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July 27, 2017

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
2nd Floor, Room -N201
400 North Street
Harrisburg, PA 17120

Re: Application for Authorization of Pennsylvania Electric Company
Docket #: A-2016-2565296

Dear Secretary Chiavetta:

Enclosed for filing at the above-captioned proceeding and its consolidated dockets, please find a **Brief in Opposition to the Application of the Pennsylvania Electric Company**. A copy of this Brief has been electronically transmitted to Administrative Law Judge Jeffrey A. Watson and counsel for Mid-Atlantic Interstate Transmission, LLC, which is the successor in interest to the Pennsylvania Electric Company. Hard copies of the Brief have also been mailed to Judge Watson and the parties identified on the attached Certificate of Service.

If you should have any questions, please contact my office. Thank you in advance for your consideration of this matter.

Very truly yours,

Peter J. Carfley

PJC/jat
Enclosure
cc: The Honorable Judge Jeffrey A. Watson (w/ enclosures)
John L. Munsch, Esquire (w/enclosures)
Anthony C. DeCusatis, Esquire (w/enclosures)

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PUBLIC UTILITY COMMISSION**

Application For authorization of Pennsylvania Electric Company to site and construct the Bedford North-Central City West 115 kV HV new Transmission line construction project situated in Shade Township, Somerset County and Napier, East St. Clair, and Bedford Townships, Bedford County, Pennsylvania	:	Docket Nos.
	:	A-2016-2565296
	:	A-2016-2565326
	:	A-2016-2565344
	:	A-2016-2565360
	:	A-2016-2565368
	:	A-2016-2565369
	:	A-2016-2565377
	:	A-2016-2565378
	:	A-2016-2565472
	:	A-2016-2565480
	:	A-2016-2565502
Fixed Utility Application	:	A-2016-2565504
	:	A-2016-2565509
Initial Hearing	:	A-2016-2565543
	:	A-2016-2565545
	:	A-2016-2565457
	:	A-2016-2565549
	:	A-2016-2565653
Judge Jeffrey A. Watson	:	A-2016-2565644
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BRIEF IN OPPOSITION TO THE APPLICATION OF
THE PENNSYLVANIA ELECTRIC COMPANY**

AND NOW COMES, Landowners MARTHA L. ANDERSON and JOHN S. ANDERSON, SHIRLEY HUSTON and GARY E. LAMBERT, ALBERT STILES, KEITH A. LOHR and FRITZ LAND HOLDINGS, LP, who by and through their counsel, Peter J. Carfley, Esquire of Lavery Law, PC, file the foregoing Brief in Opposition to the Application of the Pennsylvania Electric Company and in support thereof, set forth the following arguments and legal authority:

I. INTRODUCTION/PROCEDURAL HISTORY

The Pennsylvania Electric Company (hereafter "Penelec"), a subsidiary of the First Energy Corporation, is a public utility and electric distribution company meeting the

requirements and standards of the Pennsylvania Public Utility Commission (hereafter "PUC"). On June 19, 2015, Penelec filed an application with the PUC seeking approval to transfer its transmission assets to an affiliate company, Mid-Atlantic Interstate Transmission, LLC, which is also a FirstEnergy company. The aforementioned application for transfer of the associated assets was approved by the PUC by Order dated August 24, 2016 and transferred all current Penelec assets to its sister company. It is anticipated that all future transmission assets of Penelec, including any future construction projects subject to siting applications will be included within the transfer.

Beginning in or about the Spring of 2015, Penelec began the process of notifying landowners of their desire to construct a new 115 kilovolt electric line through Bedford and Somerset Counties in an attempt to increase service reliability and provide service to new customers in as yet unreached markets. Shortly thereafter, Penelec representatives engaged in property visits and provided designs and specifications for the project, beginning the process of attempting to negotiate an easement agreement with property owners directly affected by the route. Where access was granted by the specific landowners, Penelec also engaged in surveying, core-bore testing and environmental studies to supplement the information needed for the project's application to the Pennsylvania Public Utility Commission.

On or about September 1st, 2016, Penelec filed their Application for Approval to Locate and Construct the Bedford North-Central City West 115 kV HV Transmission Line Project (hereafter "Project") with the Pennsylvania PUC to Docket #: A-2016-2565296 and provided notice to all landowners whose property is required for the route and had yet to reach an agreement for the right-of-ways sought. As part of the application review process, the PUC held a pre-hearing conference on December 5th, 2016, in an attempt to establish which landowners had objections to the Penelec application and to the schedule and expedite the formal hearing. Landowners represented by the under-signed counsel at the conference included Keith A. Lohr, Martha and John Anderson, Shirley Huston and Gary E. Lambert, Albert Stiles, Katherine Zeigler and Fritz Land Holdings, LP. Prior to said pre-hearing conference, each landowner submitted a memorandum outlining their position with regards to the project and the upcoming hearing.

As part of the pre-hearing process, Penelec representatives David W. Parks, Grant Marchewka, Lisa Marinelli, Lawrence P. Mattei, and Barry A. Baker provided written testimony

consistent with 52 Pa. Code § 5.222(C)(3) in support of the Project. In response, landowners, Keith A. Lohr, Michael Anderson (on behalf of his mother and father), Gary Lambert, Albert Stiles, Kim Stiles and Rusty Fritz, also provided written testimony outlining their objections and concerns regarding the Project. In addition, environmental scientist Laura Jackson provided written testimony on the potential presence of a threatened species, the Allegheny Wood Rat, along the corridor Ridge subject to the proposed Project. Ultimately, Grant Marchewka, Barry A. Baker, and Lisa Marinelli as well as previously unidentified Penelec representatives John Toth, Brinton T. McIntosh, Salvatore Quattrocchi and Shawn T. Standish provided written rebuttal testimony in response to the testimony of the landowners.

On May 24th, 2017, formal hearing was held in the PUC's Pittsburgh location on the Penelec application presented for siting of the proposed project. Following the filing of the hearing transcript, an Order was issued setting July 21st, 2017 as the deadline for the submission of briefs by the parties. At the request of the under-signed counsel, a short extension until July 26th, 2017 was granted for brief submissions and this filing is made on behalf of landowners, Keith A. Lohr, Martha and John Anderson, Shirley Huston and Gary E. Lambert, Albert Stiles, and Fritz Land Holdings, LP as support for their opposition and objection to the above-captioned Penelec application as its presented.

II. OVERVIEW OF THE LINE

The Penelec application subject to this proceeding proposes the construction of a new 17.6 mile, 115 kV transmission line from the existing Penelec owned Bedford North substation, located in Bedford Township, Bedford County, Pennsylvania to the existing Penelec owned Central City West substation, located in Central City Borough, Somerset County, Pennsylvania. A portion of the Project will involve rebuilding a section of the existing Penelec owned Bedford North-New Baltimore 115 kV Transmission Line which is located in Napier, East St. Clair and Bedford Townships, Bedford County, Pennsylvania. The Project is scheduled to include approximately 10.4 miles of newly acquired right-of-way with the remaining 7.2 miles using existing Penelec owned right-of-way, which contains the existing section of the Bedford North-New Baltimore line and has been deemed to be in need of upgrade and rebuild. Penelec seeks approval of the Project as a double-circuit, 115 kV transmission line and plans to have the line in service by summer of 2018.

The existing 7.2-mile portion of the proposed line has varying widths of 100 feet and 120 feet along its corridor, which has been previously cleared of tall vegetation and would require significantly less removing of vegetation than if newly acquired right-of-way area were to be employed for that portion of the Project. The remaining approximately 10.4 miles for the proposed transmission line will require the acquisition of new right-of-way area with a width of 100 feet, except for 0.3 miles of that amount which will necessitate a right-of-way 130 feet in width to traverse the Allegheny Ridge. Within the 10.4 mile corridor that Penelec is attempting to acquire through negotiation or eminent domain, significant tree clearing will be necessary prior to construction and to the detriment of the environment and the individual landowners.

FirstEnergy and PJM Interconnection, LLC, which acts as the Regional Transmission Organization and coordinates the movement of electricity in the Mid-Atlantic region, have allegedly identified possible risks of thermal overloads and low voltage conditions on the existing system that under certain conditions could potentially impact service reliability. Penelec's application also alleges that the Project is needed to mitigate violations of FirstEnergy and PJM's planning criteria. Penelec admits that replacing the existing conductor on the current transmission line would allow the lines to carry more "load" without exceeding their design capacity, thus mitigating the thermal planning criteria violations, but would not sufficiently mitigate the voltage violations.

Penelec retained AECOM, an international engineering and environmental consulting firm, to prepare a comprehensive study of the projected environmental impacts of the Project. AECOM used information obtained during the environmental siting review and field reviews to develop an "opportunity and constraint" map of the Project Study Area and ultimately six potential routes were identified for further study and evaluation. After an analysis completed by AECOM, it was determined that the line proposed in the current Penelec Application was the most technically feasible and cost efficient to construct.

III. LEGAL STANDARD

The Pennsylvania Public Utility Code provides that "every public utility shall furnish, and maintain adequate, efficient, safe and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and

safety of its patrons, employees, and the public.” 66 Pa.C.S.A. § 1501. Upon the application of a public utility for authorization to locate and construct a HV transmission line or any portion thereof, upon approval of the application by the Commission first had and obtained, and upon compliance with existing laws, it shall be lawful for a public utility to commence construction of the HV transmission line or portion thereof. 52 Pa. Code § 57.71.

Among the requirements to be included in an application for siting and construction of an electric transmission line is a statement of the safety considerations which will be incorporated into the design, construction and maintenance of the proposed HV line; a description of studies which had been made as to the projected environmental impact of the HV line as proposed and of the efforts which have been and which will be made to minimize the impact of the HV line upon the environment and upon scenic and historic areas, including but not limited to impacts, where applicable, upon land use, soil and sedimentation, plant and wildlife habitats, terrain, hydrology and landscape and a description of the efforts of the applicant to locate and identify archaeological, geologic, historic, scenic or wilderness areas of significance within 2 miles of the proposed right-of-way and the location and identity of the areas discovered by the applicant. 52 Pa. Code § 57.72(c),

Under the PUC’s regulations set forth at 52 Pa.Code § 57.76, the Commission will issue its order, with its opinion, if any, either granting or denying the application, in whole or in part, as filed upon the terms, conditions or modifications, of the location, construction, operation or maintenance of the line as the Commission may deem appropriate. The Commission will not grant the application, either as proposed or as modified, unless it finds and determines as to the proposed HV line unless: (1) there is a need for it; (2) it will not create an unreasonable risk of danger to the health and safety of the public; (3) it is in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth and (4) it will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives.

The Commission’s decision must be supported by substantial evidence, meaning more than a mere trace of evidence or suspicion of the existence of a fact sought to be established. Lyft, Inc. v. Pennsylvania Public Utility Commission, 145 A.3d 1235 (2016). Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Phila. Gas Works. Pennsylvania Pub. Util. Comm’n, 898 A.2d 671, 675 n. 9

(Pa.Cmwlth. 2006). The party seeking affirmative relief from the Public Utility Commission bears the burden of proving its claims with competent evidence; that the record may contain evidence that supports a different result than that reached by the PUC is irrelevant so long as the record contains substantial evidence supporting the decision. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); Wheeling v. Pa. Pub. Util. Comm'n, 778 A.2d 785 (Pa.Cmwlth. 2001). As the applicant in this proceeding, Penelec has the burden to prove by a preponderance of the evidence that it is entitled to the relief it is seeking. See Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlth 1990).

IV. ISSUES ADDRESSED

Whether there is a present and future need for the proposed HV line in furnishing service to the public.

Suggested Answer: No.

Whether the proposed HV line will create an unreasonable risk of danger to the health and safety of the public and the safety of the proposed HV line.

Suggested Answer: Yes.

Whether the proposed HV line is in compliance with applicable statutes and regulations providing for the protection of the natural resources of the Commonwealth.

Suggested Answer: No.

Whether the proposed HV line will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives, including the impact and the efforts which have been and will be made to minimize the impact.

Suggested Answer: No.

V. ARGUMENT

Present and Future Need for the Proposed HV Line in Furnishing Service to the Public

In its application subject to this proceeding, Penelec states that First Energy and PJM Interconnection, LLC, which acts as the Regional Transmission Organization that coordinates the movement of electricity in the region, have jointly identified the risk of thermal overloads and low voltage conditions on the existing transmission system that under certain conditions could impact service reliability. (Penelec Application at ¶13). Penelec further alleges that the proposed project would address the potential issues and help to safely meet the electrical needs of the region. (Penelec Application at ¶13). Additionally, it is averred that the project is also needed to ensure reliable service under the established industry standards that are employed for transmission planning purposes. (Penelec Application at ¶14).

Despite the aforementioned general allegations, Penelec has not offered, either within its application or through the written testimony of its engineers, David W. Parks, Grant Marchewka and Lawrence P. Mattei, any evidence describing the significance of the “risk” of thermal overloads or low voltage conditions. There is no mention of the results of the PJM findings, only that an annual Regional Transmission Expansion Plan (hereafter “RTEP”) was prepared to identify system reinforcements needed to satisfy the North American Electric Reliability Corporation promulgated standards. (Penelec Application at ¶15 and ¶17). Only after the analysis of the RTEP by PJM was it determined that this Project was needed to mitigate potential violations. Penelec fails to provide any of the findings of the PJM reports in its application and instead asks the Commission to simply accept that the project is needed to remedy potential problems with the existing system that might occur under “certain conditions”. The application or the written testimony of the Penelec representatives is silent as to what the “certain conditions” might be or the likelihood that those conditions would occur.

Without the specifics regarding the size of the potential risk of thermal overloads and low voltage conditions as well as a clear statement of what the potential and likelihood of the conditions that would lead to those system problems, it is an impossibility to determine how necessary the proposed Project actually is. There was no mention within the application or written testimony about prior failures or interruptions to customers currently serviced by the

existing lines. Before the Project can be approved, which will result in major impact and loss to landowners along the route, Penelec must meet its burden and establish that the Project is essential to the continued service of its customers. In the present case, Penelec has failed to provide anything besides self-serving averments in its application that the Project is necessary to sustain their current level of service reliability and as such, the Commission should find that the proposed line has not been adequately supported by genuine proof of its necessity.

Proposed Line's Potential to Create an Unreasonable Risk of Danger to the Health and Safety of the Public

Among the requirements to be included in an application for siting and construction of an electric transmission line is a statement of the safety considerations which will be incorporated into the design, construction and maintenance of the proposed HV line. 52 Pa.Code § 57.72(c)(6). The various representatives for Penelec testified in their written submissions in general terms about completing all work according to established industry standards and in compliance with all federal, state and local statutes, however, at no time did they specify the safety considerations they plan to address through the Project's design or ultimate construction and maintenance. Because this requirement was not met within the formal application as required by the Pennsylvania Utilities Code, the application should not be approved until those specifics have been properly presented and addressed.

However, even assuming for the sake of argument, that it is deemed that the application's single paragraph stating that the design, construction and operation will meet or exceed the requirements specified in the latest version of the National Electric Safety Code and all applicable safety standards established by the Occupational Safety and Health Administration addresses the safety considerations required under Section 57.72(c)(6), there is also no existing plan or mention of the potential safety issues of the individual landowners. Each of the individual land owners who testified at the formal hearing mentioned concerns regarding their personal security caused by the loss of a measure of their privacy as well as the potential for personal liability as a result of trespassers having easier access to their property through the right-of-way corridor. (Specifically, Rusty Fritz testified to his concerns regarding all-terrain vehicles and

personal liability {Transcript at Page 159}; Gary Lambert testified to his issues with hunters trespassing from the adjacent State Game Lands and his potential liability in the case of an accident{Transcript at Pages 180-185}; Albert Stiles stated that the opening of the corridor and the line's proximity to his equipment shed causes privacy and security concerns {Transcript at Page 203} and Kim Stiles mentioned similar fears about all-terrain riders, hunters and addicts disrupting her personal privacy and security because of the increased available access to her property. {Transcript at Page 213}).

Additionally, concerns were raised about personal health conditions that might be affected by the project and its related maintenance. Michael Anderson testified regarding the potential for health issues involving the spraying of herbicides and pesticides and the potential for those chemicals to reach his property's water source which is mere feet from the proposed right-of-way. (Transcript at Pages 138-139 and 142). Gary Lambert expressed apprehension over the spraying of the right-of-way area and the clear-cutting of cherry trees as well as the potential that he would lose his status as a certified organic farmer Penelec sprays with the chemicals they have proposed. (Transcript at Pages 180, 187, 189). Finally, both Albert Stiles and Kim Stiles addressed possible long-term neurological health concerns because of proximity to the line to their residence (Transcript at Page 204 and 212).

While all of the potential concerns raised by the land owners are speculative in nature, Penelec representatives Shawn Standish and Salvatore Quattrocchi failed to give a definitive answer regarding the safety of the chemicals to animals or humans. When asked if the chemicals posed any risk, Mr. Standish would only offer that "The products we use are registered through the EPA for the use in utility right-of-way management." (Transcript at Page 121). Mr. Quattrocchi after being asked if the herbicides would be dangerous to animals or humans if ingested, merely stated that he was not a medical physician but based on the current documentation, the chemicals are not carcinogenic, teratogenic or mutagenic. (Transcript at Page 126-127). Neither of these individuals offered any proof that the products used to prevent the growth of vegetation in the right-of-way are certified as safe for human or animal consumption, which would be a high likelihood given the nature of the properties and their proximity. Keeping in mind that Penelec carries the burden of proving their application satisfies all of the necessary requirements prior to approval, it is not a stretch to require them to provide scientific evidence that the chemical products they intend to use are certified as safe should they be inadvertently

consumed by humans or their livestock. Additionally, there was no evidence provided from FirstEnergy Engineer John Toth, an expert on electric and magnetic fields as well as EMF levels, regarding the safety of the line from causing potential health risks. When asked about health concerns related to proximity to the line, he stated: "My testimony doesn't give a factual statement on health assessments from electric and magnetic fields. I point out where some of the studies have been done and what those studies represent, that there is neither proof that it does cause nor is there proof that it does cause health risks." (Transcript at Page 115). Mr. Toth when further questioned on whether the line would be 100% safe for people's health could not provide a definitive opinion. (Transcript at Page 115).

Given that Penelec's failure to adequately set forth the safety considerations that it intends to incorporate in the design, construction and maintenance of the line in its application along with the inability of its own representatives to state with any certainty that the line itself and the chemicals used to maintain the line's corridor are safe should they be ingested by land owners or their livestock, it appears clear that Penelec has failed to establish that the proposed Project does not create an unreasonable risk of danger to the health and safety of the property owners and the general public itself.

Proposed Line's Compliance with Applicable Statutes and Regulations Providing for the Protection of the Natural Resources of the Commonwealth

Under 52 Pa. Code § 57.72(c)(7), a siting application must contain a description of studies which have been made as to the projected environmental impact of the HV line as proposed and of the efforts which have been and which will be made to minimize the impact of the HV line upon the environment and upon scenic and historic areas, including but not limited to impacts, where applicable, upon land use, soil and sedimentation, plant and wildlife habitats, terrain, hydrology and landscape. The description of the studies undertaken and proposed in the future is a requirement of the application process and the omission of said information should render the application invalid.

Here, Penelec has failed to adequately provide any specific reference to studies that they have completed which would evaluate the environmental impact of the proposed HV line. In fact, Barry Baker, a Penelec witness and an employee with AECOM, the organization charged with identifying potential routes for the Project, stated through his direct testimony that

evaluation of potential impacts is done by accessing federal, state and county clearinghouses. (Transcript at Page 67). After the initial evaluation of the aforementioned clearinghouses, Penelec attempts to conduct field studies on the "impact area", however, as Mr. Baker testified to, they are limited to the use of public or existing right-of-ways and the feedback of land owners at the community outreach meetings. (Transcript at Page 69). Given that a large majority of properties along this project are farms or parcels of significant acreage, it would be impossible without the land owner's permission to adequately evaluate concerns such as hydrology, plant and wildlife habitat and landscape. Only once a route is proposed and selected are the required wetland delineations and T & E studies completed, but to sufficiently complete those evaluations, Penelec would need access permission from the land owners. (Transcript at Page 71). Without the grant of access from the land owners, Penelec would have no right to enter portions of the property and could not make a true and satisfactory evaluation of any potential impact from the proposed Project.

By the admission of Penelec's agent, they evaluate the potential environmental impact by viewing available maps, consulting with federal and state agencies as well as land owners who choose to attend and share information at the community outreach sessions and by viewing properties from public roadways. (Transcript at Page 67 and 75). Unfortunately, the Pa. Code requires a description of the studies completed, prior to the approval of the application by the Commission and Penelec has either not completed the necessary testing or been unable to complete the testing due to lack of access. It should not be sufficient to merely rely on existing reports, often not intended to provide the same information or detail as is required for site approval. Likewise, holding a community outreach program over two consecutive days cannot be deemed reliable to base a conclusion on the potential environmental impact. (Transcript at Page 71). Mr. Baker explained the process by which field tests are completed by stating: "Again, we propose a route. And then once we have access, later on, we will conduct the required field tests" (Transcript at Page 71).

However, there are two major problems with this procedure. First, the Pennsylvania Utilities Code requires that a description of the tests and studies completed be provided within the application not after the proposed route has been selected. And secondly, Penelec or a similarly situated public utility does not possess rights to eminent domain and with it the ability to access the property prior to the filing of the declaration of taking until the Commission has

issued a final Order approving the project. 15 Pa.C.S.A. § 1511(c). Without the ability to fully access the property and the proposed route, there is no way an accurate assessment of the potential environmental impact can be made. In this case, Penelec has not satisfied the requirement that a description of their relevant studies be included within the application and they readily admit that they have not been able as of yet, to complete the required field studies, calling into question their statements that the route chosen will not present any significant environmental impact. When weighing the lack of reliability of their information due to limitations on the ability to access the properties and applying the burden of proof assigned to the application's approval, Penelec's application as it is currently proposed must be denied.

Proposed Line's Adverse Environmental Impact, Considering the Electric Power Needs of the Public, the State of Available Technology and the Available Alternatives, Including the Impact and the Efforts Which Have Been and Will Be Made to Minimize the Impact.

As previously noted, a siting application must contain a description of studies which have been made as to the projected environmental impact of the HV line as proposed and of the efforts which have been and which will be made to minimize the impact of the HV line upon the environment and upon scenic and historic areas, including but not limited to impacts, where applicable, upon land use, soil and sedimentation, plant and wildlife habitats, terrain, hydrology and landscape. 52 Pa. Code § 57.72(c)(7). In addition, a description of the efforts of the applicant to locate and identify archaeologic, geologic, historic, scenic or wilderness areas of significance within 2 miles of the proposed right-of-way and the location and identity of the areas discovered by the applicant. 52 Pa. Code § 57.72(c)(8).

In the present case, Penelec has fallen short of its requirements by failing to include sufficient proof of the necessary tests and studies currently completed for which they base their averments that the proposed route will have a minimal overall impact on the current land owners. Without adequate access to all relevant portions of the proposed route, it is impossible to fully comprehend the possible issues. Penelec attempts to use its own self-serving statements and those of its contractor AECOM to somehow establish that a full and thorough evaluation of each route was carried. On the contrary, with just a brief, cursory review of the "Weighted Metrics

and Weighted Totals for Alternate Routes” included as Table 5-3 of Exhibit 8 of the Penelec Application, it becomes clear that the most important factors considered in the route selection process are cost and convenience of roadways. Penelec pays lip service to the environmental concerns and bases their conclusion on information that is incomplete to the detriment of each of under-signed land owners. In fact, among the six different route alternatives, the route selected and presented for approval in their application has the highest number of residences within 300 feet of the proposed center line; has the highest number of housing developments within 300 feet of the proposed center line and has the largest amount of acres currently state-owned or in conservation programs. In addition, the selected route has the second most linear feet of established wetlands among the options. Where the current route was penalized in the scoring system was by being the least expensive estimated cost and by having the most available roads within a short distance of the center line and requiring the most miles of re-build for the line, a factor that would already be weighed within the project cost. In addition, the proposed route’s valuation also takes a hit for not having a National Registry - Historically Preserved site within 1000 where several of the other routes get significant credit for having one. (Exhibit 5-3 of Exhibit #8 of the Penelec Application, Page 36-37).

It would appear from the analysis of the study’s determination of the optimum route that regardless of what issues would have been presented by the land owners to the Penelec Right-of-Way agents, the proposed route was already selected. Each of the land owners testifying at the formal PUC hearing brought significant individual concerns over the impact this project would have on their property. The Commission is undoubtedly aware of those issues that range from environmental issues to safety concerns to the loss of development potential. Each will be addressed in greater detail below.

Land Use

For each of the land owners who testified at the PUC hearing, issues were raised about the ability to continue to use their properties as they have and the opportunity to explore available development options in the future. In each case, the proposed line through their property poses a huge obstacle to their full enjoyment and use of the land.

The Anderson property is an approximately 130 acre farm used to plant corn, soy beans and hay. (Transcript at Page 136 and 140). The proposed line will result in loss of significant

road frontage and drastically limit the ability to subdivide the property into lots for homes for family members as was always the plan. (Transcript at Page 136-137, 141). The arbitrary location of the line will render the area most likely to be developed unusable and significantly interfere with the enjoyment of the land. (Transcript at Page 141).

Likewise, on the Fritz property, the proposed line will render the property useless for any future development due to loss of the road frontage. (Transcript at Page 153-154, 160). Rusty Fritz brought into question the ability to resell the property at anywhere close to full value. (Transcript at Page 160). Furthermore, the proposed line greatly hampers the owners' Christmas tree farm operation (which will be addressed below in the Wildlife and Plant Habitat Section), while also hampering the recreational purposes such as hunting and hiking that the owners use the cabin for to entertain customers and hold family functions. (Transcript at Pages 154-155, 162).

The property owned by Gary Lambert and Shirley Huston subject to this proposed Project is a family farm for over four generations and consists of nearly 380 acres with part of it being used for pasture, part for crops and another area for a timber management operation. (Transcript at Page 173-175). The route selected in the application will cause a loss of significant timber, a locust grove and a portion of the pasture lands that Mr. Lambert is currently leasing. (Transcript at Page 178-179). In addition, there has been significant initial legwork and planning to explore development options that would include timeshare residences and a golf course. (Transcript at Page 176-178, 191-192). However, the central location on the property as well as the size of the proposed easement will fundamentally alter the initial plans.

For the Stiles property, years of building and related upgrades have gone into a nearly 12,000 square foot log home, which is used by Mr. & Mrs. Stiles as their residence and is valued by the owners in excess of \$2.5 million. (Transcript at Page 195-197, 206). As part of their retirement plan, it was always contemplated that 5 or 6 retirement homes would be built along the property's road frontage and the residences would provide assisted living care to the elderly by Mrs. Stiles, who is a nurse by trade. (Transcript at Page 209-211, 216-217). Based on the location of the proposed line, this long contemplated plan is no longer feasible as the only place to adequately build was along the road and the proposed right-of-way does not leave sufficient area between the road and where the line would be located. (Hearing Exhibit Stiles B). Additionally, the property is used to mine thin venire stone and was contemplated as a future site

for a timber operation and there exists concerns over the loss of portion of the available stone and the ability to get trucks and heavy equipment to different portions of the property to facilitate the business. (Transcript at Pages 195, 200-201). Mr. Stiles testified that the location of the proposed line would prevent all of his future development plans while also increasing noise and safety concerns and destroying the view from his residence that he has put so much work and resources into. (Transcript at Pages 198-199)

Soil and Sedimentation

As noted in other sections of this filing, Penelec has been unable to complete an adequate assessment of the potential soil and sedimentation impacts to the affected properties. Within his testimony on behalf of his family's property, Michael Anderson raised concerns over the loss of crops as well as soil erosion caused by the construction and operation of the line. To date, there has been no study done to determine if his concerns are warranted, however, since Penelec carries the burden of proving little or no impact from the line, the question remains and the application cannot accurately state with any degree of certainty if there will be any impact. (Transcript at Page 139-140).

Plant and Wildlife Habitats

As previously addressed, the Fritz property subject to this proceeding is currently designated as a tree farm used in the raising of a crop of Christmas trees which are harvested on a yearly basis. (Transcript at Page 151 and 155-158). The trees that meet the proper quality for sale at the holiday season are harvested with the remaining trees thinned out and left to grow for use as saw timber and pulp wood. (Transcript at Page 155-158). Among the types of trees grown on the subject property are Scotch Pine, Douglas Fir, Norway Spruce and Frazier Fir with the growing area for the Douglas Fir trees specifically located within the proposed right-of-way. (155-158, 167). While the proposed line would prevent the growing of that type of tree, the vegetation maintenance plan proposed by Penelec would for all intents and purposes render the tree farm unusable. (Transcript at 157-158). Clearly, the proposed Project would cause significant environmental and land use harm to the Fritz Land Holding Company and Penelec attempt to gain approval of its application prior to addressing those issues is in violation of the standards set forth in Chapter 57 of the Pennsylvania Public Utilities Code.

Also addressed by Rusty Fritz at the time of his testimony was his research involving the threatened species, the Allegheny Wood Rat, which has been known to establish a habitat within areas of terrain similar to the Allegheny Ridge. Although he was unable to definitively produce evidence of the wood rat within the proposed route, he was encouraged by the Pennsylvania Game Commission to continue to explore the possibility and share any findings with them. (Transcript at Pages 163-165, 170-171). Similarly, the Game Commission raised the possibility of the endangered Indiana Bat within the proposed route, but Penelec has not completed or memorialized any study, which is required for submission with its application. (Transcript at Pages 166-167)

Terrain

The land owners subject to this proceeding are without adequate knowledge to debate whether any terrain of their properties would be adversely affected by the proposed route location or the actual operation of the line, however, Penelec within its application has failed to address this issue or the potential that the proposed Project may have a negative environmental impact on the property's terrain.

Hydrology

Michael Anderson testified to the potential damage to his family's water source caused by the proposed line. The lone source of water for the property is an artesian well used for the last 18 years where the actual line would run underneath the contemplated HV line with the well head with 50 feet of the proposed right-of-way. There is significant concern about the water flow quantity and water quality being affected and the ability to drill a substitute well since multiple other attempts have failed. (Transcript at Page 138-139, 146-147).

Several of the other land owners who testified at the hearing addressed concerns that the preferred route for proposed project will run through wetlands present on their properties. Rusty Fritz (Transcript at Page 161), Gary Lambert (Transcript at Page 186) and both Albert Stiles and Kim Stiles (Transcript at Pages 201 and 215), all confirmed that significant wetlands are present on their individual properties and Penelec's line would run directly through it. It has been argued on multiple occasions within this Brief that Penelec or its agents have not been able to fully assess the individual characteristics of the various properties because of lack of access. As noted,

an approval of the application and route for the line before the required studies have been completed would violate the provisions of Chapter 57 of the Pennsylvania Public Utility Code.

Landscape

The land owners subject to this proceeding are without adequate knowledge to debate whether the landscape of their properties would be adversely affected by the proposed route location or the actual operation of the line, however, Penelec within its application has failed to address this issue or the potential that the proposed Project may have a negative environmental impact on any archeological areas.

Archeologic Areas

The land owners subject to this proceeding are without adequate knowledge to debate whether any archeological areas would be adversely affected by the proposed route location or the actual operation of the line, however, Penelec within its application has failed to address this issue or the potential that the proposed Project may have a negative environmental impact on any archeological areas.

Geologic Areas

The land owners subject to this proceeding are without adequate knowledge to debate whether any geological areas would be adversely affected by the proposed route location or the actual operation of the line, however, Penelec within its application has failed to address this issue or the potential that the proposed Project may have a negative environmental impact on any archeological areas.

Historic Areas

The land owners subject to this proceeding are without adequate knowledge to debate whether any historical areas would be adversely affected by the proposed route location or the actual operation of the line, however, Penelec within its application has failed to address this issue or the potential that the proposed Project may have a negative environmental impact on any historical areas.

Scenic Areas and Wilderness Areas

Although not accepted by Penelec witness Barry Baker as a scenic or wilderness area, multiple land owners testified about the Allegheny Front Hawk Watch and the potential impact that the project and the line's construction specifications would have on the site and the ability of visitors to use the lookout point for recreational bird and nature watching. Rusty Fritz (Transcript at Pages 158 and 168), Michael Anderson (Transcript at Pages 141-142, 144) and Gary Lambert (Transcript at Page 186) all shared the opinion that the Hawk Watch would be severely impacted should the proposed line be approved and constructed. Mr. Fritz's testimony estimated the proposed HV line structures at approximately 1000 feet from the physical viewing perch upon the Allegheny Mountain. (Transcript at Pages 168). Penelec's position that the Hawk Watch does not constitute a scenic area impacted by the project is another attempt at their self-serving declarations being used to minimize the true environmental of their proposed Project.

Scenic Rivers

The land owners subject to this proceeding are without adequate knowledge to debate whether any scenic rivers would be adversely affected by the proposed route location or the actual operation of the line, however, Penelec within its application has failed to address this issue or the potential that the proposed Project may have a negative environmental impact on any scenic rivers.

The Availability of Reasonable Alternative Routes.

"In *Dickson v. Public Service Com.*, 89 Pa.Super 126, the applicable legal principles are set forth as follows: 'Manifestly, the selection of the route for the lines is a matter for the light company in the first instance and, unless it is shown that it proposes to exercise the powers conferred upon it wantonly, corruptly, capriciously, or that the rights of the land owner have been trifled with or unreasonably disregarded, the law does not contemplate that the Commission should withhold its approval simply because another route might have been adopted.'" *West Penn Power Co. Pennsylvania Public Utility Commission*, 199 Pa.Super. 25 (1962). "Similarly, in

Wilson v. Public Service Com., 89 Pa.Super 352, we pointed out that the Commission “must necessarily have power to pass upon the question of the proper location of the line, especially if an electric company should act wantonly, arbitrarily or unreasonably in selecting a route’.” *Id.*

In the case at bar, land owners have previously debated that the route chosen as the preferred location for the project was in fact picked more for its cost and access efficiency than its alleged minimal impact on the surrounding environment. Based on the evidence provided by the land owners through their formal testimony, it becomes obvious how significant an impact the project will have on the nature and future plans of the properties. Given that each land owner who testified will see development opportunities lost and environmental impact to the parcels, it is argued that the Penelec route selection, especially given the failure to conduct any meaningful and necessary studies, was arbitrary and unreasonable to the concerns of the affected land owners. (See *West Penn Power Co., Supra.*, where the Commission concluded that applicant’s proposed right-of-way location across the property will create a situation involving hazard to the public and, in view of the specialized nature of the property owners’ farm operation, the selection of the route, as proposed herein by applicant, constitutes an unreasonable disregard of the property owners’ rights under the law.) Penelec has chosen to maximize its profits at the expense of the several property owners and should not be rewarded with the approval of their application after their failure to adequately address the specific concerns and provide the necessary information required in the application.

The basis for granting or denying the applications for Eminent Domain.

Under the PUC’s regulations set forth at 52 Pa.Code § 57.76, the Commission will issue its order, with its opinion, if any, either granting or denying the application, in whole or in part, as filed upon the terms, conditions or modifications, of the location, construction, operation or maintenance of the line as the Commission may deem appropriate. The Commission will not grant the application, either as proposed or as modified, unless it finds and determines as to the proposed HV line unless: (1) there is a need for it; (2) it will not create an unreasonable risk of danger to the health and safety of the public; (3) it is in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth and (4) it

will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives.

The Commission's decision must be supported by substantial evidence, meaning more than a mere trace of evidence or suspicion of the existence of a fact sought to be established. Lyft, Inc. v. Pennsylvania Public Utility Commission, 145 A.3d 1235 (2016). Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Phila. Gas Works. Pennsylvania Pub. Util. Comm'n, 898 A.2d 671, 675 n. 9 (Pa.Cmwlth. 2006). The party seeking affirmative relief from the Public Utility Commission bears the burden of proving its claims with competent evidence; that the record may contain evidence that supports a different result than that reached by the PUC is irrelevant so long as the record contains substantial evidence supporting the decision. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); Wheeling v. Pa. Pub. Util. Comm'n, 778 A.2d 785 (Pa.Cmwlth. 2001). As the applicant in this proceeding, Penelec has the burden to prove by a preponderance of the evidence that it is entitled to the relief it is seeking. See Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlth 1990).

The powers conferred by subsection (a) may be exercised to condemn property outside the limits of any street, highway, water or other public way or place for the purpose of erecting poles or running wires or other aerial electric facilities only after the Pennsylvania Public Utility Commission, upon application of the public corporation, has found and determined, after notice and hearing, that the service to be furnished by the corporation through the exercise of these is necessary and proper for the service, accommodation, convenience or safety of the public. 15 Pa.C.S.A. § 1511(c).

In the case at bar, Penelec has failed to meet its burden of proof establishing the proposed Project is needed, will not create an unreasonable risk of danger to the health and safety of the public, is in compliance with the applicable statutes and regulations which provide for the protection of natural resources and will have a minimal adverse environmental impact. As such, the Commission should reject the Penelec application as it is currently presented. Land owners would be significantly harmed by the approval of the Project and the choice of a preferred site has not been perfected by the required environmental and safety studies required in the application process.

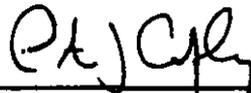
VI. CONCLUSION

Based on all of the foregoing arguments and authorities, Landowners, MARTHA L. ANDERSON and JOHN S. ANDERSON, SHIRLEY HUSTON and GARY E. LAMBERT, ALBERT STILES, KEITH A. LOHR and FRITZ LAND HOLDINGS, LP, respectfully requests that the Pennsylvania Public Utility Commission deny the Application of the Pennsylvania Electric Company, Docket #: A-2016-2565296. Applicant has failed to meet its burden for approval of its proposed project by failing to include required information within the application, selecting a route with unreasonable disregard for the landowners and failing to consider the protection of natural resources and the adverse environmental impact caused by the proposed line.

WHEREFORE, Landowners, request that this Honorable Court enter an Order denying the Application for Approval to Locate and Construct the Bedford North-Central City West 115 kV HV Transmission Line Project and further award reasonable attorney's fees and costs as well as any other relief this matter may require.

Respectfully submitted,

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Dated: July 26, 2017

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APPENDIX "A"

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

PROPOSED FINDINGS OF FACT

1. On or about September 1st, 2016, Penelec filed their Application for Approval to Locate and Construct the Bedford North-Central City West 115 kV HV Transmission Line Project (hereafter "Project") with the Pennsylvania PUC to Docket #: A-2016-2565296 and provided notice to all landowners whose property is required for the route and had yet to reach an agreement for the right-of-ways sought.
2. As part of the application review process, the PUC held a pre-hearing conference on December 5th, 2016, in an attempt to establish which landowners had objections to the Penelec application and to the schedule and expedite the formal hearing.
3. The under-signed counsel represented land owners Keith A. Lohr, Martha and John Anderson, Shirley Huston and Gary E. Lambert, Albert Stiles, Katherine Zeigler and Fritz Land Holdings, L.P. at the pre-hearing conference.
4. Prior to said pre-hearing conference, each landowner submitted a memorandum outlining their position with regards to the project and the upcoming hearing.
5. As part of the pre-hearing process, Penelec representatives David W. Parks, Grant Marchewka, Lisa Marinelli, Lawrence P. Mattei, and Barry A. Baker provided written testimony consistent with 52 Pa. Code § 5.222(C)(3) in support of the Project.
6. In response, landowners, Keith A. Lohr, Michael Anderson (on behalf of his mother and father), Gary Lambert, Albert Stiles, Kim Stiles and Rusty Fritz, also provided written testimony outlining their objections and concerns regarding the Project.
7. Grant Marchewka, Barry A. Baker, and Lisa Marinelli as well as previously unidentified Penelec representatives John Toth, Brinton T. McIntosh, Salvatore Quattrocchi and Shawn T. Standish provided written rebuttal testimony in response to the testimony of the landowners.

8. On May 24th, 2017, formal hearing was held in the PUC's Pittsburgh location on the Penelec application presented for siting of the proposed project.
9. Following the filing of the hearing transcript, an Order was issued setting July 21st, 2017 as the deadline for the submission of briefs by the parties. At the request of counsel, a short extension until July 26th, 2017 was granted for brief submissions.
10. The Penelec application subject to this proceeding proposes the construction of a new 17.6 mile, 115 kV transmission line from the existing Penelec owned Bedford North substation, located in Bedford Township, Bedford County, Pennsylvania to the existing Penelec owned Central City West substation, located in Central City Borough, Somerset County, Pennsylvania.
11. A portion of the Project will involve rebuilding a section of the existing Penelec owned Bedford North-New Baltimore 115 kV Transmission Line which is located in Napier, East St. Clair and Bedford Townships, Bedford County, Pennsylvania.
12. The Project is scheduled to include approximately 10.4 miles of newly acquired right-of-way with the remaining 7.2 miles using existing Penelec owned right-of-way, which contains the existing section of the Bedford North-New Baltimore line and has been deemed to be in need of upgrade and rebuild.
13. Penelec seeks approval of the Project as a double-circuit, 115 kV transmission line and plans to have the line in service by summer of 2018.
14. The existing 7.2-mile portion of the proposed line has varying widths of 100 feet and 120 feet along its corridor, which has been previously cleared of tall vegetation and would require significantly less removing of vegetation than if newly acquired right-of-way area were to be employed for that portion of the Project.
15. The remaining approximately 10.4 miles for the proposed transmission line will require the acquisition of new right-of-way area with a width of 100 feet, except for 0.3 miles of that

amount which will necessitate a right-of-way 130 feet in width to traverse the Allegheny Ridge.

16. Within the 10.4 mile corridor that Penelec is attempting to acquire through negotiation or eminent domain, significant tree clearing will be necessary prior to construction and to the detriment of the environment and the individual landowners.
17. FirstEnergy and PJM Interconnection, LLC, which acts as the Regional Transmission Organization and coordinates the movement of electricity in the Mid-Atlantic region, have allegedly identified possible risks of thermal overloads and low voltage conditions on the existing system that under certain conditions could potentially impact service reliability.
18. Penelec's application also alleges that the Project is needed to mitigate violations of FirstEnergy and PJM's planning criteria.
19. Penelec admits that replacing the existing conductor on the current transmission line would allow the lines to carry more "load" without exceeding their design capacity, thus mitigating the thermal planning criteria violations, but would not sufficiently mitigate the voltage violations.
20. Penelec retained AECOM, an international engineering and environmental consulting firm, to prepare a comprehensive study of the projected environmental impacts of the Project. AECOM used information obtained during the environmental siting review and field reviews to develop an "opportunity and constraint" map of the Project Study Area and ultimately six potential routes were identified for further study and evaluation.
21. After an analysis completed by AECOM, it was determined that the line proposed in the current Penelec Application was the most technically feasible and cost efficient to construct.
22. In its application subject to this proceeding, Penelec states that First Energy and PJM Interconnection, LLC, which acts as the Regional Transmission Organization that coordinates the movement of electricity in the region, have jointly identified the risk of

thermal overloads and low voltage conditions on the existing transmission system that under certain conditions could impact service reliability. (Penelec Application at ¶13).

23. Penelec further alleges that the proposed project would address the potential issues and help to safely meet the electrical needs of the region. (Penelec Application at ¶13).
24. Additionally, it is averred that the project is also needed to ensure reliable service under the established industry standards that are employed for transmission planning purposes. (Penelec Application at ¶14).
25. Despite the aforementioned general allegations, Penelec has not offered, either within its application or through the written testimony of its engineers, David W. Parks, Grant Marchewka and Lawrence P. Mattei, any evidence describing the significance of the “risk” of thermal overloads or low voltage conditions.
26. There is no mention of the results of the PJM findings, only that an annual Regional Transmission Expansion Plan (hereafter “RTEP”) was prepared to identify system reinforcements needed to satisfy the North American Electric Reliability Corporation promulgated standards. (Penelec Application at ¶15 and ¶17).
27. Only after the analysis of the RTEP by PJM was it determined that this Project was needed to mitigate potential violations. Penelec fails to provide any of the findings of the PJM reports in its application and instead asks the Commission to simply accept that the project is needed to remedy potential problems with the existing system that might occur under “certain conditions”.
28. The application or the written testimony of the Penelec representatives is silent as to what the “certain conditions” might be or the likelihood that those conditions would occur.
29. Without the specifics regarding the size of the potential risk of thermal overloads and low voltage conditions as well as a clear statement of what the potential and likelihood of the conditions that would lead to those system problems, it is an impossibility to determine how necessary the proposed Project actually is.

30. There was no mention within the application or written testimony about prior failures or interruptions to customers currently serviced by the existing lines.
31. Before the Project can be approved, Penelec must meet its burden and establish that the Project is essential to the continued service of its customers.
32. The various representatives for Penelec testified in their written submissions in general terms about completing all work according to established industry standards and in compliance with all federal, state and local statutes, however, at no time did they specify the safety considerations they plan to address through the Project's design or ultimate construction and maintenance.
33. Because this requirement was not met within the formal application as required by the Pennsylvania Utilities Code, the application should not be approved until those specifics have been properly presented and addressed.
34. Despite a single paragraph stating that the design, construction and operation will meet or exceed the requirements specified in the latest version of the National Electric Safety Code and all applicable safety standards established by the Occupational Safety and Health Administration addresses the safety considerations required under Section 57.72(c)(6), there is also no existing plan or mention of the potential safety issues of the individual landowners within the Penelec application.
35. Each of the individual land owners who testified at the formal hearing mentioned concerns regarding their personal security caused by the loss of a measure of their privacy as well as the potential for personal liability as a result of trespassers having easier access to their property through the right-of-way corridor.
36. Concerns were raised about personal health conditions that might be affected by the project and its related maintenance.

37. Michael Anderson testified regarding the potential for health issues involving the spraying of herbicides and pesticides and the potential for those chemicals to reach his property's water source which is mere feet from the proposed right-of-way. (Transcript at Pages 138-139 and 142).
38. Gary Lambert expressed apprehension over the spraying of the right-of-way area and the clear-cutting of cherry trees as well as the potential that he would lose his status as a certified organic farmer Penelec sprays with the chemicals they have proposed. (Transcript at Pages 180, 187, 189).
39. Both Albert Stiles and Kim Stiles addressed possible long-term neurological health concerns because of proximity to the line to their residence (Transcript at Page 204 and 212).
40. While all of the potential concerns raised by the land owners are speculative in nature, Penelec representatives Shawn Standish and Salvatore Quattrocchi failed to give a definitive answer regarding the safety of the chemicals to animals or humans.
41. When asked if the chemicals posed any risk, Mr. Standish would only offer that "The products we use are registered through the EPA for the use in utility right-of-way management." (Transcript at Page 121).
42. Mr Quattrocchi after being asked if the herbicides would be dangerous to animals or humans if ingested, merely stated that he was not a medical physician but based on the current documentation, the chemicals are not carcinogenic, teratogenic or mutagenic. (Transcript at Page 126-127).
43. Neither of Standish or Quattrocchi offered any proof that the products used to prevent the growth of vegetation in the right-of-way are certified as safe for human or animal consumption, which would be a high likelihood given the nature of the properties and their proximity.

44. There was no evidence provided from FirstEnergy Engineer John Toth, an expert on electric and magnetic fields as well as EMF levels, regarding the safety of the line from causing potential health risks.
45. When asked about health concerns related to proximity to the line, he stated: "My testimony doesn't give a factual statement on health assessments from electric and magnetic fields. I point out where some of the studies have been done and what those studies represent, that there is neither proof that it does cause nor is there proof that it does cause health risks." (Transcript at Page 115).
46. Mr. Toth when further questioned on whether the line would be 100% safe for people's health could not provide a definitive opinion. (Transcript at Page 115).
47. Given that Penelec's failure to adequately set forth the safety considerations that it intends to incorporate in the design, construction and maintenance of the line in its application along with the inability of its own representatives to state with any certainty that the line itself and the chemicals used to maintain the line's corridor are safe should they be ingested by land owners or their livestock, Penelec has failed to establish that the proposed Project does not create an unreasonable risk of danger to the health and safety of the property owners and the general public itself.
48. The description of the studies undertaken and proposed in the future is a requirement of the 52 Pa. Code § 57.72(c)(7), and the application process and the omission of said information should render the application invalid.
49. Barry Baker, a Penelec witness and an employee with AECOM, the organization charged with identifying potential routes for the Project, stated through his direct testimony that evaluation of potential impacts is done by accessing federal, state and county clearinghouses. (Transcript at Page 67).
50. After the initial evaluation of the aforementioned clearinghouses, Penelec would attempt to conduct field studies on the "impact area", however, as Mr. Baker testified to, they are

limited to the use of public or existing right-of-ways and the feedback of land owners at the community outreach meetings. (Transcript at Page 69).

51. Given that a large majority of properties along this project are farms or parcels of significant acreage, it would be impossible without the land owner's permission to adequately evaluate concerns such as hydrology, plant and wildlife habitat and landscape.
52. Only once a route is proposed and selected are the required wetland delineations and T & E studies completed, but to sufficiently complete those evaluations, Penelec would need access permission from the land owners. (Transcript at Page 71).
53. Without the grant of access from the land owners, Penelec would have no right to enter portions of the property and could not make a true and satisfactory evaluation of any potential impact from the proposed Project.
54. By the admission of Penelec's agent, they evaluate the potential environmental impact by viewing available maps, consulting with federal and state agencies as well as land owners who choose to attend and share information at the community outreach sessions and by viewing properties from public roadways. (Transcript at Page 67 and 75).
55. The Pa. Code requires a description of the studies completed, prior to the approval of the application by the Commission and Penelec has either not completed the necessary testing or been unable to complete the testing due to lack of access. It should not be sufficient to merely rely on existing reports, often not intended to provide the same information or detail as is required for site approval.
56. Holding a community outreach program over two consecutive days cannot be deemed reliable to base a conclusion on the potential environmental impact. (Transcript at Page 71).
57. Barry Baker explained the process by which field tests are completed by stating: "Again, we propose a route. And then once we have access, later on, we will conduct the required field tests" (Transcript at Page 71).

58. Penelec or a similarly situated public utility does not possess rights to eminent domain and with it the ability to access the property prior to the filing of the declaration of taking until the Commission has issued a final Order approving the project. 15 Pa.C.S.A. § 1511(c).
59. Without the ability to fully access the property and the proposed route, there is no way an accurate assessment of the potential environmental impact can be made.
60. Penelec has not satisfied the requirement that a description of their relevant studies be included within the application and they readily admit that they have not been able as of yet, to complete the required field studies, calling into question their statements that the route chosen will not present any significant environmental impact.
61. Penelec has fallen short of its requirements by failing to include sufficient proof of the necessary tests and studies currently completed for which they base their averments that the proposed route will have a minimal overall impact on the current land owners.
62. Without adequate access to all relevant portions of the proposed route, it is impossible to fully comprehend the possible issues. Penelec attempts to use its own self-serving statements and those of its contractor AECOM to somehow establish that a full and thorough evaluation of each route was carried.
63. A cursory review of the "Weighted Metrics and Weighted Totals for Alternate Routes" included as Table 5-3 of Exhibit 8 of the Penelec Application, finds that the most important factors considered in the route selection process are cost and convenience of roadways.
64. Among the six potential routes, the preferred route in the application has the highest number of residences within 300 feet of the proposed center line; has the highest number of housing developments within 300 feet of the proposed center line and has the largest amount of acres currently state-owned or in conservation programs. In addition, the selected route has the second most linear feet of established wetlands among the options.
65. The current route was penalized in the scoring system was by being the least expensive estimated cost and by having the most available roads within a short distance of the center

line and requiring the most miles of re-build for the line, a factor that would already be weighed within the project cost.

66. The proposed route's valuation also takes a hit for not having a National Registry - Historically Preserved site within 1000 where several of the other routes get significant credit for having one. (Exhibit 5-3 of Exhibit #8 of the Penelec Application, Page 36-37).
67. For each of the land owners who testified at the PUC hearing, issues were raised about the ability to continue to use their properties as they have and the opportunity to explore available development options in the future. In each case, the proposed line through their property poses a huge obstacle to their full enjoyment and use of the land.
68. The Anderson property is an approximately 130 acre farm used to plant corn, soy beans and hay. (Transcript at Page 136 and 140).
69. The proposed line will result in loss of significant road frontage and drastically limit the ability to subdivide the property into lots for homes for family members as was always the plan. (Transcript at Page 136-137, 141).
70. The arbitrary location of the line will render the area most likely to be developed unusable and significantly interfere with the enjoyment of the land. (Transcript at Page 141).
71. On the Fritz property, the proposed line will render the property useless for any future development due to loss of the road frontage. (Transcript at Page 153-154, 160).
72. Rusty Fritz brought into question the ability to resell the property at anywhere close to full value. (Transcript at Page 160).
73. The proposed line greatly hampers the owners' Christmas tree farm operation (which will be addressed below in the Wildlife and Plant Habitat Section), while also hampering the recreational purposes such as hunting and hiking that the owners use the cabin for to entertain customers and hold family functions. (Transcript at Pages 154-155, 162).

74. The property owned by Gary Lambert and Shirley Huston subject to this proposed Project is a family farm for over four generations and consists of nearly 380 acres with part of it being used for pasture, part for crops and another area for a timber management operation. (Transcript at Page 173-175).
75. The route selected in the application will cause a loss of significant timber, a locust grove and a portion of the pasture lands that Mr. Lambert is currently leasing. (Transcript at Page 178-179).
76. There has been significant initial legwork and planning to explore development options on the Lambert property that would include timeshare residences and a golf course. (Transcript at Page 176-178, 191-192).
77. The central location on the property as well as the size of the proposed easement will fundamentally alter the initial plans.
78. The Stiles property has involved years of building and related upgrades to produce a nearly 12,000 square foot log home, which is used by Mr. & Mrs. Stiles as their residence and is valued by the owners in excess of \$2.5 million. (Transcript at Page 195-197, 206).
79. As part of the Stiles' retirement plan, it was always contemplated that 5 or 6 retirement homes would be built along the property's road frontage and the residences would provide assisted living care to the elderly by Mrs. Stiles, who is a nurse by trade. (Transcript at Page 209-211, 216-217).
80. Based on the location of the proposed line, this long contemplated plan is no longer feasible as the only place to adequately build was along the road and the proposed right-of-way does not leave sufficient area between the road and where the line would be located. (Hearing Exhibit Stiles B).
81. The property is used to mine thin venire stone and was contemplated as a future site for a timber operation and there exists concerns over the loss of portion of the available stone and

the ability to get trucks and heavy equipment to different portions of the property to facilitate the business. (Transcript at Pages 195, 200-201).

82. Mr. Stiles testified that the location of the proposed line would prevent all of his future development plans while also increasing noise and safety concerns and destroying the view from his residence that he has put so much work and resources into. (Transcript at Pages 198-199).
83. Penelec has been unable to complete an adequate assessment of the potential soil and sedimentation impacts to the affected properties.
84. Within his testimony on behalf of his family's property, Michael Anderson raised concerns over the loss of crops as well as soil erosion caused by the construction and operation of the line.
85. To date, there has been no study done to determine if his concerns are warranted, however, since Penelec carries the burden of proving little or no impact from the line, the question remains and the application cannot accurately state with any degree of certainty if there will be any impact. (Transcript at Page 139-140).
86. The Fritz property subject to this proceeding is currently designated as a tree farm used in the raising of a crop of Christmas trees which are harvested on a yearly basis. (Transcript at Page 151 and 155-158).
87. The trees that meet the proper quality for sale at the holiday season are harvested with the remaining trees thinned out and left to grow for use as saw timber and pulp wood. (Transcript at Page 155-158).
88. Among the types of trees grown on the subject property are Scotch Pine, Douglas Fir, Norway Spruce and Frazier Fir with the growing area for the Douglas Fir trees specifically located within the proposed right-of-way. (155-158, 167).

89. While the proposed line would prevent the growing of the Douglas Fir type of tree, the vegetation maintenance plan proposed by Penelec would for all intents and purposes render the tree farm unusable. (Transcript at 157-158).
90. The proposed Project would cause significant environmental and land use harm to the Fritz Land Holding Company and Penelec attempt to gain approval of its application prior to addressing those issues is in violation of the standards set forth in Chapter 57 of the Pennsylvania Public Utilities Code.
91. Rusty Fritz also offered testimony regarding his research involving the threatened species, the Allegheny Wood Rat, which has been known to establish a habitat within areas of terrain similar to the Allegheny Ridge.
92. Although Mr. Fritz was unable to definitively produce evidence of the wood rat within the proposed route, he was encouraged by the Pennsylvania Game Commission to continue to explore the possibility and share any findings with them. (Transcript at Pages 163-165, 170-171).
93. Similarly, the Game Commission raised the possibility of the endangered Indiana Bat within the proposed route, but Penelec has not completed or memorialized any study, which is required for submission with its application. (Transcript at Pages 166-167).
94. The land owners subject to this proceeding are without adequate knowledge to debate whether any terrain of their properties would be adversely affected by the proposed route location or the actual operation of the line, however, Penelec within its application has failed to address this issue or the potential that the proposed Project may have a negative environmental impact on the property's terrain.
95. Michael Anderson testified that the lone source of water for the property is an artesian well used for the last 18 years where the actual line would run underneath the contemplated HV line with the well head with 50 feet of the proposed right-of-way.

96. There is significant concern about the water flow quantity and water quality of the Anderson well being affected and with the ability to drill a substitute well since multiple other attempts have failed. (Transcript at Page 138-139, 146-147).
97. Several of the other land owners who testified at the hearing addressed concerns that the preferred route for proposed project will run through wetlands present on their properties.
98. Rusty Fritz (Transcript at Page 161), Gary Lambert (Transcript at Page 186) and both Albert Stiles and Kim Stiles (Transcript at Pages 201 and 215), all confirmed that significant wetlands are present on their individual properties and Penelec's line would run directly through it.
99. The land owners subject to this proceeding are without adequate knowledge to debate whether the landscape of their properties would be adversely affected by the proposed route location or the actual operation of the line, however, Penelec within its application has failed to address this issue or the potential that the proposed Project may have a negative environmental impact on any archeological areas.
100. The land owners subject to this proceeding are without adequate knowledge to debate whether any archeological areas would be adversely affected by the proposed route location or the actual operation of the line, however, Penelec within its application has failed to address this issue or the potential that the proposed Project may have a negative environmental impact on any archeological areas.
101. The land owners subject to this proceeding are without adequate knowledge to debate whether any geological areas would be adversely affected by the proposed route location or the actual operation of the line, however, Penelec within its application has failed to address this issue or the potential that the proposed Project may have a negative environmental impact on any archeological areas.
102. The land owners subject to this proceeding are without adequate knowledge to debate whether any historical areas would be adversely affected by the proposed route location or the actual operation of the line, however, Penelec within its application has failed to address

this issue or the potential that the proposed Project may have a negative environmental impact on any historical areas.

103. Although not accepted by Penelec witness Barry Baker as a scenic or wilderness area, multiple land owners testified about the Allegheny Front Hawk Watch and the potential impact that the project and the line's construction specifications would have on the site and the ability of visitors to use the lookout point for recreational bird and nature watching.
104. Rusty Fritz (Transcript at Pages 158 and 168), Michael Anderson (Transcript at Pages 141-142, 144) and Gary Lambert (Transcript at Page 186) all shared the opinion that the Hawk Watch would be severely impacted should the proposed line be approved and constructed.
105. Mr. Fritz's testimony estimated the proposed HV line structures at approximately 1000 feet from the physical viewing perch upon the Allegheny Mountain. (Transcript at Pages 168).
106. The land owners subject to this proceeding are without adequate knowledge to debate whether any scenic rivers would be adversely affected by the proposed route location or the actual operation of the line, however, Penelec within its application has failed to address this issue or the potential that the proposed Project may have a negative environmental impact on any scenic rivers.
107. Penelec has chosen to maximize its profits at the expense of the several property owners and should not be rewarded with the approval of their application after their failure to adequately address the specific concerns and provide the necessary information required in the application.
108. Penelec has failed to meet its burden of proof establishing the proposed Project is needed, will not create an unreasonable risk of danger to the health and safety of the public, is in compliance with the applicable statutes and regulations which provide for the protection of natural resources and will have a minimal adverse environmental impact.

PROPOSED CONCLUSIONS OF LAW

1. Every public utility shall furnish, and maintain adequate, efficient, safe and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa.C.S.A. § 1501.

2. Upon the application of a public utility for authorization to locate and construct a HV transmission line or any portion thereof, upon approval of the application by the Commission first had and obtained, and upon compliance with existing laws, it shall be lawful for a public utility to commence construction of the HV transmission line or portion thereof. 52 Pa. Code § 57.71.

3. The Commission will issue its order, with its opinion, if any, either granting or denying the application, in whole or in part, as filed upon the terms, conditions or modifications, of the location, construction, operation or maintenance of the line as the Commission may deem appropriate. 52 Pa.Code § 57.76(a).

4. The Commission will not grant the application, either as proposed or as modified, unless it finds and determines as to the proposed HV line: (1) that there is a need for it; (2) that it will not create an unreasonable risk of danger to the health and safety of the public; (3) that it is in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth and (4) that it will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives.

5. An application for siting and construction of an electric transmission line shall contain a statement of the safety considerations which will be incorporated into the design, construction and maintenance of the proposed HV line. 52 Pa.Code § 57.72(c)(6).
6. An application for siting and construction of an electric transmission line shall contain a description of studies which had been made as to the projected environmental impact of the HV line as proposed and of the efforts which have been and which will be made to minimize the impact of the HV line upon the environment and upon scenic and historic areas, including but not limited to impacts, where applicable, upon land use, soil and sedimentation, plant and wildlife habitats, terrain, hydrology and landscape. 52 Pa.Code § 57.72(c)(7).
7. An application for siting and construction of an electric transmission line shall contain a description of the efforts of the applicant to locate and identify archeologic, geologic, historic, scenic or wilderness areas of significance within 2 miles of the proposed right-of-way and the location and identity of the areas discovered by the applicant. 52 Pa.Code § 57.72(c)(8).
8. The selection of the route for the lines is a matter for the light company in the first instance and, unless it is shown that it proposes to exercise the powers conferred upon it wantonly, corruptly, capriciously, or that the rights of the land owner have been trifled with or unreasonably disregarded, the law does not contemplate that the Commission should withhold its approval simply because another route might have been adopted. West Penn Power Co. Pennsylvania Public Utility Commission, 199 Pa.Super. 25 (1962).
9. The Commission “must necessarily have power to pass upon the question of the proper location of the line, especially if an electric company should act wantonly, arbitrarily or unreasonably in selecting a route.” West Penn Power Co. Pennsylvania Public Utility Commission, 199 Pa.Super. 25 (1962).
10. The Commission’s decision must be supported by substantial evidence, meaning more than a mere trace of evidence or suspicion of the existence of a fact sought to be established. Lyft, Inc. v. Pennsylvania Public Utility Commission, 145 A.3d 1235 (2016).

11. Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Phila. Gas Works. Pennsylvania Pub. Util. Comm'n, 898 A.2d 671, 675 n. 9 (Pa.Cmwlth. 2006).
12. The party seeking affirmative relief from the Public Utility Commission bears the burden of proving its claims with competent evidence; that the record may contain evidence that supports a different result than that reached by the PUC is irrelevant so long as the record contains substantial evidence supporting the decision. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); Wheeling v. Pa. Pub. Util. Comm'n, 778 A.2d 785 (Pa.Cmwlth. 2001).
13. As the applicant in this proceeding, Penelec has the burden to prove by a preponderance of the evidence that it is entitled to the relief it is seeking. See Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlth 1990).
14. A public utility does not possess rights to eminent domain and with it the ability to access the property prior to the filing of the declaration of taking until the Commission has issued a final Order approving the project. 15 Pa.C.S.A. § 1511(c).
15. In Dickson v. Public Service Com., 89 Pa.Super 126, the applicable legal principles are set forth as follows: 'Manifestly, the selection of the route for the lines is a matter for the light company in the first instance and, unless it is shown that it proposes to exercise the powers conferred upon it wantonly, corruptly, capriciously, or that the rights of the land owner have been trifled with or unreasonably disregarded, the law does not contemplate that the Commission should withhold its approval simply because another route might have been adopted.' West Penn Power Co. Pennsylvania Public Utility Commission, 199 Pa.Super. 25 (1962).
16. "Similarly, in Wilson v. Public Service Com., 89 Pa.Super 352, we pointed out that the Commission "must necessarily have power to pass upon the question of the proper location of the line, especially if an electric company should act wantonly, arbitrarily or unreasonably

in selecting a route'." West Penn Power Co. Pennsylvania Public Utility Commission, 199 Pa.Super. 25 (1962).

17. The powers conferred by subsection (a) may be exercised to condemn property outside the limits of any street, highway, water or other public way or place for the purpose of erecting poles or running wires or other aerial electric facilities only after the Pennsylvania Public Utility Commission, upon application of the public corporation, has found and determined, after notice and hearing, that the service to be furnished by the corporation through the exercise of these is necessary and proper for the service, accommodation, convenience or safety of the public. 15 Pa.C.S.A. § 1511(c).

18. The Commission should reject the Penelec application as it is currently presented. Land owners would be significantly harmed by the approval of the Project and the choice of a preferred site has not been perfected by the required environmental and safety studies required in the application process.

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PUBLIC UTILITY COMMISSION

Application For authorization : Docket Nos.:
of Pennsylvania Electric :
Company to site and construct : A-2016-2565296, et. al.
the Bedford North-Central City :
West 115 kV HV new :
Transmission line construction :
project situated in Shade :
Township, Somerset County :
and Napier, East St. Clair, :
and Bedford Townships, :
Bedford County, Pennsylvania :

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CERTIFICATE OF SERVICE

I, Peter J. Carfley, Esquire, hereby certify that a true and correct copy of the foregoing **Brief in Opposition to the Application of the Pennsylvania Electric Company** 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):

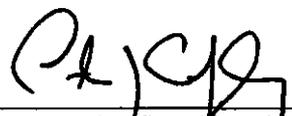
Via Electronic and First Class Mail

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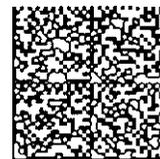
Respectfully submitted,


Peter J. Carfley, Esquire

Dated: July 27, 2017



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