

\*Please reply to *Carlisle Office*

October 31, 2012

Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor North  
PO Box 3265  
Harrisburg, PA 17105-3265

RE: PUC Docket Nos. A-2011-2267352, A-2011-2267353, A-2011-2267388, A-2011-2267416, A-2011-2267418, A-2011-2267426, A-2011-2267429, A-2011-2267446, A-2011-2267349, A-2011-2267448

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Reply Brief of the Protestants in the above-referenced proceeding.

Respectfully submitted,

SALZMANN HUGHES, P.C.

E. Lee Stinnett II

Enclosure

Concentrating in Environmental, Land Use, Municipal, Real Estate, Corporate, Estate Planning and Administration, and General Civil Litigation

**ATTORNEYS**

G. Bryan Salzmänn, Esq.	Samuel E. Wiser, Esq.	Laura Rebecca Ables, Esq.	David H. Martineau, Esq.
James D. Hughes, Esq.	Thomas J. Finucane, Esq.	George F. Douglas, III, Esq.	E. Lee Stinnett II, Esq.
Adam R. Schellhase, Esq.	Eileen C. Finucane, Esq.	Ann F. DePaulis, Esq.	Tiffany M. Cartwright, Esq.
Scott T. Wyland, Esq.	Stephen E. Patterson, Esq.	William W. Thompson, Esq.	Bradley J. Betack, Esq.
Charles E. Zaleski, Esq.	Nancy H. Meyers, Esq.	Rebecca R. Hughes, Esq.	Eric K. Grugel, Esq.
Kurt E. Williams, Esq.	Patricia R. Brown, Esq.	Susann B. Morrison, Esq.	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Jessica R. Rogers  
*jrogers@postschell.com*  
Counsel for PPL Electric Utilities  
Post & Schell  
17 North Second Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101

Randall Clark  
701 State Route 147  
Dalmatia, PA 17017

John and Evelyn Zeiders  
799 Adams Road  
Dalmatia, PA 17017

Gary and Dorene Lahr  
291 State Route 147  
Dalmatia, PA 17017

Elijah and Faye Lahr  
679 State Route 147  
Dalmatia, PA 17017

Paul Reed  
174 Scenery Drive  
Dalmatia, PA 17017

Alvin Zeiders  
688 Malta Road  
Dalmatia, PA 17017

Michael F. Faherty, Esquire  
*mfaherty@laverylaw.com*  
Lavery Faherty Patterson  
225 Market Street  
Suite 304  
P.O. Box 1245  
Harrisburg, PA 17108-1245

Honorable David A. Salapa  
*dsalapa@pa.gov*  
Honorable Joel H. Cheskis  
*jcheskis@pa.gov*  
PUC Administrative Law Judge Office  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Respectfully submitted,

**SALZMANN HUGHES, P.C.**

Dated this 31<sup>st</sup> day of October, 2012

By:

  
E. Lee Stinnett II

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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	:	Docket Nos. A-2011-2267349, etc
The Property Owners For The Proposed	:	
Richfield-Dalmatia 69 kV Transmission Tie	:	
Line In Portions Of Snyder, Northumberland,	:	
And Juniata Counties, Pennsylvania Is	:	
Necessary Or Proper For The Service,	:	
Accommodation, Convenience Or Safety Of	:	
The Public	:	

**REPLY BRIEF OF PROTESTANTS MARVIN ROGER HESS AND LEONA HESS,  
RONALD AND DIANNE MACE, ROY AND CINDY MAURER  
AND THE SHOOP FAMILY TRUST**

**I. PPL's Justification for the Transmission Line**

PPL cannot meet its burden of proving its project's necessity and, therefore, the Commission should deny PPL's Application. PPL freely admits that its transmission project will not and cannot improve the actual reliability of its transmission system by reducing the frequency of transmission outages. Main Brief of PPL Electric Utilities Corporation ("PPL's Brief"), p.21. Instead, PPL attempts to justify the transmission aspect of its project solely on compliance with the Reliability Principles and Practices ("RP&P"). Review of the RP&P guidelines, however, demonstrates that they are not mandatory, consequentially rendering the project not "necessary."

Any improvements in the transmission system produced by PPL's project do not render the project "necessary" and do not outweigh its corresponding detriments. PPL appears to acknowledge that its project merely attempts to confer some unquantifiable improvements upon the transmission system. Whether the project will improve the system in some way, however, is not the standard for proving that the project is *needed*. Further, PPL fails to address the fact that its project will cause corresponding detriments. These detriments include the exposure of 11.54 miles of additional transmission lines to the same potential risks that the current system experiences. Additionally, the project will create 140 more acres of land vegetation to manage, and an additional river crossing to design, build and maintain. Finally, the project will negatively affect the views of the river, will create a danger to aircraft and birds, and will inflict 11.54 more miles of unsightly and unnecessary aerial cables on Pennsylvanians.

PPL admits that the law does not mandate its compliance with the RP&Ps. PPL describes the qualitative standards adopted in the transmission RP&P as a process "designed to ensure that the regional power transmission system can sustain *probable* contingencies and disturbances

with minimal customer interruptions and adequately serve each customer's needs with regard to capacity, voltage and reliability." PPL's Brief, p. 16 (emphasis added). As discussed at length in the Protestants' Main Brief, PPL admitted during cross examination that the RP&Ps constitute nothing more than optional guidelines and are not mandatory. Notes of Testimony ("N.T."), September 11, 2012, 145. PPL can never demonstrate that meeting *optional* standards justifies its transmission project; optional necessarily cannot amount to necessary.

PPL has failed to prove that its project meets even the RP&P standards. PPL's own description of the RP&P guidelines provides that it must base reliability concerns on probable contingencies. PPL has not, however, put forth even a scintilla of evidence that the contingency it hopes to protect against is probable by any real-world measure. PPL's testimony and Application discuss only a hypothetical outage on the Juniata-Richfield 69 kV line, but does not identifying a single instance of such an outage. PPL has not provided the Commission with any testimony or other evidence that demonstrates that such an outage is probable or even remotely possible. By failing to demonstrate that an outage realistically and probably exists, PPL asks the Commission to approve the use of the power of eminent domain to take the real property of individuals under the guise of protecting against a situation that may never occur. PPL's failure to identify even a single instance of such an outage renders its speculation-based planning especially troublesome.

Review of the relevant data demonstrates that PPL's claimed probable contingencies amount only to extremely remote possibilities and PPL, therefore, cannot rely upon even the optional guidelines to support its Application. According to the historical outage information provided by PPL and attached to Mr. McGavran's Direct Testimony as Exhibit 1, only seven

permanent outages have occurred on the Juniata-Richfield line since 2002.<sup>1</sup> The document does not identify how many of those seven outages violated the RP&P guidelines. No outage has occurred in over six years. This data demonstrates that the current system can and does sustain probable contingencies and disturbances with minimal customer interruptions and provides each customer with adequate capacity, voltage and reliability.

PPL's own witness' testimony belies its contention that an outage that violates the RP&P is probable. Danny Jarrah, a licensed Professional Engineer in the Commonwealth of Pennsylvania, unequivocally stated that "failures of PPL Electric's transmission structures are quite rare." PPL Electric St. No. 10-R, p. 4. Despite the fact that only extremely rare transmission structure failures typically cause permanent outages, PPL argues that it necessarily needs to construct a tie line that would protect against such failures. This misguided and contradictory contention instead demonstrates that this project meets the very definition of unnecessary.

Rather than addressing Protestants' assertion that PPL's attempt to solve a hypothetical outage that rarely, if ever, occurs constitutes an unnecessary project, PPL resorts to claiming that Protestants miss the point of the project. *See* PPL's Brief, p. 21. Apparently, the point of the project is to meet optional standards.

By way of its review, the Commission must determine whether the proposed line is "necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public." *Pa. Power & Light Co. v. Pa. P.U.C.*, 696 A.2d 248, 250 (Pa. Cmwlth. 1997) (quoting 66 Pa. C.S. § 1501). Presently, the Commission must determine if a few, if any, instances of any long-term transmission outages in which a violation of the RP&P's occurs,

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<sup>1</sup> According to the outage history summary, a permanent outage is an outage "due to structure failure, cross arm failures, relay failures, [and] animal contacts in the connected subs."

deems the project “necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public.” PPL’s own RP&Ps, although optional, exist to ensure that the system can sustain “probable” contingencies and disturbances. Therefore, the Commission must determine if a highly unlikely and rare occurrence can constitute a “probable contingency or disturbance.” Clearly, PPL’s reliance upon highly unlikely violations of optional guidelines in an attempt to demonstrate the necessity of the proposed transmission line presents, at best, a logical fallacy. The Commission should not condone the taking of an individual’s property based merely on a logical fallacy.

PPL has also failed to demonstrate that it seriously considered any alternatives to its project and has, instead, made only very general assertions about such evaluation. The alternatives were evaluated by absent witnesses (N.T. 234), made on white boards (N.T. 152), or discussed around conference tables. *Id.* PPL did not introduce evidence of the specific alternatives considered in scope, cost effectiveness or any other aspect. During cross examination, the PPL witnesses sought to make up for the absence of real evidence with verbal descriptions of some informal brainstorming process along the lines, of “Oh, we discussed that at a meeting once.” *See* N.T. 152, lines 18-23.

The Protestants presented sound alternatives prepared by an experienced electrical engineer with many years of transmission system design experience, however, PPL attempted to dismiss their concerns with what can charitably be called vague generalities. For example, PPL dismissed Mr. McGavran’s sensible design to double circuit the weak spot in the transmission system with a double circuit and heavier conductor within existing rights-of-way as too costly of an alternative. Yet, PPL did not submit with its application any analysis that shows this solution as impractical or more expensive. Under cross examination, Ms. Krizenoskas admitted that she

relied on a cost estimate to discount Mr. McGavran's superior alternative that was: (a) developed by an absent witness, Mr. Kedia (N.T. 240, lines 2-5); (b) done on a "magnitude of cost" basis only (N.T. 240, lines 9-10); (c) lacking any supporting documentation (N.T. 240, lines 11-12); and (4) offered without any personal knowledge – or even a guess – as to real cost (N.T. 241, lines 1-8). PPL did not even bother to document this alleged consideration of Mr. McGavran's solution. As PPL failed to seriously consider possible alternatives, the Commission should conclude that PPL failed to meet its burden of proving the necessity of its project.

The Commission should disregard PPL's assertions regarding the cost of alternatives in making its determination, or, at the most, review them with great skepticism. New legislation now offers PPL and other utilities an economic incentive to select and build more expensive alternatives because fixed utilities have a new opportunity to recover their capital investment on an accelerated basis *and* earn a return on that investment indefinitely. Act 11 of 2012, which amended the Public Utility Code to allow for Distribution System Improvement Charges, permits accelerated return of and return on PPL's investment with regard to "eligible property." 66 Pa.C.S. § 101, et seq. The Act expressly defines "eligible property" as poles, towers, conductors, transformers, substation equipment, insulators, circuit breakers, fuses, reclosers, grounding wires, relays, capacitors and a host of other transmission and distribution for purposes of accelerated return of and return on its investment. 66 Pa.C.S. § 1351. PPL's proposed project and any alternatives fall under the definition of "eligible property" for which PPL can receive an accelerated return.

This case presents the Commission with an opportunity to review a project in light of the Act 11 amendments so as to avoid allowing the utility to receive a windfall at the cost of the consumer. This accelerated return that PPL can benefit from will negate any claim regarding the

cost of an alternative. Whereas PPL previously may have had some incentive to spend as little as possible to bring rural electric lines into good engineering status, PPL now has express statutory inducement to choose gold-plated alternatives over less expensive solutions. This statutory change is enormous when applied to the selection of alternatives for transmission lines. Without close and meaningful review of necessity, this statutory amendment will permit monopolistic utilities to behave as their economic interests dictate and build expensive and unnecessary projects. It is the Commission's basic purpose to protect landowners and customers from the financial burdens of expensive and unnecessary capital projects. The Commission has both an obligation and an opportunity here.

The Commission should also disregard PPL's attempts to disparage the Protestants' proposed alternatives. PPL baldly asserts that such solutions have "problems," without basing this conclusion in fact. PPL claims it cannot practically rebuild existing 69 kV transmission lines as either single or double circuit due to "constraints." See PPL Brief, p. 23. According to PPL, fourteen non-condemnable properties would prevent PPL Electric from acquiring rights-of-way for the rebuild because PPL utilizes a one hundred foot right-of-way for *all* new 69 kV transmission lines and *attempts* to use the one hundred foot right-of-way for rebuilt lines. If PPL "attempts" to use one hundred foot right-of-way for 69 kV rebuilds, the availability of less right-of-way is simply not a constraint and PPL cannot, in good faith, present it as one.

Additionally, PPL asserted that custom poles were needed in the event a 69 kV rebuild were constructed within a right-of-way of less than one hundred feet and that the custom poles would increase the cost of the project. PPL did not develop testimony regarding these costs or present evidence of the costs to the Commission. Importantly, the facts of record demonstrate that the use of existing right-of-way to rebuild an existing 69 kV transmission line is

significantly less costly than the construction of a new 69 kV line. PPL witness Richard Wodyka testified that the cost to reductor the approximately fifteen mile Sunbury-Dalmatia 69 kV circuit was estimated at \$9.1 million. PPL Electric St. 7-R, p. 11. That cost is significantly lower than the “magnitude of cost” basis of \$1 million per mile suggested by PPL. PPL’s assertions are not only devoid of support in the record, but are also belied by the true costs of rebuilding the Sunbury-Dalmatia line. Additionally, PPL has continually refused to acknowledge the cost savings that arise from the fact that it would not need to condemn any land to use an existing right-of-way. The facts dictate that a rebuild as advocated by Protestants would cost significantly less than the project proposed by PPL and would achieve the same ends.

Further, PPL’s own witness’ testimony again contradicts its claims. While PPL may attempt to utilize only one hundred foot rights-of-way for newly constructed transmission lines, PPL’s witness, Dennis Braun, testified unequivocally that PPL recently placed 69 kV transmission facilities within fifty foot rights-of-way, including along the recently-reconducted Sunbury-Dalmatia 69 kV transmission line. N.T. 293-95. As stated in Protestants’ Brief, the Commission should not permit PPL to use the absence of “condemnable” one hundred foot easement areas on the west side of the river as a pretext to avoid strengthening the existing transmission backbone and to justify the proposed project, especially where PPL very recently completed a reductoring of 69 kV transmission line with easements of less than one hundred feet. PPL has overcome the easement issues identified by Ms. Krizenoskas on numerous occasions. It cannot now genuinely take a position inconsistent with its recent actions on the Sunbury-Dalmatia project.

PPL’s assertions regarding service maintenance also lack practical merit. PPL claims that difficulties with maintaining service to existing customers may increase the overall cost of

any such project. PPL Brief, p. 24. However, PPL has failed to prove that it cannot avoid these difficulties by transferring load to nearby 69 kV transmission lines. PPL states that it may need to transfer load to the Sunbury-Lockhaven 69 kV line or the Juniata-Richfield 69 kV line. *Id.* PPL identifies issues with each of these lines individually, but ignores the possibility utilizing each of the 69 kV lines in tandem to avoid the voltage and load-shedding issues claimed. Additionally, PPL claims that transferring the load to the Juniata-Richfield line would result in unacceptable voltage levels at unidentified distribution substations near the end of the line. *Id.* PPL offers no citation to the record for this assertion. The transfer of load to the neighboring 69 kV transmission lines would avoid any increased cost of the project asserted by PPL.

Despite its claim to the contrary, PPL has also failed to adequately demonstrate that the transmission portion of its proposed project is necessary to provide reliable service to its customers. PPL has not shown that the contingency it is planning for, namely the loss of the Juniata-Richfield 69 kV line, is probable or that it has ever occurred. If such a loss occurs rarely, such a contingency is not, by definition, probable. Clearly, a project designed to protect against such an improbable loss is not necessary for the provision of reliable service. Quite simply, PPL does not *need* the proposed transmission tie line to provide reliable service to its customers.

## **II. PPL's Justification for the Distribution Project**

PPL has also failed to demonstrate the necessity of the distribution aspect of its project. PPL justifies the distribution aspect of the project solely on that basis that it will resolve “violations” of optional RP&P guidelines. According to PPL, the violations of the RP&P guidelines “result in greater exposure to outages due to the length of the circuit and large amounts of load being interrupted due to the large number of customers served.” PPL’s Brief, p. 30. PPL also asserts that both Howard Slugocki and Ted McGavran agree that line exposure

negatively impacts the reliability of a distribution line. *Id.* However, PPL failed to mention that Mr. McGavran stated, immediately after his assertion that line exposure impacts distribution reliability, that, although line exposure negatively impacts the reliability of a distribution line, this project will only minimally reduce, if at all, reliability issues relating to distribution line exposure. *P-McGavran-D-1*, Page 20. Mr. McGavran, therefore, opines that the project proposed is wholly unnecessary. *Id.* The substation is not necessary for a myriad of reasons. Reliability in the area that the proposed substation will serve does not necessitate the construction of an expensive substation. This wholly unnecessary substation does not justify PPL's taking of the Hess' real property over their strenuous objections.

PPL cannot rely on its assertion that the optional RP&P guidelines necessitate its project because the distribution station, as completed per the project, will not even comply with these guidelines. PPL's witness, Mr. Slugocki, admitted under cross-examination that the project proposed in the Application will not meet the RP&P guidelines after construction. PPL has accepted and come to terms with its admission. In its Brief, PPL argues that the splitting of the circuit resulting from construction of the Meiserville substation will "bring the distribution system in the area into compliance with the RP&P guideline regarding the number of customers served by a 12 kV distribution and *will enable PPL Electric to reduce the length of the resulting lines so they are much closer to the RP&P standard.*" PPL Brief, p.30 (emphasis added). While the distribution system may come closer to complying with the RP&P, the system will still violate PPL's RP&P standards. Even if the Commission believes that compliance with these optional RP&P guidelines renders a project necessary, PPL cannot escape its admissions that it fails to meet even this lowered standard of RP&P compliance. PPL cannot genuinely assert that

its project must meet only the standard of optional guideline compliance and then openly and knowingly fail to meet this standard, all the while continuing to claim that it has met its burden.

PPL apparently has not learned from its experience with the very circuit it is seeking to improve. Rather than proposing a solution that will fully alleviate the “violations” of their RP&P guidelines, PPL has instead proposed an inadequate solution that will violate those guidelines from day one. A more prudent course of action would require PPL to fully consider alternatives without limiting such plans due to their desire to construct the tie line in the chosen location. PPL failed to explain what considerations were given to location of the substation as it related to load service. According to Justin Wehr, Siting Coordinator for PPL, he was given an area less than one mile within which he could place the substation. N.T. 312. Based upon this information, it is clear that the location of the substation was driven by the location of the tie line rather than best serving the load center. Protestants suggest compliant alternatives in their Main Brief. PPL could add a third circuit, effectively splitting the 36-2 circuit into two circuits, from the Dalmatia substation. 36-2 could serve half of the existing Meiserville load, and 36-3 could serve the other half. This would split the customer load in a way that would meet PPL’s RP&P guidelines (although not mandated) and reduce the number of customers per circuit by about half. In addition, the double circuit from Dalmatia across the river would cut nearly in half the miles per circuit, again improving, if not entirely solving PPL’s concern. PPL could follow this plan without the construction of the Meiserville substation and without the construction of the 69 kV transmission line proposed. This alternative also avoids an additional river crossing. Quite simply, such an alternative may completely obviate PPL’s RP&P compliance concerns at a fraction of the cost without an unsightly new river crossing over the scenic Susquehanna River.

When discussing the reliability issues related to the Dalmatia 36-02 circuit, PPL states that the concerns do not relate to voltage issues. According to PPL, the 36-02 circuit “has experienced reliability concerns stemming mainly from the length of the circuit and the number of customers served by it.” PPL Brief, p. 28. PPL repeatedly refers to the purported distribution issue as “reliability concerns” without clearly identifying exactly how those concerns affect the customers. Customer experiences on the ground, however, do not bear out these concerns and PPL cannot rely on non-existent reliability issues to support the claimed necessity of its project.

### **III. Mahantango Expansion**

PPL asserts that the “vast majority of the [Hess] property, 97.57%, is available for expansion of the tire recycling and storage facility.” PPL Brief, Page 48. PPL continues to assert that Mr. Hess’ claims are exaggerated and that the project will not inhibit his ability to expand his business. *Id.* To the contrary, the project proposed by PPL will be a significant impediment to the future growth of Mahantango, Inc. As detailed in Mr. Hess’ surrebuttal, storing tires beneath electric lines is a significant danger. If the line is built, Mr. Hess will be required to keep the area under the line clear of tires to safely operate his facility. In essence, Mr. Hess will be left with a wide swath of ground that cannot be used for the storage of tires or for the raised conveyor system. Such a limitation on the placement of both tires and the facility’s equipment is a severe impediment to the future growth of his facility. Further, the placement of the power line directly over the pond and pump station raises additional safety concerns for fire fighters seeking to fill tanker trucks. A rupture of a hose, fitting or water supply line could cause water to blast high into the air and come in contact with live power lines. *See* P-Hess-SR1, Page 1 Lines 19-22 and Page 2, Lines 6-14. According to Mr. Jarrah, such a situation may result in injury or death to those who may be exposed to the electric current. N.T. 270. While PPL

attempts to refute and ignore the safety concerns associated with the storage of tires under power lines, Mr. Hess will not ignore the safety issues recognized by the NFPA. PPL seeks to justify this project based upon highly unlikely contingencies, while simultaneously minimizing Mr. Hess' very real safety concerns. These recognized safety issues will severely limit his ability to expand in the future and must be considered by the Commission.

To add to the inequities caused by this unnecessary line, Mr. Hess is also forced to deal with the unsightly electric facilities despite having paid significant sums to PPL to have the current electric facilities installed underground. As acknowledged by Mr. Wehr, the expense of burying an electric service line is significant. N.T. 328. Yet the Hess family paid PPL to have the distribution line buried in an effort to maintain a vista free of overhead lines. *Id.* Despite having previously accepted a significant amount of money from the Hess family to bury the electric line, PPL now refuses to make any accommodations. N.T. 329. PPL gladly accepted a significant payment from the Hess family to bury the existing facilities only to now attempt to destroy the view the Hess family paid to preserve with a project that falls well short of the "necessary" benchmark PPL must satisfy.

#### **IV. Conclusion**

PPL has failed to meet its burden of proving that its proposed project is necessary. PPL's claimed desire to comply with the optional RP&P guidelines cannot render a project necessary, particularly given the detriments its proposed project will cause. Further, PPL has failed to demonstrate that the existence of a "probable" contingency that it seeks to guard against by complying with the RP&P. An extremely rare occurrence does not equate to a probable event. Additionally, PPL has failed to genuinely consider reasonable and cost effective alternatives to its plan, but has instead dismissed other options summarily due to its desire to build its project where and how it wants. Finally, PPL cannot rely on the claimed need to resolve "violations" of

the RP&P guidelines by way of its distribution project because the project as proffered will not meet these guidelines.

Respectfully Submitted,

SALZMANN HUGHES, P.C.

Date: 10/31/12

By: 

Scott T. Wyland

Attorney ID # 52660

E. Lee Stinnett II

Attorney ID # 307128

354 Alexander Spring Road, STE. 1

Carlisle, PA 17105

Telephone: (717) 249-6333

Facsimile: (717) 249-7334