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November 18, 2011

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 Reconstruction Of The Brunner Island - West Shore 230 kV Transmission Line in Cumberland And York Counties, Pennsylvania - Docket No. A-2011-2230053**

**Gregory J. Myers v. PPL Electric Utilities Corporation  
Docket No. C-2011-2227711**

Dear Secretary Chiavetta:

Enclosed please find the Supplemental Brief of PPL Electric Utilities Corporation in the above-referenced proceedings.

Copies have been provided to the persons in the manner indicated on the Certificate of Service.

Respectfully Submitted,

David B. MacGregor

DBM/skr

Enclosures

cc: Honorable Susan D. Colwell  
Certificate of Service

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## **I. INTRODUCTION AND BACKGROUND**

On March 9, 2011, PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) submitted a Siting Application requesting approval from the Pennsylvania Public Utility Commission (“Commission”) to reconstruct approximately 16 miles of the existing single-circuit Brunner Island-West Shore 230 kilovolt (“kV”) Transmission Line for double-circuit 230 kV operation (“Brunner Island Project”). As explained in the Initial Brief filed by PPL Electric on November 14, 2011, the transmission line is being reconstructed in order to reinforce the 230 kV transmission system in Cumberland and York Counties and to resolve multiple violations of the North American Electric Reliability Corporation (“NERC”) Reliability Standards identified by PJM Interconnection, LLC (“PJM”) through its Regional Transmission Expansion Plan (“RTEP”). The proposed route for the project was selected after a detailed siting analysis, which considered and balanced the functional requirements of the project, the environmental impacts of the alternative line routes, the social impacts and costs of the alternative line routes, and other factors identified in the Commission’s siting regulations. For the reasons fully explained in PPL Electric’s Initial Brief, the proposed Brunner Island Project complies with each of the factors required by the Commission to grant an application for the construction and siting of a high voltage transmission line, and the Brunner Island Project therefore should be approved.

PPL Electric was served on February 25, 2011, with a Formal Complaint filed by Gregory J. Myers at Docket No. C-2011-222771.<sup>1</sup> The Complaint primarily related to PPL Electric’s transmission vegetation management plan (“TVMP”). Although the Complaint did contain allegations regarding the proposed reconstruction of the Brunner Island-West Shore 230

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<sup>1</sup> PPL Electric also was served with a Formal Complaint filed by Gregory J. Myers at Docket No. C-2011-2227684. This second Complaint is unrelated to the construction of the proposed Brunner Island Project and was not consolidated with the Siting Application. This second Complaint related primarily to the application of herbicides within the transmission right-of-way across Mr. Myers’ property.

kV Transmission Line, none of the issues raised by Mr. Myers' Complaint are relevant to the need or route selection for the Brunner Island Project. PPL Electric timely filed and served its Answer to the Complaint. On July 22, 2011, the Honorable Susan D. Colwell (the "ALJ") issued a Third Prehearing Order granting the request of PPL Electric to consolidate the Myers Complaint with PPL Electric's Siting Application.

An evidentiary hearing was held before the ALJ on October 13, 2011. PPL Electric and Mr. Myers were the only parties to participate at the hearing. At the conclusion of the hearing, PPL Electric and Mr. Myers were able to reach an agreement on-the-record that resolved all of the issues and concerns raised in Myers' Complaint. Tr. 101-04.

On November 11, 2011, PPL Electric and Mr. Myers entered into a settlement agreement that resolved both of Mr. Myers' Formal Complaints. On November 14, 2011, PPL Electric filed Certificates of Satisfaction indicating that it has fully satisfied Myers' Complaints at Docket Nos. C-2011-222771 and C-2011-2227684, that Mr. Myers has acknowledged his satisfaction, and that the Myers Complaints should be withdrawn, with prejudice, and marked closed. As a result of the settlement agreement reached between PPL Electric and Mr. Myers, together with the Certificates of Satisfaction filed on November 14, 2011, PPL Electric's Siting Application is unopposed. On November 14, 2011, PPL Electric filed its Initial Brief in support of the unopposed Siting Application.

On November 14 and 15, 2011, Mr. Myers sent electronic communications to the ALJ confirming that he has received a fair settlement that resolves all his issues regarding the Brunner Island Project. Notwithstanding the foregoing, Mr. Myers also stated in his November 14, 2011 communication that he opposes the application of PPL Electric's TVMP to the entire width of

the rights-of-way and easements across the properties of other landowners situated along the Brunner Island-West Shore 230 kV Transmission Line.

Because the Brunner Island Project was uncontested, and Mr. Myers' individual concerns regarding the application of the Company's TVMP had been fully resolved through settlement, PPL Electric did not brief the issue of applying its TVMP to the rights-of-way and easements for the Brunner Island-West Shore 230 kV Transmission Line in its Initial Brief. Consequently, on November 15, 2011, the ALJ directed PPL Electric to file a Supplemental Brief to address the issue of applying its TVMP to the full width of the rights-of-way and easements for the Brunner Island-West Shore 203 kV Transmission Line.

PPL Electric herein files its Supplemental Brief. As explained below, the issue of PPL Electric's TVMP is not presently before the Commission for disposition. Further, the application of PPL Electric's TVMP is entirely unrelated to the need, siting, and construction of the Brunner Island Project. For these reasons, the ALJ and the Commission need not reach this issue in order to approve PPL Electric's Siting Application.

Notwithstanding the foregoing, the application of PPL Electric's TVMP to the entire width of a right-of-way is required to comply with mandatory federal standards and to avoid significant civil penalties; is consistent with the rights conveyed to PPL Electric by the right-of-way and easement agreements; and is consistent with the manner that PPL Electric treats all owners of land over which PPL Electric holds a valid right-of-way agreement. Further, the Commission is preempted from adopting a standard that is less restrictive or inconsistent with the reliability standard adopted by NERC. Therefore, to the extent that the ALJ and the Commission address the issue of whether PPL Electric's TVMP applies to the entire width of a right-way, which it need not for the reasons summarized above, the ALJ and the Commission should find

that PPL Electric is required to apply the TVMP to the entire width of rights-of-way in order to comply with mandatory Federal standards and avoid significant penalties.

## **II. SUPPLEMENTAL ARGUMENT**

### **A. The ALJ and Commission Need Not Reach the Issue of PPL Electric's Transmission Vegetation Management Plan.**

#### **1. The Issue of the Application of PPL Electric's Transmission Vegetation Management Plan is not Before the Commission.**

The ALJ and Commission need not reach the issue of whether PPL Electric's TVMP should apply to the entire width of the right-of-way for the Brunner Island-West Shore 230 kV Transmission Line. Although initially raised by a single landowner, Mr. Myers, this issue has been resolved and is no longer being litigated as part of this proceeding. Accordingly, for this reason, as more fully explained below, the ALJ and Commission should decline to rule on this issue.

Mr. Myers was the only party that opposed and litigated PPL Electric's Siting Application. Mr. Myers filed a Formal Complaint that challenged the application of PPL Electric's TVMP to the right-of-way and easement across his property. However, after numerous settlement discussions, as well as an on-the-record settlement agreement, PPL Electric and Mr. Myers were able to amicably resolve all of the issues raised in his Formal Complaint. Tr. 101-04. Indeed, Mr. Myers confirmed in his November 14 and 15, 2011 electronic communications to the ALJ that the settlement resolved his issues. On November 14, 2011, a Certificate of Satisfaction was filed and served, indicating that PPL Electric fully satisfied Myers' Complaint, that Mr. Myers acknowledged his satisfaction, and that the Myers Complaint should be withdrawn, with prejudice, and marked closed. Consequently, this issue has been fully

resolved and is no longer pending before the Commission for disposition. For this reasons alone, the ALJ and Commission need not reach this issue.

Despite fully and finally settling the issue of the TVMP as it applies to his own property, Mr. Myers asserts in his November 14, 2011 electronic communication that the TVMP should not apply to the entire width of the rights-of-way that cross the properties of other landowners. Contrary to the implication of Mr. Myers' communication, Mr. Myers is without the capacity or the authority to represent the interests of other landowners located along the Brunner Island-West Shore 230 kV Transmission Line. The Commission has held that Sections 1.21(a) and 1.23(a) of its regulations generally prohibit any person other than an attorney from appearing in a representative capacity unless it specifically authorizes such an appearance by waiver under Section 1.23(a)(2). *Agnes Manu, et al. vs. AT&T Communications of Pennsylvania, Inc., et al.*, Docket Nos. F-09029141, et al., 1994 Pa. PUC LEXIS 25 (May 4, 1994). *See also* 52 Pa. Code § 1.21(a) (an individual may appear on his behalf in a proceeding); 52 Pa. Code § 1.23 (a person may not be represented at a hearing before the Commission or a presiding officer except as provided in Section 1.21 or by an attorney or certified legal intern as provided in Section 1.22).

In this case, Mr. Myers is not an attorney or certified legal intern and has not been granted a waiver allowing him to appear in a representative capacity. Indeed, the ALJ clearly and unequivocally explained to Mr. Myers that:

Sir, I know you wrote "Self and other right-of-way landowners," but you can only be here on behalf of yourself. In Pennsylvania you can only represent yourself unless you're a lawyer, okay? So I'm going to scratch that part off. So you understand that you are only representing yourself. That's the law. I can't change it.

Tr. 39.

It is undisputed that all landowners located within or adjacent to the right-of-way for the existing Brunner Island-West Shore 230 kV Transmission Line had notice of the Siting

Application, which included a description of PPL Electric's TVMP. *See* PPL Electric Ex. No. 1, Attachment 7 (PPL Electric's TVMP), Attachment 9 (List of Property Owners Within or Adjacent to the Proposed Right-of-Way), and Attachment 16 (Public Notice Requirements). Further, notice of the Siting Application was published in the Pennsylvania Bulletin on March 26, 2011. *See* 41 Pa. B. 1742. Despite these extensive notification efforts, the only parties to intervene, other than Mr. Myers, reached a resolution of their concerns or withdrew their intervention.<sup>2</sup> None of the other affected landowners intervened, protested, or otherwise opposed the Brunner Island Project or the application of PPL Electric's TVMP to the right-of-way for the Brunner Island-West Shore 230 kV Transmission Line. These landowners had the opportunity to raise any issues or concerns they may have, but declined to do so in this proceeding.

Based on the foregoing, the issue of whether PPL Electric's TVMP should apply to the entire width of the right-of-way for the Brunner Island-West Shore 230 kV Transmission Line is no longer being litigated and is not presently before the Commission for disposition. For this reason, the ALJ and Commission should decline to rule on this issue.

**2. PPL Electric Must Apply its Transmission Vegetation Management Plan Regardless of Whether the Brunner Island Project is Approved.**

PPL Electric must apply its TVMP to the rights-of-way and easements across the properties of landowners situated along the existing Brunner Island-West Shore 230 kV Transmission Line regardless of whether PPL Electric receives approval for and undertakes the proposed Brunner Island Project. The construction of the proposed Brunner Island Project and the application of the TVMP are two separate and distinct activities. PPL Electric Statement No.

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<sup>2</sup> Notices of Intervention were filed by Thomas E. Martin, Jr., Barbara K. Martin, and Helen E. Martin (hereinafter the "Martins"); Gregory E. Black and Christy A. Black (hereinafter the "Blacks"); and the Upper Allen Township. PPL Electric ultimately reached a resolution of the issues raised by the Martins and the Blacks. Tr. 104-05. The Martins and Blacks did not further participate in the proceeding. Upper Allen Township withdrew its Intervention on June 30, 2011.

6, p. 3. The Brunner Island Project initially had a scheduled construction start date of November 2011, in order to meet an in-service date of May 2013. Tr. 83-84. However, PPL Electric must implement its TVMP by the end of 2012, and initially planned to complete the TVMP for the Brunner Island-West Shore 230 kV Transmission Line in the first quarter of 2012. Tr. 83, 102.

The Brunner Island Project involves the removal of the existing lattice steel towers and replacement with higher single-shaft steel poles equipped with upswept arms. PPL Electric Statement No. 4, p. 5. The new single-shaft steel poles will be on foundations that are located adjacent to the existing towers. Tr. 86-87. Consequently, the construction of the proposed Brunner Island Project will have minimal, if any, incremental impacts on the vegetation located between the existing lattice towers.

PPL Electric acknowledges that if it were to implement its TVMP under the existing lattice towers, the wire zone area under the existing conductors could be larger than if the TVMP was applied after the completion of the Brunner Island Project due to the increased heights of the single-shaft steel poles used for the proposed Project. Tr. 102. It is unknown at this time when construction will be completed if the Brunner Island Project is approved. Nevertheless, PPL Electric explained that it will coordinate the construction activities and the application of its TVMP to avoid any interference between the two activities. Tr. 86, 103. However, given the uncertainty related to the construction start date for the proposed Brunner Island Project, PPL Electric must implement its TVMP by the end of 2012, even if the Brunner Island Project has not been completed at that time, in order to avoid violating the mandatory NERC Standard FAC-003-1 and settlement with ReliabilityFirst as further explained below.<sup>3</sup>

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<sup>3</sup> As explained below, under Section 215 of the Energy Policy Act of 2005, Pub. L. No. 109-58, the states are prohibited from taking actions that are inconsistent with any reliability standard adopted by NERC. 16 U.S.C. § 824o(i)(3).

Based on the foregoing, the application of PPL Electric's TVMP is entirely unrelated to the need, siting, and construction of the Brunner Island Project. The issue of whether PPL Electric's TVMP should apply to the entire width of the right-of-way for the Brunner Island-West Shore 230 kV Transmission Line is no longer being litigated and is not presently before the Commission for disposition. For these reasons, the ALJ and the Commission need not reach this issue in order to approve PPL Electric's Siting Application.

**B. PPL Electric is Required to Apply the Transmission Vegetation Management Plan to the Entire Width of Its Transmission Line Rights-of-Way.**

Application of PPL Electric's TVMP to the entire width of a right-of-way is required to comply with mandatory Federal standards and avoid significant civil penalties; is consistent with the rights conveyed to PPL Electric by the right-of-way and easement agreements; and is consistent with the manner that PPL Electric treats all other owners of land over which PPL Electric holds a valid right-of-way agreement. Further, the Commission is preempted from adopting a standard that is less restrictive or inconsistent with the reliability standard adopted by NERC. Therefore, to the extent that the ALJ and the Commission address the issue of whether PPL Electric's TVMP applies to the entire width of a right-way, the ALJ and the Commission should find the PPL Electric is required to apply the TVMP to the entire width of rights-of-way in order to comply with mandatory Federal standards and avoid significant penalties.

**1. Background of PPL Electric's Transmission Vegetation Management Plan.**

As explained in PPL Electric's Initial Brief, PPL Electric must comply with the Federal Energy Regulatory Commission ("FERC") approved NERC Reliability Standards. The NERC Transmission Vegetation Management Program, Standard FAC-003-1, was adopted by FERC on March 15, 2007. The NERC Standard FAC-003-1 was adopted in response to the largest power blackout in North American history, which occurred on August 14, 2003, and affected an area

with a population of approximately 50 million people in Ohio, Michigan, Pennsylvania, New York, Vermont, Massachusetts, Connecticut, New Jersey, and Ontario, Canada. The NERC Standard FAC-003-1 is mandatory and binding on owners and operators of transmission systems, such as PPL Electric. A failure to comply can result in penalties of up to \$1 million per day per violation. PPL Electric Statement No. 6, pp. 5-6.

The purpose of the NERC Standard FAC-003-1 is stated as follows:

To improve the reliability of the electric transmission systems by preventing outages from vegetation located *on transmission rights-of-way (ROW)* and minimizing outages from vegetation located adjacent to *ROW*, maintaining clearances between transmission lines and vegetation on and along *transmission ROW*, and reporting vegetation-related outages of the transmission systems to the respective Regional Reliability Organizations (RRO) and the North American Electric Reliability Council (NERC).

PPL Electric Statement No. 6, p. 6 (emphasis added). As demonstrated by the emphasized language above, the focus of the NERC Standard FAC-003-1 is on the *transmission line right-of-way* owned by or granted to the transmission facility owner.

The NERC Standard FAC-003-1 requires that transmission facility owners, such as PPL Electric, adopt and keep current a formal TVMP that has been approved by NERC. The plan is required to specify clearances, or safety zones, between vegetation and transmission conductors within which no vegetation is permitted to grow. PPL Electric's initial plan adopted safety zones based on the industry standards set forth in the Institute of Electrical and Electronics Engineers, Inc. Standard 516-2003, titled "IEEE Guide for Maintenance Methods on Energized Power Lines." PPL Electric Statement No. 6, pp. 6-7.

Pursuant to the NERC Standard FAC-003-1, PPL Electric self-reported certain vegetation encroachments within the safety zones around transmission lines that were not permitted under PPL Electric's initially approved TVMP. As part of a settlement with ReliabilityFirst

Corporation, PPL Electric agreed to pay a fine and agreed to revise its TVMP to implement the Wire Zone/Border Zone method of managing vegetation. The relevant provision is set forth at page 13, Paragraph No. 59 of the Settlement Agreement, which states:

As set forth below, [PPL Electric] plans to add to its future annual plans for transmission work addition right-of-way clearing above and beyond that required by its Transmission Vegetation Management Program. Specifically, [PPL Electric] plans to institute a Wire Zone/Border Zone program where appropriate across its 230 and 500 kV BES [Bulk Electric System]. This program will permit selected low-growing, compatible species to remain in place *in a right-of-way* but will eliminate other vegetation that may grow into Clearance 2 distances. The [PPL Electric] wire zone will be the area directly under the [PPL Electric] BES transmission conductors and extending outward about 10 feet on each side. The wire zone will be managed to promote a low-growing plant community dominated by grasses and small shrubs. The border zone is *the remainder of the right-of-way* in which small trees and certain shrubs will be permitted. The wire and border zone is expected to permit diverse, tree-resistant plant communities to develop, which serve to protect the electric facilities from the threat of grow-ins. While suitable in many contexts, standard wire zone/border zone prescriptions may not be deployed where lines are above low valleys or canyons or otherwise high off the ground.

PPL Electric Ex. No. PJW-2 (emphasis added). That settlement was approved by NERC and accepted by FERC.

As a result of the settlement, PPL Electric is required to implement the “Wire Zone/Border Zone” method of maintaining vegetation along its transmission line rights-of-way and easements. The “wire zone” is defined as the area within the right-of-way that includes the area underneath the conductor and extends ten (10) feet outward from the outer-most conductor on both sides of the transmission line. Areas within the wire zone are cleared of all woody vegetation leaving only grasses; ferns and other herbaceous plants, such as low-growing shrubs, are permitted to grow back over time. The “border zone” is defined as the “the remainder of the right-of-way,” or the area within the right-of-way that extends from the edge of the wire zone, as

defined above, to the outer-most edge of the right-of-way. PPL Electric Statement No. 6, p. 9. The Wire Zone/Border Zone Method also requires that PPL Electric's vegetation management operations extend to "danger trees" located outside the right-of-way that present a hazard to a transmission line. Danger trees are those that, in falling, would either strike the conductors or pass within the minimum clearances required for the conductors. PPL Electric Statement No. 6, p. 9; PPL Electric Exhibit No. PJW-1; Tr. at 72.

The Wire Zone/Border Zone method of vegetation management for transmission line corridors has been recognized as an industry "best practice." Further, the Wire Zone/Border Zone method of vegetation management for transmission corridors has been adopted by and is commonly used by other utilities. PPL Electric Statement No. 6, p. 10.

PPL Electric explained that, under its TVMP, it uses two approaches to implement the Wire Zone/Border Zone method. Under one approach, PPL Electric initially removes all vegetation except for grasses and small shrubs in both the Wire and Border Zones, and then allows compatible species for each Zone to grow back through the selective application of herbicides. This approach is commonly referred to as "non-selective management." This approach is a common practice and considered an industry "best practice" for electric transmission line corridors. PPL Electric Statement No. 6, pp. 12-13. Under the second approach, PPL Electric removes vegetation except grasses and small shrubs in the wire zone and only removes non-compatible species in the border zone. This second approach is referred to as "selective management" because it permits compatible species to remain in the border zone. PPL Electric Statement No. 6, pp. 13-14.

As explained by PPL Electric, landowners generally want to preserve vegetation on their properties. However, if PPL Electric were to make major individual adjustments to its

vegetation management practices for each and every affected landowner, the result would be customized vegetation management for each tract of land crossed by transmission lines. Such an approach to vegetation management would be extremely difficult for PPL Electric to administer, which maintains in excess of 5,000 miles of transmission line corridors, and would be very expensive to the detriment of all customers. PPL Electric Statement No. 6, p. 14. PPL Electric explained that, in applying its TVMP, it attempts to work with each affected landowner in following the compatible and non-compatible species. Tr. 97. However, in dealing with right-of-way vegetation management issues, PPL Electric must ensure that it is providing safe, adequate, and reliable service. Consequently, PPL Electric must have some discretion in determining the most appropriate method to meet its mandatory obligation to comply with the NERC Standard FAC-003-1, as well as the NERC-approved and FERC-accepted settlement with ReliabilityFirst Corporation.<sup>4</sup> PPL Electric Statement No. 6, p. 14.

**2. PPL Electric is Required to Apply its Transmission Vegetation Management Plan to the Entire Width of a Right-of-Way.**

Despite fully and finally settling his issues, in his November 14, 2011 communication, Mr. Myers questions why it is necessary for PPL Electric to apply its TVMP to the entire width of a right-of-way across the properties of other landowners. It is undisputed that PPL Electric's current standard right-of-way width for a double-circuit 230 kV transmission line is 150 feet.<sup>5</sup> It also is undisputed that the existing right-of-way for the Brunner Island-West Shore 230 kV Transmission Line varies in width from 100 feet to 200 feet. PPL Electric Statement No. 4, pp. 5-6. However, as explained below, regardless of the actual width, PPL Electric must apply its

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<sup>4</sup> The management of a utility's facilities and property rights should be left to the discretion of its management. See generally *Metropolitan Edison Co. v. Pa. P.U.C.*, 437 A.2d 76 (Pa. Cmwlth. 1981) (holding that the Commission's authority to interfere in the internal management of a utility company is limited and it is not empowered to act as a super board of directors for the public utility companies in Pennsylvania).

<sup>5</sup> The standard right-of-way width is determined by the structure type, design tensions, span length, and conductor blowout (the distance the wires are moved by a crosswind). PPL Electric Statement No. 4, pp. 5-6.

TVMP to the entire width of the right-of-way granted to PPL Electric in order to comply with the NERC Standard FAC-003-1 and avoid significant financial penalties, and the Commission is preempted from adopting a less restrictive or inconsistent standard.

As explained above, PPL Electric must comply with the NERC Standard FAC-003-1 and a failure to do so could result in penalties of up \$1 million per violation per day. Importantly, under the terms of the NERC-approved and FERC-accepted settlement with ReliabilityFirst Corporation, in order to comply with NERC Standard FAC-003-1 and avoid significant penalties, PPL Electric must apply its Wire Zone/Border Zone vegetation management method to the entire width of the right-of-way granted by a right-of-way agreement. Under the NERC Standard FAC-003-1, the width of the right-of-way actually granted in an agreement defines the scope of the penalties for outages caused by vegetation. PPL Electric is liable and subject to significantly higher penalties for outages caused by vegetation growing within the right-of-way defined by an agreement as compared to outages caused by vegetation growing outside the right-of-way. Tr. 71-72, 99; PPL Electric Ex. No. PJW-1, p. 3.

For example, if PPL Electric obtained a 200 foot transmission line right-of-way (100 feet on both sides of the centerline of the transmission line) and a tree at 195 feet (95 feet from the centerline) caused an outage, PPL Electric would incur a significantly higher penalty than if a tree just outside the right-of-way (at 201 feet or 101 feet from the centerline) caused an outage. The fact that PPL Electric may need only 150 feet to operate its transmission line is irrelevant to the mandatory penalty provisions of the NERC Standard FAC-003-1, which are expressly defined by the width of the right-of-way actually granted to the Company. Consequently, in this example, PPL Electric must apply its Wire Zone/Border Zone method to the entire 200 foot width of the right-of-way granted to PPL Electric by the right-of-way and easement agreement.

If the Commission were to hold otherwise it would force a transmission owner, such as PPL Electric, to choose between violating a FERC-approved NERC reliability standard and incurring significant monetary penalties, or violating a Commission order.

The penalty provisions of NERC Standard FAC-003-1 are consistent with the responsibilities and rights conveyed by a right-of-way and easement agreement. A right-of-way and easement agreement is a freely negotiated, mutually agreed upon, private agreement between the landowner and the party granted the easement or right-of-way.<sup>6</sup> The grant of an easement or a right-of-way conveys specific rights over a particular portion of land. *Patricca v. Zoning Bd. of Adjustment*, 527 Pa. 267, 275, 590 A.2d 744, 748 (1991). Thus, the right-of-way or easement holder does not have any property rights outside of the right-of-way defined by the agreement. The NERC Standard FAC-003-1 holds a utility responsible and liable for the entire portion of the land actually granted in the negotiated right-of-way or easement agreement.

PPL Electric acknowledges that there could be situations where a public utility acquires a right-of-way and easement that is in excess of the right-of-way width required for a transmission line. Excess right-of-way could be required for numerous reasons, including, but not limited to, future transmission needs or even landowner requests. Clearly, however, unreasonable and imprudent costs to acquire and maintain excessive and unreasonable rights-of-way may be

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<sup>6</sup> There is nothing in the Public Utility Code that grants the Commission jurisdiction over easement and right-of-way agreements between a utility company and a landowner. Indeed, in *Fairview Water Co. v. Pa. P.U.C.*, 509 Pa. 384, 502 A.2d 162 (1985), the Pennsylvania Supreme Court held that the Commission does not have jurisdiction to determine the scope and validity of an easement. To hold that the Commission has jurisdiction over a private contract between a public utility and a landowner that is unrelated to utility service rendered to the landowner or rates for utility service would mean that the Commission has jurisdiction to enforce such contracts, including, for example, the jurisdiction to adjudicate disputes regarding the validity, enforceability, and breaches of private contracts, as well as the jurisdiction to award damages. *But see Byer v. Peoples Natural Gas Co.*, 380 A.2d 383 (Pa. Super. 1977) (the Commission does not have jurisdiction over private contractual disputes between citizens and utilities); *Tucker v. Pa. P.U.C.*, 917 A.2d 378, 380 (Pa. Cmwlth. 2007) (holding that the Commission lacks jurisdiction to adjudicate matters relating to negotiable instruments); *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977) (the Commission does not have the authority to award damages).

excluded from rate base and/or may not be recovered through base rates.<sup>7</sup> Notwithstanding, absent a re-conveyance of the excess right-of-way back to the applicable landowner, the public utility must apply its vegetation management program to the entire width of the right-of-way in order to comply with NERC Standard FAC-003-1 and avoid significant penalties.

PPL Electric acknowledges that, pursuant to the settlement with Mr. Myers, PPL Electric and Mr. Myers have executed a new right-of-way agreement that reduces the width of the right-of-way and easement across Mr. Myers' property from 200 feet to 150 feet. PPL Electric and Mr. Myers agreed to reduce the width of the right-of-way across his property solely for the purpose of resolving the specific issues raised in his Complaint. PPL Electric agreed to this reduction in width because, given the specific circumstances and topography of Mr. Myers' property, it did not interfere with PPL Electric's ability to provide safe and reliable service. Obviously this is a case-by-case determination and the fact that PPL Electric was able to accommodate Mr. Myers in no way means that it could or should accommodate other affected landowners, all of which have received notice and have not asked for relief.<sup>8</sup>

Finally, although the Commission may regulate the safety, adequacy, and reliability of electric service, section 215 of the Energy Policy Act of 2005 prohibits the Commission from adopting a standard that is less restrictive, inconsistent with, or prevents PPL Electric from complying with any reliability standard adopted by NERC. *See* 16 U.S.C. § 824o(i)(3). The Pennsylvania Supreme Court has explained that "even where Congress has not completely displaced state regulation in a specific area, state law is nullified if there is a conflict between state and federal law (conflict preemption)." *Dooner v. DiDonato*, 601 Pa. 209, 219-220, 971

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<sup>7</sup> The acquisition of a right-of-way for a transmission line is a business decision for the public utility. *See* Footnote 4, *supra*.

<sup>8</sup> *See* Footnotes 6-7, *supra*.

A.2d 1187, 1194 (2009) (citing *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1993)). Such a conflict may arise in two contexts. First, there may be conflict preemption where compliance with state action and federal law is an impossibility. *Id.* (citing *English v. General Electric Co.*, 496 U.S. 72, 79 (1990)). Second, conflict preemption also may be found when state law stands as an obstacle to the accomplishments and execution of the full purposes and objectives of Congress.<sup>9</sup> *Id.* (citing *Barnett Bank of Marion County v. Nelson*, 517 U.S. 25, 31 (1996)).

As explained above, the plain language of the NERC Standard FAC-003-1 expressly requires a transmission system owner, such as PPL Electric, to “improve the reliability of the electric transmission systems by preventing outages from *vegetation located on transmission rights-of-way.*” PPL Electric Statement No. 6, p. 6 (emphasis added). Thus, under the NERC Standard FAC-003-1, an approved TVMP must be applied to the right-of-way actually granted to the transmission system owner. To hold that an approved TVMP should be applied to less than the full width of the right-of-way granted to the utility would be directly contrary to the plain language of the NERC Standard FAC-003-1 and a violation of Section 215 of the Energy Policy Act of 2005. Therefore, under the principles of conflict preemption, the Commission is precluded from ordering a transmission system owner, such as PPL Electric, to apply its TVMP to less than the full width of the right-of-way granted to the utility

Based on the foregoing, the application of PPL Electric’s TVMP to the entire width of the rights-of-way across the properties situated within the existing Brunner Island-West Shore 230 kV Transmission Line is required by the NERC Standard FAC-003-1. To the extent that the ALJ and Commission reach this issue, the ALJ and Commission should find that the application of

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<sup>9</sup> The United States Supreme Court has interpreted “stands as an obstacle” to mean that: state action “is preempted if it interferes with the methods by which the federal statute was designed to reach this goal.” *Cellucci v. GMC*, 550 Pa. 407, 414, 706 A.2d 806, 809 (1998) (quoting *International Paper Co. v. Ouellette*, 479 U.S. 481, 494 (1987)).

PPL Electric's TVMP to the entire width of a right-of-way is required in order to comply with the NERC Standard FAC-003-1 and the settlement with ReliabilityFirst Corporation.

**3. The Application of PPL Electric's Transmission Vegetation Management Plan to the Entire Width of Rights-of-Way is Consistent with the Rights Conveyed to PPL Electric by the Right-of-Way Agreements.**

PPL Electric is the holder of numerous, valid right-of-way and easement agreements by and between PPL Electric and the landowners situated along the existing Brunner Island-West Shore 230 kV Transmission Line. For example, at the time PPL Electric filed its Siting Application, PPL Electric was the holder of a valid right-of-way and easement across a portion of Mr. Myers' property.<sup>10</sup> PPL Electric Ex. No. PJW-3. The right-of-way and easement agreement provides, in pertinent part, as follows:

[PPL Electric is conveyed] the right to construct, operate and maintain, and from time to time reconstruct its electric lines, including such poles, towers, cables and wires above and under the surface of the ground, fixtures and apparatus as may be from time to time necessary for the convenient transaction of the business of the said Company ... including the right of ingress and egress to and from the said lines at all times for any of the purposes aforesaid, together with the right to set and maintain the necessary guy and brace poles and towers and anchors, and to attach thereto the necessary guy wires; also the right to cut down, trim, remove, and to keep cut down and trimmed by mechanical means or otherwise, any and all trees, brush or other undergrowth on said strip of land or adjoining the same which in the judgment of the said Company ... may at any time interfere with the construction, reconstruction or maintenance or operation of the said lines, poles, towers, cables or other fixtures and apparatus, or menace the same, and in connection therewith, the right to remove, if necessary, the root systems of said trees, brush or other undergrowth, and to spray

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<sup>10</sup> For illustrative purposes only, PPL Electric herein relies on the prior right-of-way agreement with Mr. Myers, which was admitted to the record as PPL Electric Ex. No. PJW-3. PPL Electric acknowledges that, pursuant to the settlement with Mr. Myers, PPL Electric and Mr. Myers have executed a new right-of-way agreement that reduces the width of the right-of-way and easement across Mr. Myers' property. However, other than modifying the width of the right-of-way and easement, all other material terms, conditions, rights, and obligations under the agreement are the same as those set forth in PPL Electric Ex. No. PJW-3.

said brush and undergrowth with chemicals for their removal and control....

PPL Electric Ex. No. PJW-3. The unambiguous plain language of the right-of-way and easement agreement with Mr. Myers provided PPL Electric with the right to remove and control trees, brush, or other undergrowth located within the right-of-way.<sup>11</sup>

Similar to the agreement with Mr. Myers, the right-of-way and easement agreements by and between PPL Electric and the landowners situated along the existing Brunner Island-West Shore 230 kV Transmission Line provide PPL Electric with the right to remove and control trees, brush, or other undergrowth located within the right-of-way. *See, e.g.*, PPL Electric Ex. No. PJW-3. The affected landowners acquired their respective properties with notice that it was subject to the right-of-way granted to PPL Electric.<sup>12</sup>

As explained above, under the terms of the NERC-approved and FERC-accepted settlement with ReliabilityFirst Corporation, in order to comply with the NERC Standard FAC-003-1 and avoid significant penalties, PPL Electric must apply its Wire Zone/Border Zone vegetation management method to the entire width of the right-of-way granted by a right-of-way agreement. The application of PPL Electric's TVMP to the entire width of the right-of-way is consistent with the rights conveyed to PPL Electric by the right-of-way and easement agreements by and between PPL Electric and the landowners situated along the existing Brunner Island-West Shore 230 kV Transmission Line.

Further, PPL Electric explained that it follows the actual right-of-way and easement agreement entered into by the applicable landowner, which maintains consistency across PPL

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<sup>11</sup> When reviewing an express easement, the rights conferred by the grant of an express easement must be ascertained solely from the language of the easement agreement, provided that the language of the agreement is unambiguous. In effect, an easement is interpreted in the same manner as any other contract; if the language of the agreement is clear, a court's inquiry is ended. *Steen v. Pa. Tpk. Comm'n*, 3 A.3d 747 (Pa. Cmwlth. 2010).

<sup>12</sup> Where a restrictive covenant, such as an easement, is recorded in the Recorder of Deeds, all parties affected are deemed to have notice of its contents. *Loeb v. Watkins*, 428 Pa. 480, 240 A.2d 513 (1968).

Electric's transmission system by using the widths granted in the agreement as the standard to apply its TVMP. Tr. 99. Thus, PPL Electric treats all owners of land over which PPL Electric holds a valid *right-of-way agreement in a consistent manner.*

Based on the foregoing, the application of PPL Electric's TVMP to the entire width of the rights-of-way across the properties situated within the existing Brunner Island-West Shore 230 kV Transmission Line is consistent with the rights conveyed to PPL Electric by the right-of-way and easement agreements and is consistent with the manner that PPL Electric treats all owners of land over which PPL Electric holds a valid right-of-way agreement. To the extent that the ALJ and Commission reach this issue, the ALJ and Commission should find that the application of PPL Electric's TVMP to the entire width of a right-of-way is consistent with the rights and obligations granted by the right-of-way agreements.

### **III. CONCLUSION**

For all the foregoing reasons, PPL Electric respectfully requests that the ALJ and Commission decline to reach the issue of whether PPL Electric's TVMP should apply to the entire width of the right-of-way for the Brunner Island-West Shore 230 kV Transmission Line. In the alternative, PPL Electric respectfully requests that that ALJ and Commission find that: the application of PPL Electric's TVMP to the entire width of transmission line rights-of-way is required by the NERC Standard FAC-003-1 and the settlement with ReliabilityFirst Corporation; is consistent with the rights conveyed to PPL Electric by the right-of-way and easement agreements; and is consistent with the manner that PPL Electric treats all owners of land over which PPL Electric holds a valid right-of-way agreement.

WHEREFORE, PPL Electric respectfully requests that Administrative Law Judge Susan D. Colwell and the Pennsylvania Public Utility Commission (1) approve the Brunner Island Project using the same right-of-way as the existing single-circuit Brunner Island-West Shore 230 kV Transmission Line; and (2) find that PPL Electric is required to apply its transmission vegetation management program to the entire widths of transmission line rights-of-way.

Respectfully submitted,

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**APPENDIX A**  
**Supplemental Proposed Findings of Fact**

PPL Electric Utilities Corporation (“PPL Electric”) proposes the following findings of fact:

1. PPL Electric incorporates by reference the Proposed Findings of Fact set forth in its Initial Brief filed with the Commission on November 14, 2011.

2. The only issue challenged in this proceeding was PPL Electric’s application of its transmission vegetation management program (“TVMP”) within the right-of-way across the property of Complainant Gregory J. Myers.

3. Mr. Myers’ issues regarding the application of PPL Electric’s TVMP were fully and finally resolved by settlement.

4. On November 14, 2011, PPL Electric filed Certificates of Satisfaction indicating that it fully satisfied Myers’ Complaints at Docket Nos. C-2011-222771 and C-2011-2227684, that Mr. Myers acknowledged his satisfaction, and that the Myers Complaints should be withdrawn, with prejudice, and marked closed.

5. On November 14 and 15, 2011, Mr. Myers sent an electronic communication confirming that he has reached a full and final settlement of his issues.

6. As a result of the settlement with Mr. Myers, PPL Electric’s Siting Application is unopposed.

7. No other parties or affected landowners raised any issues regarding the application of PPL Electric’s TVMP to the right-of-way for the existing Brunner Island-West Shore 230 kV Transmission Line.

8. PPL Electric must comply with the NERC Transmission Vegetation Management Program, Standard FAC-003-1, approved by FERC on March 15, 2007. The NERC Standard FAC-003-1 is mandatory and binding. A failure to comply can result in penalties of up to \$1 million per day per violation. PPL Electric Statement No. 6, pp. 5-6.

9. PPL Electric self-reported certain vegetation encroachments around transmission lines that were not permitted under PPL Electric's initially approved transmission line vegetation management plan. As part of a settlement with ReliabilityFirst Corporation, PPL Electric agreed to revise its TVMP to implement the Wire Zone/Border Zone method of managing vegetation. PPL Electric Ex. No. PJW-2.

10. The "wire zone" is defined as the area within the right-of-way that includes the area underneath the conductor and extends ten (10) feet outward from the outer-most conductor on both sides of the transmission line. PPL Electric Statement No. 6, p. 9.

11. The "border zone" is defined as the area within the right-of-way that extends from the edge of the wire zone to the outer-most edge of the right-of-way. PPL Electric Statement No. 6, p. 9.

12. The Wire Zone/Border Zone method requires that PPL Electric's vegetation management operations extend to "danger trees" located outside the right-of-way that present a hazard to a transmission line. Danger trees are those that, in falling, would either strike the conductors or pass within the minimum clearances required for the conductors. PPL Electric Statement No. 6, p. 9; PPL Electric Exhibit No. PJW-1; Tr. 72.

13. PPL Electric uses two approaches to implement the Wire Zone/Border Zone method. Under one approach, PPL Electric initially removes all vegetation except for grasses and small shrubs in both the Wire and Border Zones, and then allows compatible species for

each Zone to grow back through the selective application of herbicides. This approach is commonly referred to as “non-selective management.” This approach is a common practice and considered an industry “best practice” for electric line corridors. PPL Electric Statement No. 6, pp. 12-13.

14. Under the second approach, PPL Electric removes vegetation except grasses and small shrubs in the wire zone and only removes non-compatible species in the border zone. This second approach is referred to as “selective management” because it permits compatible species to remain in the border zone. PPL Electric Statement No. 6, pp. 13-14.

15. The construction of the proposed Brunner Island Project and the application of the TVMP are two separate activities. PPL Electric Statement No. 6, p. 3.

16. The Brunner Island Project initially had a scheduled construction start date of November 2011, in order to meet an in-service date of May 2013. Tr. 83-84.

17. PPL Electric must implement its TVMP by the end of 2012, and initially planned to complete the TVMP for the Brunner Island-West Shore 230 kV Transmission Line in the first quarter of 2012. Tr. 83, 102.

18. The construction of the proposed Brunner Island Project will have minimal, if any, incremental impacts on the vegetation located between the existing lattice towers. PPL Electric Statement No. 4, p. 5; Tr. 86-87.

19. PPL Electric will coordinate the Brunner Island Project construction activities and the application of its TVMP to avoid any interference between the two activities. Tr. 86, 103.

20. PPL Electric must be permitted to implement its TVMP by the end of 2012, even if the Brunner Island Project has not been completed at that time, in order to avoid violating the NERC Standard FAC-003-1 and the settlement with ReliabilityFirst Corporation.

21. Under the NERC Standard FAC-003-1, the width of the right-of-way actually granted in an agreement defines the scope of the penalties for outages caused by vegetation. PPL Electric is liable and subject to significantly higher penalties for outages caused by vegetation within the right-of-way defined by an agreement as compared to outages caused by vegetation outside the right-of-way. Tr. 71-72, 99; PPL Electric Ex. No. PJW-1, p. 3.

22. Application of PPL Electric's TVMP to the entire width of transmission line rights-of- is required by the NERC Standard FAC-003-1 and the settlement with ReliabilityFirst Corporation, PPL Electric Ex. No. PJW-1, p. 3; is consistent with the rights conveyed to PPL Electric by the right-of-way and easement agreements, *see, e.g.*, PPL Electric Ex. No. PJW-3; and is consistent with the manner that PPL Electric treats all owners of land over which PPL Electric holds a valid right-of-way agreement Tr. 99).

**APPENDIX B**  
**Proposed Conclusions of Law**

PPL Electric Utilities Corporation (“PPL Electric”) proposes the following conclusions of law:

1. PPL Electric incorporates by reference the Proposed Conclusions of Law set forth in its Initial Brief filed with the Commission on November 14, 2011.
2. The issue of whether PPL Electric’s TVMP should apply to the entire width of the right-of-way for the Brunner Island-West Shore 230 kV Transmission Line across the property of Mr. Myers is no longer pending before the Commission for disposition.
3. Mr. Myers is without the capacity or the authority to represent the interests of other landowners located along the Brunner Island-West Shore 230 kV Transmission Line. *Agnes Manu, et al. vs. AT&T Communications of Pennsylvania, Inc., et al.*, Docket Nos. F-09029141, et al., 1994 Pa. PUC LEXIS 25 (May 4, 1994); 52 Pa. Code §§ 1.21(a), 1.23.
4. PPL Electric’s Siting Application is unopposed.
5. PPL Electric must comply with the NERC Transmission Vegetation Management Program, Standard FAC-003-1, approved by Federal Energy Regulatory Commission (“FERC”) on March 15, 2007.
6. The Commission is prohibited from adopting a standard that is less restrictive, inconsistent with, or prevents PPL Electric from complying with any reliability standard adopted by NERC. 16 U.S.C. § 824o(i)(3); *Dooner v. DiDonato*, 601 Pa. 209, 219-220, 971 A.2d 1187, 1194 (2009).

7. PPL Electric is required to implement the Wire Zone/Border Zone method of maintaining vegetation along its transmission line rights-of-way and easements pursuant to a NERC-approved and FERC-accepted settlement agreement with ReliabilityFirst Corporation.

8. PPL Electric must apply its Wire Zone/Border Zone method to the entire width of a right-of-way granted by a right-of-way and easement agreement in order to comply with the NERC Transmission Vegetation Management Program, Standard FAC-003-1, and the NERC-approved and FERC-accepted settlement agreement.

9. The application of the Wire Zone/Border Zone method the entire width of the right-of-way is within the rights conveyed to PPL Electric by the right-of-way and easement agreements by and between PPL Electric and the affected landowners.

10. The evidence introduced by PPL Electric demonstrates that the application of its TVMP to the entire width of the right-of-way for the existing Brunner Island-West Shore 230 kV Transmission Line is required by the NERC Standard FAC-003-1.

11. The evidence introduced by PPL Electric demonstrates that the application of its TVMP to the entire width of the right-of-way for the existing Brunner Island-West Shore 230 kV Transmission Line is consistent with the rights conveyed to PPL Electric by the right-of-way and easement agreements.

12. The evidence introduced by PPL Electric demonstrates that the application of its TVMP to the entire width of the right-of-way for the existing Brunner Island-West Shore 230 kV Transmission Line is consistent with the manner that PPL Electric treats all owners of land over which PPL Electric holds a valid right-of-way agreement.

## 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 & FIRST CLASS MAIL

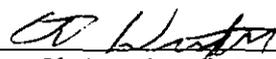
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