa. 2003) ("For matters coming before an administrative agency, procedural due process, however, requires that a party be afforded reasonable notice of the issues raised and the agency's rulings on those issues, so that the party has an opportunity to present any response or objection."). Because the record has closed, PPL Electric, the party with the burden of proof in this matter, is without an opportunity to respond with record evidence to the contentions raised by Mr. Scheller.

Because the record has closed, there is no evidence of record to support the issues and contentions asserted by Mr. Scheller in his Exceptions and Formal Complaint/Protest. To the extent that Mr. Scheller's Exceptions are construed as a request to reopen the record, the request should be denied. Mr. Scheller has failed to provide any compelling reason for his failure to participate in the proceeding before the ALJ. Mr. Scheller has not alleged that he did not have notice of the proposed Effort Mountain Taps and, in fact, concedes otherwise in his Formal Complaint/Protest. (*See Scheller Formal Complaint*, p. 7, admitting that he discussed the route for the Effort Mountain Taps with representatives from PPL Electric.)

Finally, Mr. Scheller's Exceptions are, in large part, restatements of the allegations set forth in his Formal Complaint/Protest. It should be noted that PPL Electric fully responded to each of the allegations set forth in Mr. Scheller's Formal Complaint/Protest. In its Answer and New Matter, PPL Electric explained that the issues raised by Mr. Scheller had been fully covered on the record and were without merit. (See PPL Electric's Answer and New Matter, filed September 16, 2010.) For the reasons set forth therein, as well as Mr. Scheller's failure to timely file his Formal Complaint/Protest, Mr. Scheller's Exceptions should be denied.

Based on the foregoing, Mr. Scheller's Formal Complaint/Protest was untimely. Further, because the record has closed, there is no evidence of record to support the issues and contentions asserted by Mr. Scheller. Finally, PPL Electric is without any meaningful opportunity to respond with record evidence to the contentions raised by Mr. Scheller. For these reasons, the ALJ properly declined to consider Formal Complaint/Protest and the other documents filed by Mr. Scheller. Accordingly, the Commission should adopt the recommendation of the ALJ that the siting and construction of the Effort Mountain Taps be approved.

#### **IV. CONCLUSION**

WHEREFORE, for the reasons explained above, as well as those set forth in the Recommended Decision and PPL Electric's Initial and Reply Briefs, the Commission should:

- (1) Approve the siting and construction of the Effort Mountain #1 & #2 138 kV Taps;
- (2) Find that the building to shelter control equipment at the Effort Mountain 138-12 kV Substation site is reasonably necessary for the convenience or welfare of the public;

- (3) Approve the exercise of the power of eminent domain by PPL Electric to acquire a right-of-way and easement across the land of Ms. High by finding that the service to be furnished is necessary for the service, accommodation, convenience, or safety of the public;
- (4) Deny the Exceptions of Ms. High, Ms. Hart, and Mr. Scheller; and
- (5) Dismiss the Protest filed by Mr. Scheller.

Respectfully submitted,



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