BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of PPL Electric Utilities Corporation under 15 Pa. C.S. § 1511(c) for a finding and determined 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 the following property owners in Lower Mahanoy Township, Northumberland County, Pennsylvania	:	
Randall Clark	:	A-2011-2267352
John & Evelyn Zeiders	:	A-2011-2267353
Roy & Cindy Maurer	:	A-2011-2267416
Ronald & Dianne Mace	:	A-2011-2267418
The Shoop Family Trust c/o Edwin & Denny Shoop	:	A-2011-2267426
Gary & Dorene Lahr	:	A-2011-2267429
Elijah & Faye Lahr	:	A-2011-2267446
And the following property owners in Perry Township, Snyder County, Pennsylvania	:	
Michael & Logan Wendt	:	A-2011-2267349
for the proposed Richfield-Dalmatia 69 kV transmission tie line is necessary or proper for the service, accommodation, convenience or safety of the public	:	
Application of PPL Electric Utilities Corporation under 15 Pa. C.S. § 1511(c) for a finding and determination that the service to be furnished by the applicant through its proposed exercise of the power of eminent domain to acquire a right of way and easement over and across the lands of Marvin Roger Hess and Leona Hess for the proposed Richfield-Dalmatia 69 kV transmission tie line and	:	A-2011-2267448

Meiserville 69-12 kV substation in Susquehanna :
Township, Juniata County, Pennsylvania is :
necessary or proper for the service, accommodation :
convenience or safety of the public :

PROTESTANTS' REPLY TO EXCEPTIONS OF PPL ELECTRIC UTILITES CORPORATION

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Date: January 24, 2013

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I. INTRODUCTION

On January 14, 2013, PPL Electric Utilities Corporation ("PPL") filed Exceptions to the December 24, 2012, Recommended Decision ("R.D.") of Administrative Law Judges ("ALJ") Joel H. Cheskis and David A. Salapa. The R.D. urges denial of PPL's Application. Protestants Hess, Mace, Maurer and the Shoop Family Trust now file these Replies to the Exceptions of PPL.

The R.D. applied the correct legal standard and concluded that PPL failed to demonstrate that the proposed Project satisfies that standard. The Project is not necessary and PPL should not be permitted to take the Protestants' real property where PPL failed to show a need for the Project. It is a wasteful and unnecessary project and the Application should be denied.

II. PROTESTANTS' REPLIES TO PPL'S EXCEPTIONS

REPLY TO EXCEPTION NO. 1: THE RECOMMENDED DECISION APPLIED THE CORRECT LEGAL STANDARD IN DETERMINING THAT THIS PROJECT IS NOT NECESSARY OR PROPER.

PPL's Application seeks permission to condemn the private property of the Protestants. A private, investor-owned corporation may condemn private property "only after" the Commission has found and determined that the service to be furnished by the corporation "is necessary or proper for the service, accommodation, convenience or safety of the public." 15 Pa.C.S. § 1511(c). The R.D. applied this standard, and applied it correctly. The R.D. found the Application did not *satisfy* the standard; the R.D. did not misstate or misapply it.

The R.D. also correctly noted that PPL had the burden of proof. Per Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), the burden of proof rests with the party seeking a rule or order from the Commission. As detailed in the R.D., the "burden of proof" requires PPL to establish supporting facts by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 70

A.2d 854 (Pa. 1950). The R.D. correctly required PPL to carry the burden of proof, and correctly found that it had not done so in its Application or its evidentiary offerings.

The R.D. found that PPL failed to prove that the proposed Project was necessary. The R.D. helpfully explained that the types of circumstances justifying other approved projects, such as numerous NERC violations or PJM RTEP mandates or serious load growth – there are many possible deficiencies that could support a truly necessary project – were utterly absent here. PPL had ample opportunity to prove its case, but failed.

That failure of proof should not be confused with a misapplication of the law; the law was correctly applied. PPL contends in Exception 1 that the R.D.'s recognition that the Project is unsupported by objective necessity present in other cases somehow changes the legal standard. It does not. The R.D. cannot honestly be read to hold that *only* projects that have one of the enumerated bases discussed in the R.D. can be approved. The R.D. does not create an incorrect or unfair standard; rather it simply points out that PPL's case lacks the factual foundation it needs to be considered necessary and proper.

Although PPL criticized the R.D. for allegedly focusing on whether the Project is "necessary" (as opposed to "proper," to the extent they differ in practical application), PPL focused on necessity nearly exclusively in its Application, evidence and brief. Oddly, PPL even omitted the words "or proper" from its quotation of the statute. PPL Main Brief, p.11. Whether PPL's misquote was an accident or a Freudian slip, PPL's omission of "or proper" in its excerpt reflects accurately PPL's deliberate concentration at hearing on trying to show that the Project was justified by its own RP&Ps. After PPL's first witness undermined its case by freely conceding the RP&Ps are purely optional and that its related 36-01 project violated the RP&Ps at installation, PPL nonetheless clung to the theory that RP&Ps supplied the missing necessity.

Given PPL's submissions and statement of the issue, it is certainly unfair to criticize the R.D. for appying the very standard PPL urged it to apply.

Missing from PPL's voluminous Exception to the R.D.'s claimed reliance upon an impermissibly narrow standard is any citation to the record demonstrating that PPL actually addressed anything *other than* the necessity of the Project. Indeed, PPL itself focused solely on whether the Project was necessary. Despite PPL's encyclopedic but ultimately unpersuasive discourse on the purported need for the Project, the R.D. found that PPL had not met its burden of proof. R.D., p. 41, Conclusion of Law No. 5. That was a fair conclusion and was made using the proper legal standard.

It is difficult to understand why PPL thinks that the words "or proper" would help it meet its burden. In any event, PPL did not offer any discrete evidence it characterized as showing the Project was "proper" as opposed to "necessary." PPL's Application in this matter had attached as Exhibit 1 a "Necessity Statement" detailing why, in PPL's opinion, the Project was necessary to maintain reliable electric service. The Application does not attempt to demonstrate that the Project is "proper" by any means other than demonstrating that it is necessary. PPL's Main Brief similarly attempts to justify the Project based exclusively on the basis of necessity. In summarizing its argument, PPL stated that "the two principal issues presented in this proceeding are whether the service to be furnished through the Richfield-Dalmatia 69 kV Transmission Line *is necessary for the service, accommodation, convenience or safety of the public.*" PPL Main Brief, p. 5 (emphasis added). One cannot fault the R.D. for concluding that PPL failed to meet the standard it attempted to meet.

Furthermore, PPL's Main Brief devoted an entire section to a discussion of "need" for the Project, but did not address the "proper" requirement it now sees as paramount or distinct. PPL

Main Brief, p. 14. The Findings of Fact submitted by PPL as Appendix A to its Main Brief also exemplify PPL's total reliance on the need for the Project, as opposed to whether the Project is proper. Proposed Finding of Fact Number 4 provides that "PPL Electric seeks findings that the service to be furnished through the exercise of the power of eminent domain by PPL Electric to acquire rights-of-way across the nine identified tracts of land for construction of aerial transmission lines is *necessary for the service, accommodation, convenience or safety of the public.*" PPL Main Brief, Appendix A, p. 1 (emphasis added).

PPL's Reply Brief is similar to its Main Brief in its complete lack of discussion of whether the Project proposed in its Application is "proper," instead choosing again to focus completely on the necessity of the Project. In summarizing its argument, PPL states that "PPL Electric has demonstrated that the Richfield-Dalmatia Project . . . *is needed to provide reliable service.*" PPL Reply Brief, p. 1 (emphasis added). Likewise, PPL's own description of the legal burden that is applicable to this proceeding neglects to include whether the Project is proper: "PPL Electric's *legal burden is to show that this Project is necessary to provide reliable service to its customers.*" *Id.* (emphasis added). Additional statements by PPL in its Reply Brief regarding the legal standard include the following: "In order to support its use of the power of eminent domain, PPL Electric is required to show that the project is 'necessary for the service, accommodation, convenience or safety of the public.' 15 Pa.C.S. § 1511(c)"[1]; and "PPL Electric has shown that the project is necessary to provide *reliable* service in the area, and therefore, it has met the legal standard."[2] These quotations demonstrate that PPL framed and presented its case in terms of need for the proposed Project. To now assert that the R.D. applied the very standard that PPL presented for review is well off target.

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[1] PPL Reply Brief, P. 5.

[2] *Id.* at 6.

PPL's attempt to now assert that the R.D. applied the wrong standard is clearly contrary to the position it has maintained throughout this proceeding. Consequently, PPL should be precluded from claiming that the R.D. applied the wrong standard when R.D. applied the very standard that PPL advocated throughout the entirety of this proceeding. PPL's failure to advance any distinct factual position in regard to whether the proposed Project is "proper" precludes the Commission from making any such finding at this stage of the proceeding. PPL not only failed to satisfy its burden of proof with regard to whether the Project is proper, it failed to advance any argument whatsoever regarding the propriety of the Project. PPL's newly formed position with regard to the correct standard begs the question: Can a project found and determined to be unnecessary for the service, accommodation, convenience or safety of the public even be considered "proper" for the same purpose? The best answer, Protestants respectfully submit, is that it is a distinction without a difference.

Despite PPL's failure to address the propriety of the proposed Project in fact or legal argument, the R.D. considered and applied the correct legal standard to PPL's Application – whether the Project was necessary or proper. The *accurate* citation and quotation of Section 1511(c) throughout the R.D. proves the point.[3] Additionally, the Conclusions of Law found in the R.D. specifically and accurately quote the "necessary and proper" standard found in Section 1511(c). R.D., p. 40, Nos. 4, 7. After a complete and thorough review of the evidence of record and the *applicable governing law* (a reference to the entirety of Section 1511(c)), the R.D. found that PPL failed to satisfy its burden and recommended that PPL's Applications be rejected. R.D., p. 41-44. Accordingly, Exception No.1 should be denied.

[3] *See, e.g.*, R.D., P. 17, 18, 19, and 41.

REPLY TO EXCEPTION NO. 2: THE RECOMMENDED DECISION DID NOT IMPROPERLY RELY ON THREE RECENT COMMISSION TRANSMISSION SITING PROCEEDINGS AS A BASIS FOR REJECTING THIS PROJECT AND IS NOT FACTUALLY AND LOGICALLY FLAWED AND SHOULD NOT BE REJECTED.

PPL's second Exception asserts that the R.D. relied exclusively on three recent Commission proceedings as its sole basis for rejecting the Project. PPL misstates the R.D.'s reasoning in a specious effort to contend that a novel or incorrect legal standard was articulated and applied in the R.D. This is not the case; the R.D.'s reference to the recent cases was a salient demonstration that PPL here lacked a factual justification for the proposed Project. The R.D. does *not* say that the only way to get a project approved is to meet one of the reasons set forth in the recent cases. Rather, the R.D. shows that if PPL had actually presented a decent factual basis for its Project, it might have fared better.

PPL claims that, as a threshold matter, the "R.D. appears to conclude that the factors identified in these three recent cases form the entire universe of reasons that can establish need for a utility construction project." PPL's Exceptions, p. 16. The R.D. says no such thing. The R.D. considered not only the three recent cases it cited, but also PPL's reliance upon RP&P violations and the worst-performing circuit list. *See, e.g.,* R.D., p. 36. For instance, the R.D. provides that while the "RP&P is a helpful tool in increasing reliability on PPL's system," a violation of the RP&P does not give rise *per se* to a need for the transmission line and substation. *See* R.D., p. 37. An intellectually honest reading of the R.D. shows that the three cases cited were merely given as examples of recent transmission line siting cases decided by the Commission. The R.D. did not state or even imply that the cases recited form the "entire universe of reasons that can establish" need.

Simply put, PPL's entire case was built upon the foundation of violations of RP&P guidelines. The R.D., however, recognized that any attempt to demonstrate necessity through

reliance upon optional guidelines was ineffective and logically flawed. This fact is recognized and identified by the R.D.'s citation to the Commission's statement when adopting electric reliability regulations that "the analysis of an [Electric Distribution Company's] worst-performing circuits is only one aspect of reliability that is proposed to be reviewed by the Commission." *Rulemaking Re: Amending Electric Service Reliability Regulations at 52 Pa. Code Chapter* 57, Docket No. L-00030161, Final Rulemaking Order (entered May 20, 2004).

Rather than relying exclusively on RP&P guidelines and worst performing circuit lists to carry its burden to demonstrate necessity, PPL might have introduced evidence into the record that demonstrated other indicators of poor reliability such as those suggested by the cases cited within the R.D. or others within the entire "universe" of transmission line siting determinations. PPL's failure to produce any evidence relating to reliability aside from optional RP&P guidelines and worst-performing circuit lists is surely the cause of the R.D.'s rejection of the Application. PPL is now simply attempting to shift the blame for its failure to carry the burden to the R.D. Such an attempt should not be countenanced and the Application should properly be denied. Exception No. 2 should be denied.

REPLY TO EXCEPTION NO. 3: THE RECOMMENDED DECISION DID NOT INCORRECTLY RELY ON THE ABSENCE OF PJM OR NERC RELIABILITY STANDARD VIOLATIONS TO JUSTIFY REJECTING THIS PROJECT.

PPL's Exceptions 3-7 focus on examples of evidence found sufficient in recent Commission transmission line siting cases that the R.D. noted in finding that the record was lacking sufficient evidence to demonstrate need here. As noted by the R.D., PPL's case in chief consisted entirely of violations of optional RP&P guidelines and the worst-performing circuit list.

As the May 20, 2004, Final Rulemaking Order establishes, review of the worst-performing circuits is but a single aspect of reliability to be reviewed by the Commission. The cases cited and discussed in the R.D. are merely examples of evidence that PPL could have, but did not, enter into the record. The R.D.'s point in citing recent transmission line siting cases was to provide examples of factors previously found and determined to give rise to the requisite necessity for granting a public utility the power to exercise eminent domain for the taking of private property.

The Application and record evidence is devoid of any proof that the Project is necessary or proper aside from the optional RP&P guidelines and the worst-performing circuit information that the Commission has specifically stated is only a single aspect of reliability to be reviewed. PPL needed to demonstrate something more than simply RP&P violations and worst-performing circuit status, such as violation of independent reliability standards, "stress modeling, congestion, load growth, etc." R.D., p. 37. More to the point, even if PPL showed that something should be done to improve the system, it did not prove that the proposed Project itself was an appropriate solution. It is one thing to describe a problem; it is another thing altogether to demonstrate that a particular solution is necessary or proper. This was a bad solution: bloated, destructive and overdone.

For all its hand-wringing, PPL appears to overlook that it its proposed Project simply does not pass muster; it is not necessary. Before a corporation can win the right to use the very substantial power of forcibly taking a private citizen's real property, it is entirely correct to hold that corporation to a standard. PPL howls that it was unfairly denied the right to wield condemnation powers and cannot fathom that perhaps it advanced a poorly designed project. PPL can regroup and redesign a sound project that improves its system but does not unfairly

tread on landowners. Use of existing corridors, doubling of transmission circuits and splitting distribution circuits are all possible and are better than the feebly justified layout – which would destroy many acres, create an unwelcome new river crossing and wrest land from its objecting owners – PPL offered in this case. These options were discussed at the hearing. What good is a legal standard to the landowners and general public if the Commission concludes that no matter how poor the utility's proposed project, the test is met? What protection do they have from careless or abusive practices and unjustified takings if the Commission does not protect them? The definition of "regulatory capture" is a perfunctory "rubber stamp" approval of every utility application, no matter the quality. Here, the R.D. provided a meaningful review and recommends denial.

The test is not incorrect or unfair merely because PPL failed it. Exception No. 3 should be denied.

REPLY TO EXCEPTION NO. 4: THE RECOMMENDED DECISION DID NOT ERR IN FINDING THAT A LACK OF FUTURE LOAD GROWTH SHOWS THAT THE RICHFIELD—DALMATIA PROJECT IS NOT NEEDED.

PPL conceded that there is no future load growth anticipated in the area of the substation. Load growth certainly was not proved or even proffered as justification for the proposed project. The R.D. did not hold that the only way PPL could win approval was to show future load growth, and PPL cannot in good faith contend that it did.

The absence of future load growth did nothing to help PPL's case. The R.D. did not, however, require it absolutely. Exception No. 4 should be denied.

REPLY TO EXCEPTION NO. 5: THE RECOMMENDED DECISION'S FINDING THAT NO STRESS MODELING WAS PERFORMED IS NOT IN ERROR.

Here, PPL comes dangerously close to retrying its case in its Exceptions. Throughout Exception 5, PPL repeatedly and inappropriately refers to facts, without proper citation to the record, that are not within the record of evidence.

PPL's entire Exception No. 5 includes but a single citation to the Application that includes a very general statement providing background as to how computer simulations are used by PPL to identify reinforcement alternatives. PPL Exceptions, p. 19. The cited page in the Application does not state that such simulations were conducted within the study area, present the findings of any simulations, identify alternatives, or even relate whether the simulations indicated that reinforcements were required.[4]

Most importantly, PPL asserts that stress modeling was, in fact, conducted by PPL and identified that a contingency outage in the Project area would result in excessive customer load that could not be transferred. PPL Exceptions, p. 19. PPL's assertion was without any citation to the record of evidence. PPL additionally states that the Project area has insufficient transfer capacity available, without any citation to the record evidence. *Id.* at 20. Despite a complete lack of citation to the record, PPL concludes this Exception by stating that "R.D.'s finding that PPL Electric failed to conduct stress modeling is contrary to the undisputed evidence of record." PPL Exceptions, p. 21.

Protestants understand that PPL fervently wishes to reargue its case and to present detailed modeling evidence now that it did not present at hearing or cite in its Exceptions.

[4] Such statements of fact without citation include: PPL uses the load forecasts prepared annually by PJM; all violations of reliability criteria are identified by "stress" testing; extensive analysis is undertaken by system planners to find solutions to identified violations; use maximum allowable load drop to identify reliability violations; and identification of heavily loaded lines that allow the transfer of load to neighboring lines. PPL Exceptions, pp. 19-20.

Respectfully, PPL should not be permitted to do so within its Exceptions because it is unfair and precludes Protestants from contesting and contradicting these factual assertions. Accepting these facts in this context deprives Protestants of due process.

On the merits, alternatives such as reconductoring and doubling of transmission circuits were undertaken by PPL *within this project area.* R.D. p. 23; N.T. 234-35. The R.D. was correct to conclude that the proposed project was not justified by the evidence submitted by PPL where such alternatives exist. Exception No. 5 should be stricken or, in the alternative, denied.

REPLY TO EXCEPTION NO. 6: THE RECOMMENDED DECISION'S FINDING THAT THERE IS NO HEAVY CONGESTION ASSOCIATED WITH THIS PROJECT IS NOT IN ERROR.

PPL's sixth Exception is similar to PPL's fifth Exception in that PPL again makes claims that certain facts were proven, without any citation to the record. PPL claims that it proved that heavy loading, i.e., congestion, prevents PPL from transferring load to other nearby lines without citation to the record. PPL Exceptions, p. 21. Aside from citations to the R.D., PPL's only citation within this Exception points to page 4 of Lisa Krizenoskas' Rebuttal Testimony for the assertion that transferring additional load to neighboring circuits would exceed the emergency rating of the circuits remaining in operation resulting in 44 MW of load remaining interrupted. PPL Exceptions, p. 21. Quite simply, the portion of Ms. Krizenoskas' Rebuttal Testimony cannot, by any stretch, be interpreted as stating that 44 MW of load will remain interrupted due to the inability of neighboring circuits to accept a transfer of the load. In fact, the phrase "44 MW" does not appear anywhere on page 4 of Ms. Krizenoskas' Rebuttal Testimony. The section of Ms. Krizenoskas' Rebuttal Testimony cited does not contain any statement that any amount of load will remain interrupted because of the emergency rating of the circuits remaining in operation.

Exception No. 6 should be stricken or, in the alternative, denied.

REPLY TO EXCEPTION NO. 7: THE RECOMMENDED DECISION DID NOT ERR IN FINDING THAT PPL ELECTRIC FAILED TO SHOW THAT IT LACKED ALTERNATIVE PROJECTS.

The R.D. did not hold that the only way PPL could win approval was to show a lack of alternative projects, and PPL cannot in good faith argue that it did. As explained in greater detail in Reply to Exception Number 3, the R.D. cited recent transmission line siting cases to provide examples of factors previously found and determined to give rise to the requisite necessity to grant a public utility the power to exercise eminent domain for the taking of private property. The R.D. made no attempt to limit the factors to those presented.

The R.D. did not require a lack of alternatives and, therefore, PPL's argument is unavailing. The Project proposed by PPL is simply a bad project that is unnecessary. PPL failed to carry its burden by presenting sufficient evidence that the Project was necessary or proper. Consequently, Exception No. 7 should be denied.

REPLY TO EXCEPTION NO. 8: VIOLATIONS OF PPL ELECTRIC'S OPTIONAL RELIABILITY PRINCIPLES AND PRACTICES GUIDELINES DO NOT PER SE PROVIDE A VALID BASIS FOR IDENTIFYING RELIABILITY ISSUES IN THE TRANSMISSION AND DISTRIBUTION SYSTEMS.

As detailed throughout the Protestants' Main and Reply Briefs, PPL justified its entire project as being necessary to correct "violations" of its Reliability Principles and Practices ("RP&P") regarding customers per circuit and miles per circuit. N.T. 145. PPL's Howard Slugocki testified unequivocally that the RP&P guidelines are *voluntary*. *Id.* PPL may not contend that the project is necessary to correct violations of *optional* RP&P guidelines. R.D, p. 36. The contention is illogical and should not serve as the basis to authorize the exercise of

eminent domain to take citizens' real property. Consequently, PPL failed to demonstrate that the project was needed to furnish service to the public. The idea that voluntary or optional RP&P guidelines cannot be used to establish that the Project is necessary or proper was reinforced by the R.D. *See* R.D., p. 36, 37.

Simply put, PPL's entire case was built upon the foundation of violations of RP&P guidelines that led to the 36-02 circuit being placed on the worst-performing circuit list. The R.D., however, recognized that any attempt to demonstrate necessity through reliance upon optional guidelines was folly and logically flawed. *Id.* This fact is recognized and identified by the R.D.'s citation to the Commission's determination when adopting electric reliability regulations, in which the Commission stated that "the analysis of an [Electric Distribution Company's] worst-performing circuits is only one aspect of reliability that is proposed to be reviewed by the Commission." *Rulemaking Re: Amending Electric Service Reliability Regulations at 52 Pa. Code Chapter* 57, Docket No. L-00030161, Final Rulemaking Order (entered May 20, 2004).

Rather than relying exclusively on RP&P guidelines and worst performing circuit lists to carry its burden, PPL might have introduced evidence that demonstrated other aspects of reliability such as those suggested by the R.D. PPL cannot be permitted to do so via Exceptions filed after the close of the evidentiary record when the Protestants have limited ability to test the veracity of such assertions. PPL's failure to produce any evidence relating to reliability aside from optional RP&P guidelines and worst-performing circuit lists is the basis for the R.D.'s rejection of the Application. PPL now is attempting to shift the blame for its failure to carry its burden to the R.D. As stated by the R.D., a violation of the RP&P does not give rise *per se* to a need for the transmission line and substation. *See* R.D., p. 37.

It should also be noted that the evidentiary value of PPL's reliance on the worst-performing circuit list is greatly overstated. Throughout this proceeding, PPL has stated that the Dalmatia 36-02 circuit has "historically" been on the worst-performing circuit list, including 16 of the last 31 quarters.[5] PPL carefully couched the awkward statistic that way because the circuit did *not* appear on the list (except for one instance) since 2008. While it may be true that the 36-02 circuit was on the list 16 out of the previous 31 quarters, there was no evidence that it was on the list more than once anytime recently. More weight should be placed on the most recent quarters *after* the 36-02 was split to form the 36-01 and the 36-02 circuits in approximately 2008.[6] The Dalmatia 36-02 circuit did *not* appear on the worst-performing circuit list for fifteen consecutive quarters.[7] Based strictly upon the numbers presented by PPL throughout this proceeding (namely, the 36-02 circuit appeared on 16 of the last 31 quarters) and the worst-performing circuit list filed with the PUC at Docket No. L-00030161, the 36-02 appeared on the worst performing circuit list for a number of quarters before disappearing from a single worst-

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[5] PPL St. No. 5-R, P. 3.

[6] N.T.,150-51.

[7] In essence, there is an *absence* of record evidence that the 36-02 circuit was on the list of worst-performing circuits more than once since 2008. This absence can be confirmed by referring to PPL's submissions to the Commission, which are outside the record in this case. Protestants respectfully contend that the *absence* of the circuit on that list should be considered by the Commission and should be treated as an admission against PPL's interest. See P.R.E. 830(25). Protestants acknowledge that another way of viewing that factual issue is that judicial notice may be required to refer to the reports filed by PPL but that are not part of this record. Alternatively then, pursuant to 52 Pa. Code § 5.408(a), official or judicial notice of the quarterly worst-performing circuit lists is appropriate in this proceeding for a number of reasons. The worst-performing circuit reports are referenced by PPL and form a significant part of its basis for contending that the Project is necessary or proper. Moreover, it is really no different than PPL citing to the same docket for the first time in its Exceptions, which likely amounts to waiver of any objections on the basis of prejudice. The actual quarterly reports should have been included in the record of evidence by PPL because of its reliance upon such reports. The quarterly worst-performing circuit lists are filed with the Commission at Docket No L-00030161 by PPL. PPL, consequently, cannot credibly claim any adverse effect or prejudice from the Commission's exercise of judicial notice of the contents of the worst-performing circuit lists. Most importantly, however, PPL is the party that relied upon the worst-performing circuits quarterly reports in attempting to meet its burden of proof in this proceeding without entering the actual quarterly reports into the record. If the Commission disagrees, it should disregard the actual reports as filed and instead merely note the absence of record evidence that the circuit was on the list recently.

performing circuit report completely for fifteen consecutive quarters. Exception No. 8 should be denied.

REPLY TO EXCEPTION NO. 9: THE RECOMMENDED DECISION IS CONSISTENT WITH THE COMMISSION'S REGULATIONS AND WELL-ESTABLISHED POLICY.

1. The Recommended Decision Is Not Contrary To The Commission's Reliability Regulations Relating To Worst Performing Circuits.

As discussed above, the Dalmatia 36-02 circuit was absent from the worst-performing circuit list for fifteen consecutive quarters.[8] Therefore, the regulations requiring utilities to report and plan remedial action to improve the quality of service on such circuits have already been satisfied. PPL's previous remedial work in splitting the circuit to form the Dalmatia 36-01 and 36-02 circuits was undertaken after the Dalmatia 36-02 circuit appeared on the worst-performing circuits list and resulted in a period covering fifteen quarters in which the 36-02 did not appear on the worst-performing circuit list. PPL's statement that the R.D. would force PPL to disregard the Commission's regulations requiring remedial action reflects an exaggerated and melodramatic view. PPL has already undertaken remedial action that resulted in the 36-02 circuit, the circuit in question, from disappearing from the worst-performing circuit list.

PPL believes that it is illogical for the Commission to command PPL to identify portions of its system that require repair and then disallow such remedial action. It would be illogical for the Commission to allow PPL to exercise the power of eminent domain to remedy reliability concerns based upon the circuit in question being on the worst-performing circuit list more than four years ago without reappearing for fifteen consecutive quarters until a single recent reappearance. PPL is free to address and repair substandard portions of its system; it must do so

[8] Or, if that is an issue, there is no evidence that the 36-02 circuit has been on the list more than once recently. As discussed above, the Commission fairly should take official notice of PPL's own filings to that effect.

with projects that are necessary. Again, PPL appears to contend that any project it suggests should automatically be approved. The landowners here deserve a real evaluation of the project. The R.D. conducted that evaluation and PPL came up short. There is nothing unjust with that result or inconsistent with the Commission's overarching goal to require system improvement through sound projects.

2. The Recommended Decision Does Not Contradict Commission Orders Relating To Storm Outages.

For the first time in the underlying proceeding, PPL now contends that numerous Commission Orders relating to storm outages apply to this proceeding. As discussed in the preceding section, the 36-02 circuit disappeared from the worst-performing circuit list because PPL undertook a project to split the 36-02 circuit into two circuits, the 36-01 and 36-02. The circuit split resulted in the 36-02 circuit being removed from the worst-performing circuit list for all but one quarter since approximately 2008. Since the circuit is no longer a "trouble segment," the Outage Investigative Order referenced by PPL is inapplicable.

More importantly, however, PPL completely failed to advance the position cited in this Exception throughout the entirety of these proceedings. PPL's attempt to rely on evidence outside the record and arguments not previously advanced at any point during the proceedings should not be the basis to grant an exception.

3. The Recommended Decision, If Applied To Other Proceedings, Has No Bearing On the Implementation Of Act 11.

PPL's position regarding Act 11, advanced for the first time through PPL's Exceptions, should be stricken. PPL's Exception relates to the interplay between the R.D. and its Act 11 filing and can be reduced to a single argument: Act 11, in PPL's view, should provide PPL *carte blanche* to undertake any project it chooses without affording any Constitutional protections from unnecessary takings of Protestants' private property. PPL's argument, however, ignores

Section 1511(c). Section 1511(c) is intended to withhold from PPL the enormous power of eminent domain except for those instances where the Commission determines the service is "necessary and proper." Act 11 does not completely eviscerate the requirements of Section 1511(c).

Taken to its logical conclusion, PPL's arguments related to Act 11 would allow PPL to exercise the power of eminent domain for any project approved pursuant to Act 11. Such a reading of Act 11 is a direct violation of constitutionally protected property rights enjoyed by all Pennsylvanians. Section 1511(c) is intended to protect the property rights of Pennsylvanians from unnecessary takings by public utilities and these protections were not intended to be destroyed by Act 11 as PPL claims. Approval of the LTIIP by the Commission does not serve as a Commission determination that the projects contained therein are "necessary or proper" as PPL's reading of the statute would require. Any project approved as part of the LTIIP must still be approved pursuant to Section 1511(c) before an individual's property may be taken by a public utility.

Act 11 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 apparatus 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.

Act 11 warrants a *closer*, not more relaxed, review of takings by utilities. 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. 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 under Section 1511(c), Act 11 otherwise might 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 to conduct a close review and affirm the R.D.'s conclusions.

REPLY TO EXCEPTION NO. 10: THE FINDINGS OF FACT IN THE RECOMMENDED DECISION DO NOT SUPPORT THE CONCLUSION THAT THE PROJECT IS NECESSARY OR PROPER.

PPL's tenth and final Exception asserts that the R.D.'s cited Findings of Fact support a conclusion that the Project submitted is necessary or proper for the service, accommodation, convenience or safety of the public. PPL's entire case was built upon the foundation of violations of RP&P guidelines and the worst-performing circuit list. PPL's citation to the Findings of Fact precisely demonstrates this point – each of the Findings of Fact cited by PPL is based upon PPL's incorrect assertion that the 36-02 circuit is still on the worst-performing circuit list or upon a purported violation of its own RP&Ps, both transmission and distribution. As the

R.D. recognized, any attempt to demonstrate necessity through reliance upon optional guidelines was ineffective and logically flawed and the worst-performing circuit list is but one indicia of reliability to be considered. R.D., p. 36. This fact is also recognized by the R.D.'s citation to the Commission's statement when adopting electric reliability regulations that "the analysis of an [Electric Distribution Company's] worst-performing circuits is only one aspect of reliability that is proposed to be reviewed by the Commission." *Rulemaking Re: Amending Electric Service Reliability Regulations at 52 Pa. Code Chapter* 57, Docket No. L-00030161, Final Rulemaking Order (entered May 20, 2004). The R.D. correctly determined that PPL failed to satisfy its burden of proof despite the Findings of Fact cited by PPL. Consequently, the Application should be denied along with Exception No. 10.

III. CONCLUSION

The R.D. concluded that the proposed Project does not meet the standard required to allow PPL to take the Protestants' real property. The Commission's goal to require PPL to improve its system is not imperiled by affirming the R.D. here. The Commission should not grant every application PPL submits, especially where, as here, the project lacks merit. The Protestants urge the Commission to take into account the substantial imposition that a taking of their cherished homesteads and lands creates. If there were ever a case where the utility should be sent back to re-think its approach, this is the case. The Commission, by affirming the R.D., can eliminate 11.5 miles of new transmission corridor and a new river crossing. After careful factual review the R.D. determined that such destruction truly is not necessary. The transmission backbone and distribution circuits can be improved by strengthening existing conductor and using existing corridors, as PPL already is doing nearby. Affirmance of the R.D. does no harm to the Commission's goals and policies and merely requires applicants to meet long-existing

statutory prerequisites to taking private lands. Protestants respectfully request that PPL's Exceptions be denied in their entirety.

Respectfully Submitted,

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Date: 1-24-13

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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).

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Dated this 24th day of January, 2013

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