

COMMONWEALTH OF PENNSYLVANIA



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September 29, 2023

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Letter Of Notification Of PPL Electric Utilities Corporation, Filed Pursuant To 52 Pa. Code Chapter 57 Subchapter G, For Approval To Rebuild The Existing Double-Circuit Stanton-Summit #3 And #4 230 kV Transmission Lines Connecting the Stanton 230 kV Substation And A Two-Pole Turn Structure That Are Respectively Located In Luzerne And Lackawanna Counties, Pennsylvania
Docket No. A-2022-3037374

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Reply Brief in the above-referenced proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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The Honorable Darlene Heep (**email only**)
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Certificate of Service

*4858-0166-1059

CERTIFICATE OF SERVICE

Letter of Notification of PPL Electric Utilities :
Corporation, Filed Pursuant To 52 Pa. Code :
Chapter 57 Subchapter G, For Approval To :
Rebuild The Existing Double-Circuit :
Stanton-Summit #3 And #4 230 kV : Docket No. A-2022-3037374
Transmission Lines Connecting the Stanton :
230 kV Substation And A Two-Pole Turn :
Structure that are Respectively Located :
in Luzerne and Lackawanna Counties, :
Pennsylvania :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Reply Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 29th day of September 2023.

SERVICE BY E-MAIL ONLY

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY
COMMISSION

Letter Of Notification Of PPL Electric :
Utilities Corporation, Filed Pursuant To 52 :
Pa. Code Chapter 57 Subchapter G, For : Docket No. A-2022-3037374
Approval To Rebuild The Existing Double- :
Circuit Stanton-Summit #3 And #4 230 kV :
Transmission Lines Connecting the :
Stanton 230 kV Substation And A Two- :
Pole Turn Structure That Are Respectively :
Located In Luzerne And Lackawanna :
Counties, Pennsylvania :

REPLY BRIEF OF THE OFFICE OF
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I. INTRODUCTION

PPL Electric Utilities Company (PPL or Company) seeks approval of its Letter of Notification (LON) for the reconstruction of the Stanton-Summit Line. The Office of Consumer Advocate (OCA) submits this Reply Brief in response to the Main Brief filed by PPL. The OCA will respond only to those matters raised by PPL that were not previously addressed in the OCA's Main Brief or that require clarification. The OCA does not waive its opposition on any contested issues simply because it does not repeat arguments here and incorporates by reference the arguments and analysis provided in its Main Brief.

II. BURDEN OF PROOF

PPL acknowledges that it carries the burden of proof in this proceeding, as the party seeking approval of the proposed Project. PPL M.B. at 5. PPL adds that while the Company bears the burden of proving that the Project satisfies the requirements of 52 Pa. Code Section 57.76(a), and should be approved by the Commission, PPL does not bear the burden of proof with respect to OCA's proposed alternatives. PPL M.B. at 43. In its recitation of applicable caselaw, PPL states that if the proponent makes a *prima facie* case, the "burden shifts to the opponent." PPL M.B. at 5-6.

PPL's burden of proof discussion is incomplete. The OCA's burden of proof discussion as set out in its Main Brief is more detailed and precise and is of particular relevance in this matter. OCA M.B. at 5-8. As discussed herein, PPL has established that *something* needs to be done about the Stanton-Summit Line's deteriorating lattice structures. PPL has failed, however, to establish that the existing Stanton-Summit Line is currently needed. OCA M.B. at 15-20. The record is clear that PPL could remove this line today, eliminating any potential health or safety concerns from the deteriorating lattice structures, and no customers would experience an outage and no overloads would occur. Tr. 32-34; Tr. 77-79; OCA M.B. at 17-18. PPL has not demonstrated that its proposed solution to spend \$37 million is necessary or proper as required by the controlling law and precedent.

Thus, the burden is not on the OCA to prove that PPL's proposed Project is not necessary or not in the public interest. See *MacDonald v. Pa. R.R. Co.*, 36 A.2d 492, 493 (Pa. 1944); *Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528, 530-31 (1980). Instead, Pennsylvania law requires only that the OCA show how PPL failed to meet its burden of proof and failed to explore reasonable alternatives. *Id.* While subtle, this critical distinction shows that parties opposing a utility need only to shift the burden of going forward to prevail. In sum, the burden of proof remains with PPL and PPL has failed to satisfy its statutory burden.

The Pennsylvania Supreme Court has stated that the party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. Even where a party has established a *prima facie* case, the party with the burden must establish "the elements of that cause of action to prevail, precluding all reasonable inferences to the contrary." *Burleson v. Pa. PUC*, 461 A.2d 1234, 1236 (Pa. 1983). Thus, PPL has an affirmative burden to establish the necessity and reasonableness of its request.

The Pennsylvania Supreme Court has also held that the party with the "burden of proof" has a duty to establish material facts by a preponderance of the evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 857 (Pa. 1950). The "preponderance of the evidence" means that one party has presented evidence that is more convincing than the evidence presented by the other party. *Id.*, 70 A.2d at 856.

Additionally, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Mill v. Comm.*, 447 A.2d 1100 (Pa. Cmwlth. Ct. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth. Ct. 1993), 2 Pa. C.S. Section 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment*

Com. Bd. Of Review, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. Ct. 1984).

To the extent that the findings of fact and conclusions of law proposed by PPL in Appendices A and B of its Main Brief are inconsistent with the OCA's recommendations as presented in the OCA's Main Brief and herein, the OCA respectfully requests that the findings and conclusions be modified or denied by the Commission.

III. SUMMARY OF REPLY ARGUMENT

PPL seeks approval of its LON for the reconstruction of the Stanton-Summit Line. PPL argues that the LON should be granted, as there is a need for the project due to the pack rust issue and the deterioration of the towers. PPL also contends that there is no need to study the proposed alternatives to this proposed project. The OCA is not challenging the fact that these structures are deteriorating. As such, the OCA asserts that there is an undisputed need to do something with this transmission line. However, the need to rebuild the line in question as proposed by PPL is in dispute.

PPL has the burden to first establish that there is a need for the *existing* line. The OCA contends that PPL has failed to establish this fact as the Company did not ask PJM to study a retirement scenario. PPL has failed to establish a *prima facie* case that the existing line is in fact necessary. Without this initial showing, PPL cannot satisfy the need requirement for its proposed project. There simply cannot be a "need" to rebuild/replace an existing line that has not been shown to be necessary in the first place. PPL has argued that if the Stanton-Summit Line was completely out of service *and additional contingencies occurred*, there *may* be customer outages, but PPL has not provided any evidence to establish a reasonable likelihood or probability that the "contingency" events which could lead to an outage are likely to occur.

Alternatively, if PPL had established that there is an electrical need for the existing line – such as by seeking a retirement scenario from PJM – then PPL could have submitted PJM's findings as to

other projects or reinforcements, if any, that would be needed if the Stanton-Summit Line was retired. Based on the OCA's past transmission line experiences, other projects or reinforcements that may be needed could very well be located outside of PPL's service territory. In any event, the Commission would have additional evidence to consider as to the merits of PPL's proposed project.

Further, the OCA contends that PPL has failed to investigate and consider reasonable alternatives to the proposed supplemental project. PPL does not dispute that an undergrounding solution would resolve the current situation, but quickly dismissed that option due to upfront construction costs. The OCA contends that PPL's decision as to undergrounding is incomplete, as PPL has not studied the total costs to ratepayers for above ground facilities that are subject to extreme weather, and underground facilities, which are not. That information would aid the Commission in reaching a reasoned decision, but such evidence has not been provided by PPL.

The record shows that PPL has failed to carry its burden of proof. PPL is required to investigate and explore reasonable alternatives before such a supplemental project can move forward, as this Commission has previously held. *See Letter of Notification of PPL*, Dock. No. A-2017-2635709 (Order entered Aug. 3, 2018) (*2018 PPL LON*) at 7 (citing PPL's "failure to fully assess alternative solutions").

IV. REPLY ARGUMENT

A. Introduction

PPL claims that "there is an immediate and undisputed need for the Project." PPL M.B. at 19. PPL is wrong. The OCA agrees that *something* needs to be done with the Stanton-Summit Line due to the deteriorating condition of the steel lattice structures. PPL goes to great lengths in an attempt to show that since OCA has not challenged PPL's assertions that the Stanton-Summit Line is no longer suitable for service, that must mean that OCA agrees the "Project" is needed. PPL M.B. at 21. These are two completely different issues.

Further, PPL argues at length that the OCA is attempting to challenge PJM's processes for evaluating supplemental projects and is also attacking the Commission's siting regulations. PPL M.B. at 36-40. PPL's arguments here are misplaced. The OCA is not seeking to challenge or change PJM's review process in this proceeding. OCA M.B. at 3. The OCA is also not challenging the Commission's siting regulations in this proceeding. *Id.* As the OCA provided in its Main Brief, the Commission needs to be aware of the limited review that PJM provides for supplemental projects like this one, in order to ensure that PPL has adequately and completely complied with the Commission's siting regulations and past Commission precedent. *Id.* at 1-3.

Notwithstanding PPL's efforts to confuse the issues, the OCA's arguments here are simple and straightforward. PPL started from the premise that the existing Stanton-Summit Line is needed. The OCA submits that the record evidence shows otherwise. PPL needs to establish a *prima facie* case that the existing Stanton-Summit Line is electrically needed, before moving on to any discussion of alternatives, including PPL's proposed Project. If it is established that the current line is needed, then PPL bears the burden to show that its Project satisfies the applicable regulations and other laws of the Commonwealth, and primarily satisfies the "need" requirement.

The OCA submits that PPL has failed to carry its burden of proof on these issues and its LON should be denied.

B. PPL Has Failed To Demonstrate A Need For The Proposed Project.

PPL states in its Main Brief that in order to grant a contested letter of notification for the construction and siting of a high voltage transmission line, the Commission must find and determine that there is a need for it. PPL M.B. at 5-6. PPL adds that OCA's challenge is limited to its claim that PPL has not satisfied 52 Pa. Code Section 57.76(a)(1). PPL M.B. at 18-19.

The OCA agrees with PPL that the Commission must find and determine that there is a need for the rebuild of the transmission line in question pursuant to 52 Pa. Code Section 57.76(a)(1) in order

to grant the LON. However, the OCA emphasizes that PPL bears the burden to prove that the need actually exists and PPL has failed to demonstrate a need for the proposed project. In its Main Brief, PPL provides that “the Code does not define ‘need’”. PPL M.B. at 7. The OCA agrees that there is no one definition of need. The OCA submits that the following discussion of need is appropriate to consider, as follows:

In assessing the public need for the Pennsylvania 502 Junction Facilities and the Prexy Facilities, it has become abundantly clear to us that "public need" is an amorphous concept. The inquiry to determine whether a public need for a transmission project exists depends on the specific facts presented regarding each project and upon the future impacts or consequences within a broad context. The impacts and consequences of approving the project and the impacts and consequences of not approving the project, both beneficial and adverse, must be weighed. The Commission must determine, for planning and policy purposes, whether a proposed transmission project is ultimately necessary or proper for the accommodation, convenience and safety of patrons, employees and the public.

In Re Application of TrAILCo, A-110172, Recommended Decision at 80-81 (issued Dec. 5, 2007).

The OCA submits that the “need” inquiry which the Commission should undertake is broader and more searching than PPL’s Main Brief indicates.

1. PPL’s Transmission Planning Process Is Designed To Address The Needs Of Its Own System.

In its Main Brief, PPL explains its own internal planning processes. PPL M.B. at 21-23. PPL also describes how its proposed Project was presented to PJM and was “approved”. *Id.* at 23. PPL also cites its witness, Mr. Smodis, who testified that “PPL Electric’s transmission and distribution planning processes include a holistic review of the needs of its system”. *Id.* at 22.

As discussed earlier, PPL started its planning process from the assumption that the existing Stanton-Summit Line was actually needed, without ever seeking a retirement opinion from PJM. OCA M.B. at 15-20. In this proceeding, PPL has failed to establish an electrical need for the existing line. PPL’s discussion as to PJM’s “approval” of the Project was thoroughly covered in the OCA’s Main Brief, as to the fact that PJM’s review is limited to a “do no harm” study. OCA M.B. at 13-15. The

testimony of PPL witness Smodis is also telling, as there can be no doubt that PPL's Project is intended to address PPL's needs. Conversely, whether the Project meets the "need" requirement is at the heart of the debate.

2. The OCA Is Not Disputing That PPL's Project Would Address The Identified Asset Health Concerns.

a. PPL Electric's Proposed Project Resolves Asset Health Concerns.

PPL describes in detail how its Project will address the asset health concerns due to the pack rust issue on the current lattice structures. PPL M.B. at 24-29. Of course, replacing the entire existing Stanton-Summit Line with new towers and new conductors will "resolve" the rust pack issue of the existing lattice structures. The OCA does not dispute this fact. The dispute here is whether any rebuild is needed at all.

PPL could address the existing asset health concerns by retiring and completely removing the line, or undergrounding the line, or adding sufficient Dynamic Line Rating (DLR) technology to other lines such that this line may not be needed, and/or seeking a retirement option from PJM in order to assess what other reinforcements to the system may be needed in the absence of the existing line. OCA M.B. at 15-27.

b. PPL Has Failed To Show That Its Project Is Necessary To Prevent Violations Of NERC Reliability Standards And Maintain Reliable Transmission Service During Planned And Unplanned Outages.

PPL argues that a complete failure of the existing Stanton-Summit Line "would also likely result in reliability issues." PPL M.B. at 29. PPL also alleges that a complete failure of the existing line could lead to outages in the event of "the next contingency." *Id.* The OCA notes that PPL hedges here by using the word "likely" and also only based on the "next contingency", because PPL has not submitted any studies to definitively show what would happen in the event of a complete failure of the line.

As the record evidence provides, however, PPL's own witnesses confirmed that the existing line could completely fail and no outages would occur and no customers would lose service. OCA M.B. at 17-18. Further, only after the existing line failed and then the "next contingency" occurred, would there be a possibility of overloads. Tr. at 32-34. PPL has provided no evidence in this proceeding as to the probability of such events occurring. OCA M.B. at 19. Similar concerns about speculative occurrences led the Commission to reject a previous PPL LON filing. *2018 PPL LON*.

PPL has failed to provide sufficient evidence to carry its burden of proof as to the need for this Project.

c. PPL Alleges That The Proposed Project Resolves The Needs On A More Efficient And Cost-Effective Basis Than PPL's Proposed Alternatives.

The OCA provided no testimony on this issue and takes no position as to which one of the three alternatives that PPL developed would be the most efficient or cost effective.

3. OCA's Claim That PPL Has Failed To Establish A Need For The Project Is Supported By The Evidence.

PPL contends that the OCA's argument should be rejected for the following four reasons: (1) OCA does not dispute the significant health and public safety needs identified by PPL; (2) OCA's attempt to challenge the existing PJM and Commission requirements and procedures related to HV transmission lines projects is not proper; (3) OCA's legal argument that there is not a need for the Project because certain transmission and non-transmission alternatives should be evaluated is unsound; and (4) OCA's additional alternatives provide no basis for concluding that there is no need for the Project. PPL M.B. at 35-42.

As to PPL's first argument, the OCA is not disputing that the existing lattice structures on the Stanton-Summit Line are no longer suitable for service. PPL's second argument is also misplaced. As the OCA previously stated, the OCA is not attacking the PJM process. Rather, the OCA is arguing that

the Commission should not place any undue reliance on PJM's review of supplemental projects, like the one proposed here. As to the third PPL argument, the Company should be required to evaluate reasonable alternatives and the costs/benefits thereof in order to provide the Commission with a full and complete evidentiary record to review in order to establish whether PPL has met the need requirement, as the Commission clearly held in a previous PPL case:

Under the Commission's siting regulations at 52 Pa. Code § 57.71 *et seq.*, the Company must establish a clear need for the Project.¹ PPL Electric has not adequately proven the need for this project. Specifically, the Company has not established a reasonable likelihood that the alleged events leading to an outage event are likely to occur, nor has it demonstrated that the proposed solution is an efficient and cost-effective choice relative to other alternatives.²

2018 PPL LON at 6 (citations in original). Here, PPL has provided the Commission with only three alternatives, but essentially only one as all of them are based on the same outcome – either rehab, repair or replace the entire Stanton-Summit Line.

In the *2018 PPL LON* case, the Commission provided:

While this history and inventory of past and future transmission project costs do not have a direct relevance to the particular circumstances to this proposed project, they do highlight the need for further scrutiny by all interested parties to ensure the requirements of 52 Pa. Code § 57.72(5) and 52 Pa. Code § 57.76(a)(4) are met, particularly for supplemental projects, and that electric distribution companies in Pennsylvania are expected to provide more information to justify these expenditures going forward.

2018 PPL LON at 7. The OCA submits that PPL has failed to meet the expectations of the Commission as set out in the *2018 PPL LON* matter.

¹ 52 Pa. Code § 57.72(5) states that an application shall contain a general statement of need for the proposed HV line in meeting identified present and future demands for service, of how the proposed HV line will meet that need and of the engineering justifications for the proposed HV line.

² 52 Pa. Code § 57.76(a)(4) requires that the Commission finds and determines that a 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.

As to PPL's fourth argument, that PPL should not be required to explore alternatives presented by the OCA, some clarification is needed. PPL M.B. at 42. In its Main Brief, the OCA provided that after further study of the PPL Rebuttal Testimonies, and discovery responses, the OCA determined that it was no longer advocating for PPL to consider or study a potential 500 kV option, a battery storage option, or the recognition of demand response and aggregation of distributed energy resources as to its proposed Project. OCA M.B. at 1. At present, the OCA submits that the DLR and undergrounding options are still viable and should be analyzed further.

a. PPL's Arguments As To Good Utility Practice Are Misplaced.

At pages 43-44 of its Main Brief, PPL argues that the OCA's witness Mr. Konidena agreed that each of the OCA's proposed alternatives is unreasonable. PPL M.B. at 43-44. PPL's arguments here should be dismissed as they represent a gross mischaracterization of the record. PPL's questioning of Mr. Konidena was comprised of mainly hypothetical scenarios, and also colored by PPL's desire to frame the entire issue as one of "asset health." PPL M.B. at 44.

b. The OCA's Proposed Alternatives Are Reasonable And Should Be Further Evaluated.

PPL argues that DLR technology is not a viable option in this case because you cannot rely on DLR during "an electrical system event". PPL M.B. at 45. PPL has experience using DLR technology. PPL has previously installed DLR technology to address congestion issues. PPL installed DLR on the Juniata and Susquehanna lines to address network congestion. *See* OCA St. 1 at 26; PPL Response to OCA I-7. According to PPL, "DLR has been installed on circuits that would benefit from the allowance of additional load increase: Juniata – Cumberland 1 230kV, Susquehanna – Harwood 1 & 2 230 kV." *Id.* Based on PPL's use of DLR on other circuits, it is hard to see how PPL can summarily dismiss the use of DLR in this situation. Although, PPL's objections appear to be based on the assertion that DLR cannot address the "asset health" issues that PPL has identified. PPL M.B. at 44.

Of course, the OCA is not suggesting that adding DLR technology to compromised lattice structures is a viable option. If PPL used DLRs on other existing transmission lines, some of the lines could be loaded much lighter to the point that they might not even be needed. OCA St. 1 at 26. Mr. Konidena concludes,

Thus, before approving this project, or as a condition of approval if the Commission determined that the rebuild is needed, the PUC should require PPL to provide a complete study on how the use of DLR technology may impact the need for the planned rebuilds of PPL's 230kV system.

OCA St. 1 at 26. Utilizing DLR technology is more cost effective than building new transmission infrastructure. Based on the evidence, the complete loss of the Stanton-Summit Line, followed by the next "contingency" would lead to heavier loads being placed on the surrounding transmission assets. The use of DLR technology on these other lines could help to reduce that loading and avoid any overloads or potential customer outages. OCA.M.B. at 23.

PPL also argues that undergrounding of the Stanton-Summit Line is not a reasonable option as PPL alleges it is more costly and would provide little benefit over above-ground facilities. PPL M.B. at 46-47. The OCA submits that there are insufficient facts in the record to support PPL's arguments on this issue. PPL acknowledges in its Main Brief that PPL has the burden of proof with regard to the need for the Project. PPL M.B. at 43. However, PPL asserts that the OCA has the burden of proof with respect to the proposed alternatives. PPL M.B. at 43. As the Commonwealth Court has stated, "[T]he burden of persuasion never leaves the party on whom it is originally cast, but the burden of production may shift during the course of the proceedings." *Riedel v. County of Allegheny*, 633 A.2d 1325, 1328 n. 11 (Pa. Cmwlth. Ct. 1993).

Assuming that PPL was able to establish a *prima facie* case that the existing transmission line is electrically necessary (the OCA argues it is not), then the Commission can look to potential alternatives as solutions to the existing lattice structure issues. PPL has proposed rebuilding the entire

line. The OCA submits that PPL has not met its initial burden of production to show that its Project is reasonable or necessary, however, in the alternative that the Commission should find PPL has met that burden then the burden of production shifts to the OCA.

The OCA proposed undergrounding the Stanton-Summit Line. OCA M.B. at 23-27. PPL agreed that undergrounding the line would resolve the current concerns over the asset health of the Stanton-Summit Line. OCA St. at 31; PPL Response to OCA III-12. The OCA has shown and PPL agreed that undergrounding is a solution to the identified issue. In the OCA's view, PPL should now have the burden of production to show why undergrounding is not a reasonable alternative. PPL has opined that undergrounding is cost prohibitive. PPL M.B. at 47. Those statements alone, however, do not address the OCA's primary argument.

The Commission cannot fairly compare the benefits of the underground option without knowing the actual economic cost and impact for customers (the total cost of ownership) should an outage occur. OCA St. 1 at 31. PPL has not studied this issue. Tr. at 59; OCA M.B. at 26. The OCA submits that should the Commission find that the Stanton-Summit Line is needed, PPL should be required to provide a study as to the consumer costs of outages in order for the Commission to make a fair evaluation of the available alternatives.

4. Conclusion As To Project Need

Need is a broad and deep inquiry. Here, PPL has failed to adequately support the need for its proposed Project. Accordingly, the Commission should reject the PPL LON.

C. Unreasonable Risk Of Danger To The Health and Safety Of The Public

The OCA is not addressing this issue.

D. Compliance With Applicable Statutes and Regulations Providing For The Protection Of Natural Resources

The OCA is not addressing this issue.

E. Minimum Adverse Environmental Impacts

The OCA is not addressing this issue.

V. CONCLUSION

Consistent with the foregoing, PPL has failed to demonstrate that the proposed Project is needed. PPL's Project as proposed is neither necessary nor proper for the accommodation of the public. As PPL has failed to carry its burden to establish the need of the proposed Project, the Office of Consumer Advocate respectfully requests that the Commission deny the Company's LON regarding the proposal to rebuild the existing double circuit Stanton-Summit #3 And #4 230 kV Transmission Lines.

Respectfully Submitted,

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September 29, 2023
4872-6021-1586