

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of PPL Electric Utilities Corporation :
filed pursuant to 52 Pa. Code Chapter 57, :
Subchapter G, for approval of the siting and :
construction of transmission lines associated : A-2012-2340872
with the Northeast-Pocono Reliability Project :
in portions of Luzerne, Lackawanna, Monroe, :
and Wayne Counties, Pennsylvania :

Petition of PPL Electric Utilities Corporation :
for a finding that a building to shelter control :
equipment at the North Pocono 230-69 kV :
Substation in Covington Township, : P-2012-2340871
Lackawanna County, Pennsylvania is :
reasonably necessary for the convenience :
or welfare of the public :

Petition of PPL Electric Utilities Corporation :
for a finding that a building to shelter control :
equipment at the West Pocono 230-69 kV :
Substation in Buck Township, Luzerne : P-2012-2341105
County, Pennsylvania is reasonably necessary :
for the convenience or welfare of the public :

Application of PPL Electric Utilities Corporation :
under 15 Pa. C.S. §1511(c) for a finding and :
determination that the service to be furnished by :
the applicant through its proposed exercise of the :
power of eminent domain to acquire a certain :
portion of the lands of the property owners listed :
below for siting and construction of transmission :
lines associated with the proposed :
Northeast-Pocono Reliability Project in portions of :
Luzerne, Lackawanna, Monroe, and Wayne :
Counties, Pennsylvania is necessary or proper :
for the service, accommodation, convenience :
or safety of the public :

John C. Justice and Linda S. Justice : A-2012-2341107

Three Griffins Enterprises, Inc. : A-2012-2341114

Margaret G. Arthur and Barbara A. Saurman :

Trustees of the Residuary Trust of James C. Arthur	:	A-2012-2341115
Anthony J. Lupas, Jr. and Lillian Lupas John Lupas and Judy Lupas, Grace Lupas, Eugene A. Bartoli and Robert J. Fankelli	:	A-2012-2341118
Ronald G. Sidovar and Gloria J. Sidovar	:	A-2012-2341120
FR First Avenue Property Holding, LP	:	A-2012-2341123
Transcontinental Gas Pipe Line Corporation	:	A-2013-2341208
William Petrouleas and Joanna Petrouleas	:	A-2013-2341209
Peter Palermo and Francine Palermo	:	A-2013-2341211
Christopher Maros and Melinda Maros	:	A-2013-2341213
Dianne L. Doss	:	A-2013-2341214
Doanld Januszewski	:	A-2013-2341215
International Consolidated Investment Company	:	A-2013-2341216
Bradley D. Hummel	:	A-2013-2341220
Michael Palermo and Joanne Palermo	:	A-2013-2341221
Roberta Searfoss a/k/a Judy Searfoss Executrix of the Estate of Euylla Hughes a/k/a Eylla Hughes	:	A-2013-2341232
John F. and Veronica Iskra	:	A-2013-2341233
Michael A. Mitch and Sue K. Mitch	:	A-2013-2341234
Clifton Acres, Inc.	:	A-2013-2341236
Dietrich Hunting Club	:	A-2013-2341237
Art Borrower Propco 2010-5 LLC	:	A-2013-2341238
NLMS, Inc.	:	A-2013-2341239

US Industrial Reit II	A-2013-2341241
Ronald Solt	A-2013-2341249
Merel J. and Arlene J. Swingle	A-2013-2341250
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Donald W. Henderson and Louis Bellucci	A-2013-2341262
Fr E2 Property Holding LP	A-2013-2341263
Sylvester J. Coccia	A-2013-2341267
Lawrence Duda	A-2013-2341271
Mark M. Mack, J. Dean Mack and Heather K. Mack	A-2013-2341272
Blue Ridge Real Estate	A-2013-2341277
James L. and Michaelene J. Butler	A-2013-2344353
Susan Butler Reigeluth Living Trust	A-2013-2344604
Blueberry Mountain Realty, LLC	A-2013-2344605
Grumble Knot, LLC	A-2013-2344612
Pennsylvania Glacial Till, LLC	A-2013-2344616
Chris and Melinda Maros	
v.	C-2012-2305047
PPL Electric Utilities Corporation	

Joe and Vanessa Caparo

v.

PPL Electric Utilities Corporation

C-2012-227 6713

**NORTH POCONO CITIZENS ALERT REGARDING THE
ENVIRONMENT'S INITIAL BRIEF**

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Dated: August 26, 2013

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I. INTRODUCTION

This matter consists, *inter alia*, of Application A-2012-2340872, the Application of PPL Electric Utilities Corporation (“PPL”) Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of a 230 kV Transmission Line and related Substations and 69/138 kV lines (the “Project”) in Portions of Lackawanna, Luzerne, Monroe, Pike and Wayne Counties, Pennsylvania (referred to herein together with the related applications as the “Application”).

The instant brief is submitted on behalf of North Pocono Citizens Alert Regarding the Environment (“NP CARE”). NP CARE is a tax exempt, non-profit organization incorporated under the Pennsylvania Nonprofit Corporation Law in 1996. Its mission is to preserve the environment in the North Pocono area. Its primary focus is on protecting the headwaters of the Lehigh River and the surrounding watershed lands. NP CARE St. 2, p.2. NP CARE intervened in the Application in order to object to both the proposed Project in its entirety and the Application’s failure to ensure that PPL will sufficiently minimize environmental impacts during construction and maintenance of the proposed Project.

II. HISTORY OF THE PROCEEDING

A. PPL’s Application and NP CARE’s Objections

On December 28, 2012, PPL filed Application A-2012-2340872 with the Pennsylvania Public Utility Commission (“Commission”) for authority to construct transmission lines as part of its Project. Also on December 28, 2012, in conjunction with its application for authority to construct transmission lines associated with the Project, PPL filed petitions, pursuant to 52 Pa. Code §5.41 and 53 P.S. §10619. These petitions request that the Commission find that the

buildings to shelter control equipment at the proposed North Pocono and West Pocono Substations are reasonably necessary for the convenience or welfare of the public and therefore exempt from any local zoning ordinance. *See Application.*

Relevant to the instant brief, on February 27, 2013, NP CARE filed a petition to intervene in the proceeding. The petition alleged that NP CARE is a non-profit organization with approximately 100 members who own property in the area of the proposed Northeast-Pocono Reliability Project, a property owners' association, and visitors who enjoy the public lands and waters in the area of the proposed Northeast-Pocono Reliability Project. The petition alleged that NP CARE also has members who live in PPL's service territory, are customers of PPL, and take electric service from PPL. The petition alleged that the proposed Northeast-Pocono Reliability Project will cause significant environmental damage to the Northeast-Pocono area. *See NP CARE Petition to Intervene and Protest.*

In Prehearing Order #2, dated January 29, 2013, Administrative Judge David A. Salapa consolidated the application, two petitions, two complaints and the eminent domain proceedings for the purposes of discovery, litigation and decision. Administrative Law Judge Salapa conducted a prehearing conference on March 6, 2013 in Harrisburg. In Prehearing Order #3, dated March 13, 2013, Judge Salapa ruled that NP CARE had standing in this matter, and granted NP CARE's petition to intervene. *See Prehearing Order #3.*

Judge Salapa conducted two public input hearings in Thornhurst Township on May 2, 2013. Meanwhile, the parties engaged in discovery. Thereafter, Judge Salapa conducted a formal evidentiary hearing in Harrisburg, PA on July 24 and 26, 2013. Pursuant to Prehearing Order #3, initial briefs are due on or before August 26, 2013.

B. PPL and NP CARE's Concessions

Since the time it submitted the Application, PPL has agreed to several changes to the proposed Project from what was set forth in the Application, and has made one clarification. These should be recognized in the Commission's Order if the Commission approves the Application. Additionally, NP CARE is withdrawing its specific objection to the proposed location of the line on one parcel. The following paragraphs set forth those changes, the clarification and the withdrawn objection.

1. On Parcel 38, PPL Electric will move the proposed route 300 feet southeast from the property line, as shown on PPL Electric Exhibit DLH-5. PPL St. 1-RJ-2, p.2. The proposed realignment on Parcel 38 creates a 300 foot visual buffer between the proposed route and both Phelps Road and an existing walking path from Phelps Road to Choke Creek Falls. *Id.* This modification resolves NP CARE's concerns with the route location on Parcel 38.
2. On Parcel 35, PPL Electric will extend the proposed route approximately 75 west at the northern portion of the route on Parcel 35 and then continue south to tie into the location for the proposed route at the southern part of Parcel 35, as shown on PPL Electric Exhibit DLH-8. PPL St. 1-RJ-2, p.3. This change would allow for greater distance between the proposed line and a parallel riparian (land/stream interface) buffer, while avoiding the wetland on Parcel 35. *Id.* This modification resolves NP CARE's concerns with the route location on Parcel 35.
3. As a result of the changes identified at paragraph 2(a) above, the proposed route will cross from Parcel 38 to Parcel 37 at a more southeast location, as shown on DLH-5. PPL St. 1-RJ-2, p.2. This change would allow for greater distance between the proposed line and the existing walking path from Phelps Road to Choke Creek Falls. *Id.* This modification resolves NP CARE's concerns with the route location on Parcel 37.
4. NP CARE withdraws its objection to the proposed location of line on Parcel 43.
5. The Commission's approval of the Application does not preclude PPL from obtaining through negotiations or condemnation any additional rights of way within the 1,000 foot corridor approved by the Commission, where necessary to comply with the requirements of other agencies. Where necessary to comply with requirements of other agencies, PPL will acquire, by agreement or condemnation, additional ROW within the area of 1000' deemed approval. PPL St. 1-RJ-2 at p.5, 1.4-7 and p.6, 1.4-8; Douglas L. Haupt, Tr.389.
6. PPL agrees to use the Selective Clearing protocol in Attachment 12 of the Application within 150' of all streams within the Border Zone of the Right-of-Way.

As it has in other proceedings, if the Commission approves the Application, then the Commission should adopt the above agreements and changes to the Application as part of its Order. *See, e.g.*, Opinion and Order in A-2009-2082652, regarding the Susquehanna-Roseland Line, dated February 12, 2010; *see also* Opinion and Order in A-2008-2022941, regarding the Proposed Coopersburg # 1 and # 2 138/69 kV Tap, dated July 24, 2009. Appropriate language regarding the above agreements and changes is suggested in ordering paragraphs, *infra*.

III. CONCISE STATEMENT OF THE CASE

PPL has proposed the Project, a 57 mile 230kV transmission line and adjoining right-of-way between an existing substation in Jenkins, PA and a planned substation in Paupack, PA, and rebuilding of the existing Peckville to Honesdale transmission line. The new transmission line will also be connected with other existing transmission lines by constructing a substation in West Pocono and a 69kV/138kV connector line, and constructing a substation in North Pocono and a 69kV/138kV connector line with the existing Gouldsboro substation. NP CARE St. 4, pp.2-3.

The project between Jenkins and Paupack, with substations and connector lines, will involve the clearing of a 150 foot right-of-way (Attachment WHE-B, Int. Set I, R.5) and erection of 113 steel poles/towers (Attachment WHE-B, RPD. Set I, R.34) that will be on average 145 feet tall, and stringing of the transmission lines. The 69kV/138kV line cleared right-of-way will generally be 100 feet wide, but a large portion of the 69kV/138kV lines leaving the North Pocono substation will exist in parallel; therefore the cleared right-of-way will be 225 feet (in some places PPL states it will be 200 feet). The project will also require maintenance in perpetuity. The proposed Alternative D1 will cross the Pocono Plateau in Luzerne and Lackawanna County. NP CARE St. 4, pp.2-3.

A number of individuals at the Public Input Hearings on May 2, 2013 testified in opposition to the Project. Utilizing some of that testimony, the Office of Consumer Advocate has challenged the need for the Project and provided viable alternatives to the Project. NP CARE supports the position of the Office of Consumer Advocate in challenging the need for the Project and presenting alternatives to the Project. NP CARE therefore adopts those positions and arguments by reference, including that public testimony. NP CARE St. 2-R, p.3.

With the above in mind, NP CARE's testimony and brief are focused on opposing only activities which are proposed to occur at a portion of the route and not the whole route for the Project. NP CARE has limited its review and testimony to: 1) the West Pocono to North Pocono Segment, 2) the West Pocono Substation and its associated 69/138 kV Connector Lines, and 3) the North Pocono Substation and its associated 69/138 kV Connector Lines. NP CARE St. 2-R, p.1. By so doing, NP CARE is focusing its case in the area it has worked diligently to protect from environmental degradation – the North Pocono area. *Id.*

IV. SUMMARY OF DISCUSSION AND ARGUMENT

PPL bears the burden of proving by a preponderance of the evidence that it is entitled to have its Application approved. Its supporting evidence must be substantial, i.e., not merely a mere trace or suspicion of each material fact, but solid proof.

The applicable Pennsylvania regulation, 52 Pa. Code § 57.76 (a)(4), prohibits the Commission from approving the Application unless the proposed Project will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives. PPL must therefore analyze impacts of the proposed Project, and must demonstrate that every reasonable effort has been made to keep

impacts to a minimum. PPL must also demonstrate that the remaining harms are clearly outweighed by the benefits to be derived from the Project.

The Project is to be located in a nearly pristine area of the Commonwealth, one wherein government and private organizations have made substantial efforts to set aside land and classify waters for perpetual protection. Unfortunately, PPL's testimony and exhibits barely mention many environmental attributes of the Project area. PPL's testimony and exhibits also fail to describe the Project's impact on those attributes, or what efforts that will be made to minimize those impacts. This failure renders PPL's Application deficient, and precludes the Commission from making the necessary determination under 52 Pa. Code § 57.76 (a)(4) that the proposed Project will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives.

PPL claims that all environmental impacts will be addressed by other agencies in subsequent approval applications. PPL St. R-4-2, p.6. However, this ignores the fact that those agencies have jurisdictional limits, and that PPL has a separate obligation to minimize impacts which are outside the jurisdiction (outside the statutes and regulations) of other agencies, and to the extent that the requirements of those agencies are insufficient to minimize impacts. As set forth more fully below, these impacts include vegetation management practices, impacts to streams, wetlands and vernal (occurring primarily in the Spring season) pools, impacts to species and communities of special concern on private lands, and other impacts that for various reasons are not, or are not sufficiently, regulated by other agencies. PPL has failed to evaluate and demonstrate minimization of such impacts. Accordingly, PPL's Application should be denied. Alternatively, if the Commission does grant the Application, the Commission should impose conditions set forth herein to ensure minimization of environmental impacts.

V. DISCUSSION AND ARGUMENT

A. LEGAL STANDARD

1. PPL Bears the Burden of Proof in this Matter

As the proponent of a rule or order, PPL bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a). As a fundamental rule, “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence means that PPL must present evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. *See Se-Ling Hosiery v. Marquies*, 364 Pa. 45, 70 A.2d 854 (1950) (emphasis added). Finally, the Commission’s decision on an application must be supported by substantial evidence in the record. A mere trace of evidence or a suspicion of the existence of a fact sought to be established will not suffice. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980) (emphasis added).

2. PPL Must Satisfy the “Intensified Burden” Arising Out of Article 1, Section 27 of the Pennsylvania Constitution

Although the degree of PPL’s showing is only a preponderance of the evidence, the required substantive scope and depth of its demonstration is severe. “[U]nder Pennsylvania law every applicant for a siting certificate has an intensified burden to show on the record that the environment has been considered in its planning and that every reasonable effort has been made to reduce the environmental incursion to a minimum.” *See Re Overhead Electric Transmission Lines*, 1978 Pa. PUC LEXIS 203, 51 Pa. PUC 682 (March 1, 1978) at *14 (citing *Payne v.*

Kassab, 11 Pa. Commw. Ct. 14, 312 A2d 86 (1973), *aff'd* 468 Pa. 226, 361 A.2d 263 (1976) and *Pa. DER v. Pa. PUC*, 18 Pa Commw Ct. 558, 335 A2d 860 (1975), *aff'd per curiam* 473 Pa. 378, 374 A.2d 693 (1977)) (emphasis added).

This “intensified burden” arises out of Article 1, Section 27 of the Pennsylvania Constitution. Article 1, Section 27 states:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

Pa. Const. art.I, § 27. To satisfy this constitutional requirement, the Pennsylvania Courts have established a three-part test, first enunciated in *Payne v. Kassab, supra*, which requires as the following:

(1) Was there compliance with all applicable statutes and regulations relevant to the protection of the Commonwealth’s public natural resources? (2) Does the record demonstrate a reasonable effort to reduce the environmental incursion to a minimum? (3) Does the environmental harm which will result from the challenged decision or action so clearly outweigh the benefits to be derived therefrom that to proceed further would be an abuse of discretion?

Pa. DER, supra, 18 Pa Commw Ct. at 567, 335 A2d at 865.

3. PPL Must Satisfy the Electric Transmission Siting and Construction Regulations

The Commission crafted siting and construction regulations intended to encompass the elements of the three part test of *Payne v. Kassab*. Those regulations are codified at 52 Pa. Code Part I, Subpart C, Chapter 57, Subchapter G, entitled “Commission Review of Siting and Construction of Electric Transmission Lines” (the “Siting and Construction Regulations”). When it adopted the Siting and Construction Regulations, the Commission stated that the demonstrations a utility must make pertain not only to the proposed means of addressing

electricity needs but also to the proposed location of siting the proposed line, and the proposed manner of construction and maintenance. The Commission stated:

It is essential in the siting, construction, and maintenance of overhead electric transmission facilities to minimize any adverse effect upon the environment and upon the quality of human life in the area in which new facilities will be located, and to minimize any potential hazards to public health and safety.

Re Proposed Electric Regulation, 49 Pa. P.U.C. 709, 710 (1976) (emphasis added).

The relevant provisions of the Siting and Construction Regulations therefore require the following of the Commission before it can approval an application:

§ 57.76. Determination and order.

(a) The Commission will not grant the application, either as proposed or as modified, unless it finds and determines as to the proposed HV line:

...

(3) That it is in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth.

(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.

52 Pa. Code § 57.76 (emphasis added).

Pennsylvania's Statutory Construction Act is instructive here. The rules of statutory construction and interpretation apply equally to regulations. *Presock v. Department of Military and Veterans Affairs*, 855 A.2d 928, 931 (Pa. Cmwlth. 2004). "The object of all interpretation is to ascertain and effectuate the intention of the General Assembly or, in this instance, the PUC." *Energy Conservation Council of Pennsylvania v. Public Utility Commission*, 995 A.2d 465, 483 (Pa. Commw. 2010) (citing Section 1921(a) of the Statutory Construction Act of 1972, 1 Pa. C.S. § 1921(a)). "When the words of the regulation are clear and free from ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." *Id.* (citing 1 Pa. C.S. § 1921(b)). Additionally, the intent of a statute is that the entire statute be given effect. 19 Pa. C.S. §1922.2.

Applying the Statutory Construction Act to 52 Pa. Code § 57.76, the unambiguous language of Section 57.76(a)(4) requires that an applicant not only must demonstrate compliance with applicable statutes and regulations, but additionally demonstrate that the siting, construction and maintenance will have minimum adverse environmental impacts, to the extent that actions to minimize those impacts will not interfere with the electric power needs of the public and can be achieved using available technologies and available alternatives.

PPL took the position in its testimony that minimization of environmental impacts merely requires compliance with the statutes and regulations of other agencies. Of course, if this were true, it would render 52 Pa. Code Section 57.76(a)(4) of no effect. Thus, PPL's interpretation is mistaken. That provision means just what it says – that the siting and construction of the proposed line must achieve minimum adverse environmental impacts, even with respect to impacts that are not governed by existing statutes and regulations.

Consistent with this demonstration the Siting and Construction Regulations place on applicants, the Commission stated that applications cannot be approved unless the applicant demonstrates that “the environmental harm is clearly outweighed by the benefits to be derived from the facilities to be constructed.” *Re Proposed Electric Regulation* at 712 (emphasis added).

The Commission has indicated the types of evidence it will consider to determine whether the above demonstrations have been made. The Siting and Construction Regulations state:

§ 57.75. Hearing and notice.

...

(e) At hearings held under this section, the Commission will accept evidence upon, and in its determination of the application it will consider, inter alia, the following matters:

(1) The present and future necessity of the proposed HV line in furnishing service to the public.

...

(3) The impact and the efforts which have been and will be made to minimize the impact, if any, of the proposed HV line upon the following:

- (i) Land use.
- (ii) Soil and sedimentation.
- (iii) Plant and wildlife habitats.
- (iv) Terrain.
- (v) Hydrology.
- (vi) Landscape.
- ...
- (x) Scenic areas.
- (xi) Wilderness areas.
- (xii) Scenic rivers.

(4) The availability of reasonable alternative routes.

52 Pa. Code § 57.75 (emphasis added).

To boil the analysis down to its fundamental point, “the regulations do not demand “no impact” by a project; rather, it requires a ‘minimum’ impact.” *Energy Conservation Council*, 995 A.2d 465, 482 (emphasis added).

Where the Commission concludes that an Application lacks sufficient information or fails to propose necessary activities, the Commission may impose conditions on its approval. *Energy Conservation Council*, 995 A.2d 465, 479. In *Energy Conservation Council*, the Commission issued conditions requiring the applicant to perform environmental studies and to report the results to the Commission. *Id.* The Commission further required the applicant to prepare and submit to the Commission mitigation plans to address impacts revealed in those environmental studies. *Id.* Finally, the Commission required the applicant to file with the Commission all required environmental permits from state and federal agencies before commencing construction of the proposed project. *Id.* The Court upheld these conditions pursuant to Section 1103(a) of the Pennsylvania Public Utility Code, specifically authorizes the Commission to “impose such

conditions as it may deem to be just and reasonable” when granting a certificate. *Id.*; 66 Pa. C.S. § 1103(a).

The Court in Energy Conservation Council held that:

the conditions the PUC imposed requiring TrAIL Co. to perform additional studies and submit the results of those studies, as well [as] all environmental permits obtained from federal and state government agencies, to the PUC before commencing construction on the 502 Facilities ensure the minimization of the environmental impact....

Id. at 482 (emphasis added). Thus, the Court has made clear both that the applicant must ensure minimum impacts, that the Commission may require further studies, plans and activities to do so, and that compliance with the regulations of other agencies is not always enough.

B. THE APPLICATION IS DEFICIENT AND SHOULD BE DENIED OR AT LEAST SUBJECT TO CONDITIONS

1. The Headwaters of the Lehigh River Present A Unique Natural Environment Not Ordinarily Encountered in Transmission Line Siting and Construction Applications, and Require Protection

The proposed Project would cross approximately thirty Exceptional Value (“EV”) streams in a portion of the upper Lehigh River basin in which lie the headwaters of the Lehigh River. NP CARE St. 2, p.6; NP CARE St.2, Attachment BLS – 1. They are part of the network of EV streams that qualified to receive the designation of “Exceptional Value” pursuant to 25 Pa. Code Chapter 93, on the basis of exceptional ecological significance. NP CARE St. 2, pp.4-6.

The EV designation is very rare. The section of the Lehigh River and its tributaries in Lackawanna County are the only EV streams in Lackawanna County. *Id.*, p.6. In Luzerne County, there is only one other EV stream other than the section of the Lehigh River and its tributaries in Luzerne County. *Id.* Across the Commonwealth, approximately 7% of all stream miles are designated as EV and less than 1% of all stream miles qualify as EV on the basis of exceptional ecological significance. *Id.* In looking at Figure 1 of the Pennsylvania Department

of Environmental Protection's ("PADEP" or "DEP") Water Quality Standards Review Stream Redesignation Evaluation Report, the upper Lehigh River and the streams that feed it from the west (Luzerne and Lackawanna counties) all qualify based on exceptional ecological significance in the area of the proposed PPL HV line, except for Sand Spring Creek which qualifies based on exceptional aquatic life. *Id.*; Attachment BLS – 2.

The Nature Conservancy named the Pocono Plateau and surrounding mountaintop ridges one of the world's "Last Great Places" because it harbors the highest concentration of globally rare plants, animals and habitats in Pennsylvania. *Id.*, p.10, Attachment BLS-6. The Nature Conservancy has also identified this area as critical for conservation because of its extensive intact forest lands. *Id.*, Attachment BLS-7.

In light of the special nature of the environment in the North Pocono area, NP CARE partnered with The Nature Conservancy, the Conservation Fund, Wildlands Conservancy, Monroe County and the Department of Conservation and Natural Resources ("DCNR") to acquire 2,650 acres in the upper Lehigh River watershed and add it to the Lackawanna State Forest. NP CARE St. 2, p.7. Forming what is called the Lehigh River Conservation Corridor, the newly acquired property coupled with the existing conservation lands provides prime upland forest, waterway access, significant wetland acreage and ideal habitat for black bear, bobcat, river otter, coyote, fisher, snowshoe hares and white tailed deer. *Id.*; Attachment BLS – 3.

As just one example of an important effort to preserve undeveloped land, recently DCNR arranged to exchange property interests in Westmoreland County for 376 acres in Thornhurst Township, Lackawanna County. NP CARE St. 2, pp.8-9. In its public notice, DCNR state that the "parcel is adjacent to existing State Forest land, improves public access, and further conserves lands within an exceptional quality watershed." *Id.* DCNR's public notice and map

are included in the record in NP CARE St. 2 as Attachment BLS – 5. *Id.* The land being acquired through this property exchange is along Phelps Road. It is land through which PPL proposes to run its HV line and it is designated as parcel 38 on PPL Pocono Aerial Exhibit B3.

Id.

2. The Project area Consists of Numerous State-Recognized Species of Special Concern and Communities of Special Concern Not Ordinarily Encountered in Transmission Line Siting and Construction Applications, and Require Protection

Within the proposed Project area, significant natural resources, including Species of Special Concern in Pennsylvania such as endangered, threatened, rare or uncommon plants and animals, as well as Communities of Special Concern, occur and will be impacted by the proposed Project. NP CARE St. 3, pp.2-3. These species and community types have been ranked by the Pennsylvania Natural Heritage Program and identified for protection by the Pennsylvania Wildlife Action Plan, which was compiled by the Pennsylvania Game Commission (“PGC”) and the Pennsylvania Fish and Boat Commission (“PFBC”) to provide “a statewide overview of the integrated efforts needed to sustain wildlife and habitat.” NP CARE St.3-R, p.4.

These Species and Communities of Special Concern have been identified in the Project area through available materials, but also largely through the field work of Richard Koval on behalf of NP CARE. *Id.* Mr. Koval’s field work was limited to public lands and a few private lands to which he had access in the proposed Project area. As of June 2, 2013, Mr. Koval personally identified and documented 17 species considered Pennsylvania Species of Special Concern, with the possibility of three additional species. *Id.* at p.3. These were either found within the proposed Right-of-Way or could exist within the proposed Right-of-Way based on having been found in close proximity to the Right-of-Way. *Id.* Mr. Koval also identified several plant communities of special concern within or in close proximity to the proposed Right-of-Way.

Id. at p.9. Finally, Mr. Koval determined that four additional Species of Special Concern also might exist, but that their presence cannot be confirmed until later in the year, due to their life cycle. These include the globally rare Fly-Poison Lily Borer Moth. NP CARE St. 3, p.11.

3. PPL has an Available Alternative to its Vegetation Management Practice of “Scorched Earth” Initial Clearing of all Vegetation, and Should be Required to Use that Alternative Throughout the Right-of-Way

Neither the Application nor any document possessed by PPL or introduced in this matter suggested that PPL intended to conduct full-scale initial clearing of all vegetation. NP CARE St. 1-R, pp.3, 4. PPL admitted this in testimony under oath at the hearing. Tr. 422-32. Rather, PPL’s Application contains Attachment 12, entitled “Specifications for Initial Clearing and Control Maintenance on or Adjacent to Electric Line Right-of-Way through Use of Herbicide, Mechanical and Hand-Clearing Techniques.” *See* Attachment 12 (emphasis added). In Attachment 12, PPL explained that it intended to use the “Wire Zone/Border Zone method” (and in limited circumstances where necessary either Selective Clearing or Restricted Clearing) to manage vegetation within the Right-of-Way. Attachment 12, p.5, Section III.A and Section III.A.1.

More specifically, as Attachment 12 explains, PPL’s Application proposed establishing two zones within the Right-of-Way: an inner zone called the Wire Zone, and an outer zone called the Border Zone. Attachment 12, pp.5-5. Within the Wire Zone, PPL generally proposed preserving all “Small Shrubs” and all “Native Grasses, Ferns and Herbaceous Plants”. *Id.* Within the Border Zone, PPL generally proposed that both “compatible”¹ and “non-compatible” vegetation would be preserved except as necessary to prevent growth into the WSZ by the time

¹ PPL’s Attachment 12 is ambiguous as to the differences in treatment between “compatible” and “non-compatible” species. However, there are a number of additional species which would not grow high enough to pose a clearance threat. These are identified in Appendix RLK-3, and should be included within PPL’s list of “compatible” species. NP CARE St. 3, p. 14

of the next three-year maintenance event. *Id.* The vegetation management area may additionally extend significantly (as much as 50') beyond the specified 150' right-of-way for management of "danger trees". Application, Attachment 12.

In the Application, PPL explained that "where the wire zone/border zone is not appropriate" due to limitations such as "environmental concerns", PPL would employ greater efforts to minimize impacts by employing either "selective clearing" or "restrictive clearing." *Id.* at pp. 6-7. NP CARE St. 1-R, p.4. In such cases, rather than only preserve "Small Shrubs" and "Native Grasses, Ferns and Herbaceous Plants" in the Wire Zone, instead all vegetation in the wire zone is generally treated like vegetation in the Border Zone – the vegetation is to be managed only if it would interfere with the WSZ by the time of the next three-year maintenance event. *Id.* Unfortunately, PPL never defines "environmental concerns", and apparently (as discussed below) never intended to equate it with very much, if any, of the Project area.

NP CARE took issue with the proposal to use the "wire zone/border zone" method, and with the ambiguities in the "selective clearing" and "restrictive clearing" methods. NP CARE St. 1. NP CARE's concerns apply to both the areas along the streams, wetlands and vernal ponds and along the whole Right-of-Way. Evidence from other stream crossings indicates that clearing the vegetation from a stream can alter water quality (total suspended solids, temperature, and flow), physical habitat (substrate particle size, channel morphology), benthic invertebrate community structure and drift (abundance, species composition, diversity, standing crop), and fish behavior and physiology (hierarchy, feeding, respiration rate, loss of equilibrium, blood hematocrit and leukocrit levels, heart rate and stroke volume) (Levesque and Dube 2007). NP CARE St. 4, p.7-8. Changing the vegetation within the right of way adjacent to the stream may result in long-term warming of stream temperatures from removal of the forest canopy, increased

erosion and sedimentation from loss of bank stabilizing vegetation and upslope vegetation, and increased overland flow during storm events, which can increase stream temperature and carry sediments and dissolved chemicals. *Id.*

Additionally, many aquatic organisms found in healthy streams in largely unmodified watersheds in Pennsylvania, such as would be likely be found in the EV and HQ streams of the Pocono Plateau, are sensitive to sediment loading, warming, and changes to the flow regime. *Id.* at pp.8-9. Brook trout are particularly sensitive to changes in land cover and temperature. An increase in temperature may stress brook trout and result in their being replaced by brown trout or rainbow trout, neither of which is native to Pennsylvania, or the complete loss of all trout species (Wenger et al. 2011). In Maryland, brook trout are mostly absent from streams with greater than 4% impervious surface in the watershed (Stranko et al. 2008). *Id.* Aquatic species that build a nest in gravel substrate, such as brook trout, may experience reduced survival through early development due to increased levels of fine sediments (Argent and Flebbe 1999). *Id.* Increased turbidity may also reduce the distance at which brook trout detect prey (Sweka and Hartman 2001). *Id.* Brook trout are also sensitive to changes in flood frequency and intensity, particularly over the winter when embryos are in the gravel (Wenger et al. 2011). *Id.*

Even outside away from streams, wetlands and vernal pools, PPL's plan to conduct full-scale clearing of all vegetation within the Right-of-Way on its face constitutes a profound environmental impact. Pennsylvania's Bureau of Forestry recognizes that:

Most of the forested land in Pennsylvania is second growth. Scattered throughout the forests, however, are large, old trees that were left from the earlier cuttings. These trees usually have many limbs and branches that allow the trees to dominate the forest canopy and are therefore excellent producers of mast. Their numerous limbs provide a variety of roosting sites, and the large trunks may have cavities that animals can use for dens. Many animal species, including barred owls, porcupines, and raccoons, find haven in these trees.

All forest seres or systems are important components of managing state forestlands under an ecosystem management approach. Old growth forests provide ecological niches for a myriad of fauna species. There is generally a substantial level of structural diversity, including vertical diversity and dead and down wood, in old growth forests.

NP CARE St. 3-R, p.15 (citing State Forest Resource Management Plan, <http://www.apps.dcnr.state.pa.us/forestry/sfrmp/flora.htm>).

PPL's full-scale clearing constitutes the complete elimination of existing forest, leaving only grasses, ferns and other herbaceous plants. This full-scale clearing will eradicate the forest land use, eliminate existing habitat, and destroy the visual landscape. It will also allow the introduction of invasive species. NP CARE St. 3-R, p.18. Mr. Koval explained, in addition to its overall impacts, the practice of full-scale clearing has direct impacts on plant Species of Special Concern such as the Balsam Fir, and Communities of Special Concern such as the Hemlock Palustrine Forest and the Coniferous-Broadleaf Palustrine Forest. NP CARE St.3-R, pp.8-10.

The fact that PPL never intended much, if any, of the Project to qualify as "environmental concerns" which would trigger Selective Clearing or Restrictive Clearing became clear well after PPL submitted the Application. During discovery, PPL responded to questions about its clearing protocols with the shocking announcement that, rather than initially employ any of the clearing protocols proposed in Attachment 12, PPL intends to conduct complete, full-scale initial clearing of all vegetation within the right of way, and then follow Attachment 12 only for subsequent maintenance vegetation management. PPL explained that during initial clearing of the entirety of the [entire] Right-of-Way, PPL will remove all trees and shrubs. See PPL's response to Question 17 in the Response to Interrogatories of the North Pocono Citizens Alert , Set I; NP CARE St. 1, p.11.

Not surprisingly, NP CARE took issue with the plan to conduct this full-scale initial clearing. As Ms. Donna Alker testified on behalf of NP CARE, the siting of the lines in Special Protection (Primarily Exceptional Value) watersheds and in riparian buffer and wetland areas, are instances where there are environmental concerns and, as such, Restricted Clearing procedures are more appropriate than the Wire Zone/Border Zone procedures. NP CARE St. 1-R, p.4. The environmental concerns of the negative impacts of vegetation management are applicable to the entire project in the delicate Lehigh River Headwaters of the Pocono Plateau. The entire length of the proposed lines in NP CARE's area of concern are located in special protection watersheds, mostly in exceptional value watersheds, so minimizing the impact to the natural vegetation is important throughout the Right-of-Way. NP CARE St. 1, p.13.

Exhibit DA-R-1, shows the maximum heights of trees that could be preserved on a sample cross-section of the right-of-way using the Selective Clearing and Restrictive Clearing vegetation management procedures set for in Attachment 12. NP CARE St. 1-R, p.5. The diagram presents one scenario at the lowest point of the conductor, based on several assumptions, which are listed on the diagram, including level ground across the entire section. *Id.* As illustrated on the diagram, the vegetation that could remain, while still protecting the WSZ, is significant. *Id.*

There can be no dispute that PPL's "Scorched Earth" practice of initially clearing all vegetation from within the entire Right of Way has significant environmental impacts. As discussed elsewhere in this brief, NP CARE's concerns include thermal impacts, loss of habitat, soil erosion and sediment flow into streams. The land use along the length of the Project consists largely of forested lands, both public and private. *See* Attachment 3, Figures 3-10a and 3-10b of the Application. Once a shrub layer is removed, it will take decades to regenerate in the thin

soils of the Pocono Plateau. In the interim the sensitive ecological communities will be destroyed. NP CARE St. 2, p.16.

Shortly before the hearing in this matter, PPL agreed that, only within 150 feet of streams, PPL will 1) use the Selective Clearing protocol for initial and maintenance vegetation management in the Border Zone, and 2) conduct full-scale initial clearing in the Wire Zone but will leave stumps in place.² See PPL St. 7-RJ at pp.5-6; PPL St. 8-RJ at p5, 1.15-20. The current dispute, therefore, is whether an alternative approach is available to further minimize those impacts in the wire zone and border zone in the remainder of the Right-of-Way (including around EV wetlands and vernal pools) and in the wire zone within 150 feet of streams.

PPL's current proposed vegetation management proposal fails to satisfy 52 Pa. Code § 57.76 (a)(4), because it fails to employ an available alternative to minimize environmental impacts. PPL clearly has another approach – employing Selective Clearing or Restrictive Clearing throughout the Right-of-Way, not just within 150 feet of streams. These clearing protocols, as defined in Attachment 12, allow vegetation to remain in place if it will not interfere with the WSZ. See Attachment 12, p.5. Importantly, these protocols also allow PPL to fully clear defined areas needed for access roads, work areas, and structures. See Attachment 12, p.7. Why this isn't good enough for PPL's proposed Project has never been clear. NP CARE has testified PPL should use this approach. NP CARE St. 1, p.12; NP CARE St. 1-R, p.2. This approach achieves PPL's ultimate goals – ensuring sufficient distance between vegetation and conductors (the Wire Security Zone), and allowing for necessary construction activities. *Id.*

As intimated above, despite now wanting to employ full-scale initial clearing of all vegetation in most areas, PPL still has not provided any documents which explain either the

² NPCARE requests that, if the Commission approves the Application, the Commission include in its Order a condition clarifying and mandating this agreement.

practice of conducting initial full-scale clearing of all vegetation, or which demonstrate that this was required by any governing entity. Even in the face of NP CARE's objections, PPL has made absolutely no demonstration that full-scale clearing of all vegetation is necessary, or that selective or restrictive management is not a reasonably available alternative to initially managing all vegetation in all areas of the Right-of-Way. *See* testimony of Douglas L. Haupt, Tr. 397. The most PPL provides are six unsupported words suggesting why PPL wants to initially clear all vegetation: to "establish the right of way" and for "construction activities." NP CARE St. 1-R, p.6. Despite the ambiguity of these assertions, it appears that, as set forth above, the Selective Clearing and Restrictive Clearing methods already accommodate construction activities by permitting full clearing at defined work areas.

The Commission should not allow PPL, as an afterthought to the Application and without any justification, to conduct this scorched-earth initial clearing of all vegetation within the Right-of-Way. If PPL truly could support these bald assertions, which is arguable at best, then PPL should have decided to do so at the onset, and should have provided support when it submitted the Application. Even now, after development of the record, PPL has still failed to support the idea. Having failed to do so, PPL cannot ask the Commission to blindly follow PPL's unsupported plan. To minimize environmental impacts, the Commission should prohibit this practice of full-scale stripping of all the vegetation within the Right-of-Way. Instead, the Commission should require that PPL use the "Selective Clearing" and "Restrictive Clearing" methods set forth in Attachment 12 of the Application throughout the Right-of-Way, not just within 150 feet of streams.³

³ It bears noting that in an earlier application, PPL agreed to do the following remove only vegetation that has the potential to grow more than 20 feet. *See* Opinion and Order in A-2008-2022941, regarding the Proposed Coopersburg # 1 and # 2 138/69 kV Tap, dated July 24, 2009.

4. Particularly Within 150 Feet of Vernal Pools, Streams and Wetlands, PPL Should be Required to Implement Available Measures to Minimize Environmental Impacts
 - a. PPL Should use Selective and Restrictive Clearing to Minimize Clearing of Vegetation Across the Full Right-of-Way at the Edge of Vernal Pools, Streams and Wetlands

The parties do not really disagree that clearing vegetation from within 150 feet of streams can have some impact on stream temperature. *See* PPL St. 8-R, pp.10-11. On behalf of PPL, Peter S. Foote testified that thermal impacts may occur on at least forty percent of the stream crossing planned for the Project. *Id.* He testified that “The extent of vegetation clearing along the stream course is a major factor in the extent of warming that may occur....” PPL St. 8-R, p.5. As Dr. Eldridge explained in more detail:

Evidence from other stream crossings indicates that clearing the vegetation from a stream can alter water quality (total suspended solids, temperature, and flow), physical habitat (substrate particle size, channel morphology), benthic invertebrate community structure and drift (abundance, species composition, diversity, standing crop), and fish behavior and physiology (hierarchy, feeding, respiration rate, loss of equilibrium, blood hematocrit and leukocrit levels, heart rate and stroke volume) (Levesque and Dube 2007). Changing the vegetation within the right of way adjacent to the stream may result in long-term warming of stream temperatures from removal of the forest canopy, increased erosion and sedimentation from loss of bank stabilizing vegetation and upslope vegetation, and increased overland flow during storm events, which can increase stream temperature and carry sediments and dissolved chemicals.

NP CARE St.4, pp.7-8. Dr. Eldridge went on to explain that:

Many aquatic organisms found in healthy streams in largely unmodified watersheds in Pennsylvania, such as would be likely be found in the EV and HQ streams of the Pocono Plateau, are sensitive to sediment loading, warming, and changes to the flow regime. Brook trout are particularly sensitive to changes in land cover and temperature. An increase in temperature may stress brook trout and result in their being replaced by brown trout or rainbow trout, neither of which is native to Pennsylvania, or the complete loss of all trout species (Wenger et al. 2011). In Maryland, brook trout are mostly absent from streams with greater than 4% impervious surface in the watershed (Stranko et al. 2008). Aquatic species that build a nest in gravel substrate, such as brook trout, may experience reduced survival through early development due to increased levels of fine sediments (Argent and Flebbe 1999). Increased turbidity may also reduce the distance at which brook trout detect prey (Sweka and Hartman 2001). Brook trout are also sensitive to

changes in flood frequency and intensity, particularly over the winter when embryos are in the gravel (Wenger et al. 2011).

Id. at pp.8-9. Accordingly, the parties' disagreement is not over whether there will be impacts, but in the degree and duration of impact, and what should be done about it.

To minimize impacts, Mr. Foote agreed PPL should avoid clearing understory and scrub-shrub vegetation to the stream's edge to maintain shade and minimize thermal impacts to streams. PPL St. 1-R, p.11. As noted *supra*, PPL has available a means of minimizing those impacts. PPL's current proposed vegetation management proposal fails to satisfy 52 Pa. Code § 57.76 (a)(4), because it fails to employ an available alternative to minimize environmental impacts. Particularly within 150 feet of streams, in both the Border Zone and the Wire Zone, PPL should be prohibited from employing full-scale initial clearing, and should be required to employ selective clearing or restrictive clearing as set forth in Attachment 12.

The sensitive nature of the waters in the area of the proposed Project cannot be overstated. Based on the PPL mapping, there are about 30 crossings of special protection streams (perennial streams shown as blue line streams on the USGS maps), the majority of which also have adjacent wetlands associated with them; eight (8) identified wetland crossings/encroachments not related to the identified streams, including three locations where poles will be located in identified wetlands; and two additional riparian buffer encroachments proposed. NP CARE St. 1, p.4. All of the streams that will be impacted are exceptional value (EV) streams with the exception of Emerson Run, Lake Run and Roaring Brook which are classified as high quality, cold water fisheries (HQ-CWF). *See* Table 3-7 in Attachment 3 of the PUC Filing Documents for the PPL Northeast/Pocono Reliability Project. All of the streams are included on the Pennsylvania Wild Trout Waters (Natural Reproduction) list. All of the wetlands are classified as exceptional value (EV) wetlands per 25 Pa. Code Section 105.17(1)(iii). *Id.* at pp.4-5.

Several streams located in the proposed Project Area and classified as EV contain breeding populations of native Brook Trout, such as Choke Creek, Sand Springs Creek, Ash Creek and Lehigh River. NP CARE St. 3, p.11. The Pennsylvania Fish and Boat Commission manages and protects native brook trout and the streams they reside. Ash Creek and Sand Spring Creek are labeled "Class A Wild Trout Streams" for Brook Trout. They are able to sustain a naturally reproducing population of wild trout, and are not stocked. *Id.* At least seven others are Wild Trout Waters which the PFBC has recognized as Stream Sections that Support Natural Reproduction of Trout. NP CARE St. 2, p.10; *see* http://fishandboat.com/trout_repro.htm.

Additionally, as headwater streams, these streams have an immediate and intimate connection with the terrestrial environment, forming an extensive terrestrial/aquatic mosaic. These attributes make headwaters critical to the health of stream networks but also exceedingly vulnerable to degradation when landscapes are altered. Because small streams are so integrated into landscapes, they are most at risk to disturbance, and because of their small size, the impacts of the degradation of a single stream on larger downstream reaches are difficult to observe or quantify. NP CARE St. 4, pp.11-12

Importantly, the cumulative effects of headwater stream degradation on biodiversity and the energy contributions to downstream biota, especially when multiple headwater streams are disturbed and feed into the same larger stream within the watershed network, need to be considered at a watershed scale. *Id.* For example, scientific evidence clearly shows that healthy headwaters — tributary streams, intermittent streams, and spring seeps — are essential to the health of stream and river ecosystems (Kaplan et al. 2008). *Id.* at p.12. The authors point out that evidence demonstrates that protecting these headwater streams with forested riparian buffer zones and protecting and restoring the watersheds in which they arise will provide benefits vital

to the health and well-being of Pennsylvania's water resources and its citizens. Healthy, undisturbed headwaters supply organic matter that contributes to the growth and productivity of higher organisms, including insects and fish. Headwaters also help to keep sediment and pollutants out of the stream system's lower reaches. In addition, headwaters enhance biodiversity by supporting flora and fauna that are uniquely acclimated to this habitat. *Id.* at p.12.

PADEP recognizes that riparian buffer areas provide many benefits relating to the water quality and stream habitat. PADEP indicates that

Riparian buffers play a vital role in mitigating the effects of stormwater runoff from land development activities. Riparian buffers are useful in mitigating or controlling point and nonpoint source pollution by keeping the pollutants out of the water body and increasing the level of instream pollution processing...Riparian buffers can be effective in removing excess nutrients and sediment from surface runoff and shallow groundwater, stabilizing stream banks and shading streams and rivers to optimize light and temperature conditions for aquatic plants and animals. Riparian buffers provide significant flood attenuation and storage functions within the watershed. They prevent pollution both during and after earth disturbance activities and provide natural, long-term sustainability for aquatic resource protection and water quality enhancement. A riparian forest buffer is a specialized type of riparian buffer.

NP CARE St. 1, pp.10-11 (citing the Background and Purpose section of 25 Pa. Code Ch. 102 Rules and Regulations published in Pennsylvania Bulletin, Vol. 40, No. 34, August 21, 2010 on Page 4871).

Similar to EV streams, vernal pools and EV wetlands are important, sensitive ecological areas. Vernal pools are critical breeding habitat for a variety of amphibian species, as well as other animals including dragonflies and damselflies. NP CARE St. 3, p.10. Reptiles such as turtles and snakes frequent vernal pools for refuge and foraging. *Id.* Vernal pools lack state regulation on private land, but they are ranked S3- Vulnerable by the Pennsylvania Natural Heritage Program's Species Ranks and Definitions on their website at <http://www.naturalheritage.state.pa.us/>. The Pennsylvania State Forest Resource Management

Plan found on the webpage at

<http://www.dcnr.state.pa.us/forestry/stateforestmanagement/sfrmp/index.htm> addresses

management and protection of vernal pools, but only those which are located on State Forest lands. It states:

Areas around wetlands, vernal ponds, spring seeps, streams, lakes, ponds, and impoundments should be designated as aquatic habitat buffers. These guidelines provide a standard set of operating procedures to be followed when conducting management activities in or near aquatic habitats on State Forest land. Management efforts should focus on providing connectivity, wildlife habitat, and protecting water quality.

NP CARE St. 3-R, p.10.

According to the Pennsylvania Natural Heritage Program and Pennsylvania Wildlife Action Plan, vernal pools should remain undisturbed, and a forested buffer of at least 300 feet and up to 1,000 feet should be kept undisturbed surrounding the pool. NP CARE St. 3, p.10. Otherwise, excessive timber harvesting, clear cutting and drainage displacement adjacent to vernal pools leads to premature wetland drying and warming of the forest floor, which impacts plants and animals utilizing the pools. *Id.* As just one example, disturbance of vernal pools negatively impacts amphibian Species of Special Concern such as the Four-Toed Salamander. NP CARE St. 3, p.5. Given their sensitivity and importance, Selective Clearing and Restrictive Clearing of these areas are especially appropriate.

PPL's current vegetation management proposal fails to satisfy 52 Pa. Code § 57.76 (a)(4), because it fails to employ an available alternative to minimize environmental impacts. PPL has not seriously demonstrated why it cannot employ its Selective Clearing and Restrictive Clearing methods in these aquatic areas. PPL's argument is that it should simply be left to implement engineered Best Management Practices ("BMPs") applicable to the Project under regulations of

the Department of Environmental Protection – after invoking an exclusion for utility projects. PPL St. 4-R-2, pp.14-15. This argument misses the mark for two reasons.

First, the argument ignores the limitations of engineered BMPs and the fact that they do not completely alleviate impacts. NP CARE St. 1, pp.14-18. As PADEP recognized when it adopted its BMP regulations, “Scientific literature supports the riparian forest buffer (with stormwater entering the buffer as sheet flow or shallow concentrated flow) as the only BMP that can do all of the following: capture and hold stormwater runoff from the majority of storms in this Commonwealth; infiltrate most of that water or transport it, or both, as shallow flow through the forest buffer soils where contaminate uptake and processing occurs; release excess storm flow evenly, further processing dissolved solids and particulate substances associated with it; sequester carbon at significant levels; and improve the health of the stream and increase its capacity to process organic nutrients generated on the site or upstream of the site.” NP CARE St. 1, pp.10-11 (emphasis added). Thus, preserving riparian buffer vegetation is a far better BMP than constructing an engineered substitute.

Second, PPL’s argument ignores that engineered BMPs often fail, and often are not enforced, and their efficacy is not verified by testing. NP CARE St. 1, pp.14-18. In fact, engineered BMP failures are quite common. NP CARE St. 1, p.15. There’s always a chance for failure of engineered BMPs due to lack of proper installation and maintenance, the occurrence of a stormwater event that exceeds the design of the BMPs or other unforeseen circumstances. *Id.*, pp.14-15. This potential is acknowledged by PADEP. In fact, there are two standard notes that are required to be placed on erosion and sediment (“E&S”) Plans to address these circumstances. One reads “Immediately upon discovering unforeseen circumstances posing the potential for erosion and/or sediment pollution, the operator shall implement appropriate best management

practices to minimize the potential for erosion and sediment pollution and notify the local conservation district and/or the regional office of the Department.” The other standard note addresses penalties for failure to correctly install engineered E&S BMPs, failure to prevent sediment-laden runoff from leaving the construction site, or failure to take immediate corrective action to resolve failure of engineered E&S BMPs. *Id.* Compliance is primarily determined through self-monitoring and self-reporting which, as one might expect, can be unreliable. NP CARE St. 1, p.16.

PPL’s current vegetation management proposal fails to satisfy 52 Pa. Code § 57.76 (a)(4), because it fails to employ an available alternative to minimize environmental impacts. That alternative is simply to preserve existing vegetation. Accordingly, the Commission should require that PPL use the Selective Clearing and Restrictive Clearing methods in both the Border Zone and the Wire Zone within 150 feet of all streams, wetlands and vernal pools in the Project area, and not allow PPL to simply *carte blanche* conduct full-scale initial clearing and resort to engineered BMPs.

- b. Within 150 Feet of Streams, Wetlands, and Vernal Pools, Unless PPL Demonstrates it is Impracticable and that PPL Will Implement Reasonable Protections, PPL Should Be Prohibited From:
 - i. using herbicides, especially foliar application of herbicides;
 - ii. using heavy equipment;
 - iii. using concrete washouts;
 - iv. placing staging areas;
 - v. placing transmission line poles.

As discussed in detail herein, these activities pose definite risks to streams, wetlands and vernal pools:

- i. using herbicides, especially foliar application of herbicides;
- ii. using heavy equipment;
- iii. using concrete washouts;
- iv. placing staging areas;
- v. placing transmission line poles.

NP CARE St. 1, p.19; NP CARE St. 3, pp.5, 10. PPL's current proposal to undertake these activities within 150 feet of streams, wetlands and vernal pools fails to satisfy 52 Pa. Code § 57.76 (a)(4), because it fails to employ available alternatives to minimize environmental impacts. For the same reasons identified above, PPL should be required to employ available alternatives in order to minimize impacts to vernal pools, streams and wetlands. The chief alternative is simply to conduct these activities away from those waters. To protect these waters, the Commission should prohibit PPL from engaging in these activities within 150 feet of streams, wetlands, and vernal pools unless PPL demonstrates that it is impracticable and that PPL will implement reasonable protections.

Where avoidance is not possible, the following management practices should be employed: provide a site specific management plan for each of the riparian buffer, wetland and vernal pool areas encroached upon by the utility right-of-way; include a landscape plan for re-vegetation of disturbed areas including the planting native shrubs and a plan for maintenance and replacement, when needed of planted vegetation; and post notices in the field in the areas of concern in conspicuous places to alert work crews that there is a special management plan for the area that must be adhered to. NP CARE St. 1, p.14; NP CARE St. 4, p.10.

5. The Commission Should Require PPL to Assess the Presence of Species and Communities of Special Concern, and Evaluate and Minimize Potential Impacts to those Species and Communities

Within the proposed Project area, significant natural resources, including Species of Special Concern in Pennsylvania such as endangered, threatened, rare or uncommon plants and animals, as well as Communities of Special Concern, occur and be impacted by the proposed Project, as noted above,. NP CARE St. 4, pp.2-3. For each of these species and communities, PPL should be required to conduct an assessment of the extent to which they exist, prepare a management plan, document implementation of that plan, and assess the results. *Id.*

PPL has claimed that it will do so where required by other Commonwealth agencies, primarily by DCNR and PGC on state lands; however, no specific regulation (other than the Public Utility Commission's 52 Pa. Code § 57.76(a)) compels PPL to do so in areas outside the jurisdiction of Commonwealth agencies. PPL's current proposal to ignore these same species and communities in areas outside the jurisdiction of other agencies fails to satisfy 52 Pa. Code § 57.76 (a)(4), because it fails to employ available alternatives to minimize environmental impacts – the studies and mitigation it presumably will conduct at areas which are under the jurisdiction of other agencies.

PPL has also argued that it should not have to do anything with respect to these species and communities because they are not listed on State or federal endangered or threatened species lists. However, there are many reasons a Species or Community of Concern may not be listed as endangered or threatened, including legislative roadblocks, apathy, ignorance, unfamiliarity, and simply timing. NP CARE St. 3-R, p.5. None of these reasons overcome the sound science behind listing these species and communities as being of concern – including as being globally rare. More importantly, accepting PPL's argument on this point would render 52 Pa. Code §

57.76 meaningless. To minimize environmental impacts to these documented Species and Communities of Special concern, PPL must evaluate them and take reasonable efforts to minimize impacts to them. The Commission should require PPL to do so in order to comply with 52 Pa. Code § 57.76(a).

As noted *supra*, the Commission has previously issued conditions requiring the applicant to perform environmental studies and to report the results to the Commission, in *Energy Conservation Counsel*. The Commission further required the applicant to prepare and submit to the Commission mitigation plans to address impacts revealed in those environmental studies. *Id.* Finally, the Commission required the applicant to file with the Commission all required environmental permits from state and federal agencies before commencing construction of the proposed project. *Id.* The Court upheld these conditions pursuant to Section 1103(a) of the Pennsylvania Public Utility Code, specifically authorizes the Commission to “impose such conditions as it may deem to be just and reasonable” when granting a certificate. *Id.*; 66 Pa. C.S. § 1103(a). Similarly, in the instant case, the Commission should require PPL to prepare and submit studies of Species and Communities of Special Concern, and to prepare, submit and implement plans to mitigate impacts to them.

6. The Commission Should Require PPL to Conduct Pre-Construction, Construction, and Post-Construction Water Quality Monitoring, and Prepare and Implement a Response Plan to Address Impacts of the Proposed Project

As indicated *supra*, construction and maintenance of PPL’s proposed Project will result in numerous direct and indirect stream impacts. Many of these impacts will not be regulated by any agency other than the Commission, such as vegetation management, herbicide application,

and vehicle and equipment staging outside of state lands and areas of PADEP jurisdiction. Other impacts are regulated by other state agencies, but only to a point.⁴

For instance, even if the Commission grants all of the requests by NP CARE in this matter (except the request to reject the Application in its entirety), PPL will undoubtedly conduct some degree of vegetation clearing within 150 foot riparian buffer areas. In doing so, PPL will hopefully also implement some degree of engineered BMPs to control erosion and sediment control. However, as noted *supra*, PADEP itself recognizes that only natural riparian buffers can do all of the following: 1) capture and hold stormwater runoff from the majority of storms in this Commonwealth; 2) infiltrate that water and/or transport it as shallow flow through the forest buffer soils where contaminate uptake and processing occurs; 3) release excess storm flow evenly, further processing dissolved solids and particulate substances; 4) sequester carbon at significant levels; 5) and improve the health of the stream and increase its capacity to process organic nutrients generated on the site or upstream of the site. NP CARE St. 1, pp.10-11 (citing the Background and Purpose section of 25 Pa. Code Ch. 102 Rules and Regulations published in Pennsylvania Bulletin, Vol. 40, No. 34, August 21, 2010 on Page 4871).

Engineered BMPs are used to meet minimum standards set by regulation. NP CARE St. 1, p.17. They aren't necessarily going to produce results that exactly replicate pre-construction conditions. *Id.* Additionally, as noted *surpa*, engineered BMPs often suffer from lack of maintenance, monitoring, and enforcement. Thus, there is no question that engineered BMPs cannot replicate pre-construction conditions. Additionally, engineered BMPs are only required for certain impacts of the proposed Project.

⁴ It bears noting that in an earlier application, PPL agreed not to use herbicides except with the permission of the landowner. See Opinion and Order in A-2008-2022941, regarding the Proposed Coopersburg # 1 and # 2 138/69 kV Tap, dated July 24, 2009.

The degree of difference during and after construction of the proposed Project can be very hard to determine. NP CARE St. 1, p.17. Unfortunately, there is nothing in the PADEP permitting programs to require baseline and post-activity monitoring, so there is not even an obligation to determine the difference or ensure there is no detrimental impact. *Id.* Therefore, if the Commission approves the Project, no other agency is going to require PPL to evaluate the overall impact of the Project to ascertain the extent to which it causes aquatic degradation, or require PPL to identify and remediate specific areas causing significant degradation. This is especially important at Ash Creek and Mash Creek (which contain breeding populations of native Brook Trout), and Sand Spring Creek (which contains breeding populations of Brook Trout and is parallel and downstream from the proposed line). PPL's current proposal to ignore these impacts fails to satisfy 52 Pa. Code § 57.76 (a)(4), because it fails to employ an available alternative to minimize environmental impacts – studies and mitigation of those impact. Studies and mitigation plans which rightfully should have been included in the Application in the first place.

For the above reasons, the Commission should require that PPL document baseline (pre-construction) conditions for comparison to post-construction conditions. The Before-After-Control-Impact (BACI) approach, which is often applied in Environmental Effects Monitoring, is recommended as a basis for impact assessment, as is consideration of site-specific sensitivities, assessment of significance, and cumulative effects (Levesque and Dube 2007). A BACI design requires both pre-and post-disturbance monitoring of the section of stream immediately downstream from the impact (the Impact site) and upstream from the impact (the Control site). Assessing recovery would then include both the pre-versus post- comparison for the affected area and the comparison between the affected area versus the surrounding areas to determine if

the physical, chemical and biological communities are similar in density and cover to both pre-disturbed and adjacent undisturbed streams. PPL should be required to provide monitoring results to the Commission, and make it available to NP CARE and PADEP as soon as possible after monitoring events. NP CARE St. 4, pp.14-15. This monitoring should address:

- a. Erosion and sedimentation (suspended solids)
- b. Temperature
- c. Flow rate and volume
- d. Channel morphology
- e. Fish population diversity and density
- f. Benthic invertebrate community structure and drift

PPL should also be required to evaluate what is and isn't working, and develop a response plan to evaluate additional and/or alternate controls and/or maintenance where necessary. *Id.* at p.18. As it did in the *TrAILCo* case, in the instant case, the Commission should require PPL to prepare and submit studies of impacted aquatic areas, and to prepare, submit and implement plans to mitigate impacts to them.

7. The Commission Should Prohibit Commencement of Construction Until All Permits are Obtained and Filed With the Commission

Mr. Baker indicates that all required studies, plans, and permits will be completed, submitted and authorized prior to any construction, and that they need to be completed on an appropriate in-service and construction schedule. PPL St. 4-R-2, p.5, l.16. He states that the last segment to be constructed is the West Pocono to North Pocono segment, and therefore this segment has the lowest priority in PPL's planning and permitting schedule. This indicates the intent is for construction on portions of the route to take place prior to completing the studies and plan and obtaining permits on other portions of the route. By initiating construction prior to having completed all studies and obtaining all permits, there is a risk of locking in an adjacent route that would have otherwise been modified based on the studies and detailed planning. As it

did in the TrAILCo case, in order to avoid this situation, the studies and permitting should be completed and submitted to the Commission prior to initiating any construction. NP CARE St. 2-R, p.7.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. FINDINGS OF FACT

1. NP CARE is a tax exempt, non-profit organization incorporated under the Pennsylvania Nonprofit Corporation Law in 1996. Its mission is to preserve the environment in the North Pocono area. Its primary focus is on protecting the headwaters of the Lehigh River and the surrounding watershed lands. NP CARE St. 2, p.2.
2. NP CARE intervened in the Application in order to object to both the proposed Project in its entirety and the Application's failure to ensure that PPL will sufficiently minimize environmental impacts during construction and maintenance of the proposed Project. *See* NP CARE Petition to Intervene and Protest.
3. On December 28, 2012, PPL filed Application A-2012-2340872 with the Pennsylvania Public Utility Commission ("Commission") for authority to construct transmission lines as part of its Project. Also on December 28, 2012, in conjunction with its application for authority to construct transmission lines associated with the Project, PPL filed petitions, pursuant to 52 Pa. Code §5.41 and 53 P.S. §10619. These petitions request that the Commission find that the buildings to shelter control equipment at the proposed North Pocono and West Pocono Substations are reasonably necessary for the convenience or welfare of the public and therefore exempt from any local zoning ordinance. *See* PPL Application.

4. Relevant to the instant brief, on February 27, 2013, NP CARE filed a petition to intervene in the proceeding. The petition alleged that NP CARE is a non-profit organization with approximately 100 members who own property in the area of the proposed Northeast-Pocono Reliability Project, a property owners' association, and visitors who enjoy the public lands and waters in the area of the proposed Northeast-Pocono Reliability Project. The petition alleged that NP CARE also has members who live in PPL's service territory, are customers of PPL, and take electric service from PPL. The petition alleged that the proposed Northeast-Pocono Reliability Project will cause significant environmental damage to the Northeast-Pocono area. *See NP CARE Petition to Intervene and Protest.*

5. In Prehearing Order #2, dated January 29, 2013, Administrative Judge David A. Salapa consolidated the application, two petitions, two complaints and the eminent domain proceedings for the purposes of discovery, litigation and decision. Administrative Law Judge Salapa conducted a prehearing conference on March 6, 2013 in Harrisburg. In Prehearing Order #3, dated March 13, 2013, Judge Salapa ruled that NP CARE had standing in this matter, and granted NP CARE's petition to intervene. *See Prehearing Order #3.*

6. Judge Salapa conducted two public input hearings in Thornhurst Township on May 2, 2013. Meanwhile, the parties engaged in discovery. Thereafter, Judge Salapa conducted a formal evidentiary hearing in Harrisburg, PA on July 24 and 26, 2013. Pursuant to Prehearing Order #3, initial briefs are due on or before August 26, 2013.

7. Since the time it submitted the Application, PPL has agreed to several changes to the proposed Project from what was set forth in the Application, and has made one clarification. Additionally, NP CARE is withdrawing its specific objection to the proposed location of the line on one parcel. The following paragraphs set forth those changes, the clarification and the withdrawn objection.

- a. On Parcel 38, PPL Electric will move the proposed route 300 feet southeast from the property line, as shown on PPL Electric Exhibit DLH-5. PPL St. 1-RJ-2, p.2.

The proposed realignment on Parcel 38 creates a 300 foot visual buffer between the proposed route and both Phelps Road and an existing walking path from Phelps Road to Choke Creek Falls. *Id.* This modification resolves NP CARE's concerns with the route location on Parcel 38.

- b. On Parcel 35, PPL Electric will extend the proposed route approximately 75 west at the northern portion of the route on Parcel 35 and then continue south to tie into the location for the proposed route at the southern part of Parcel 35, as shown on PPL Electric Exhibit DLH-8. PPL St. 1-RJ-2, p.3. This change would allow for greater distance between the proposed line and a parallel riparian (land/stream interface) buffer, while avoiding the wetland on Parcel 35. *Id.* This modification resolves NP CARE's concerns with the route location on Parcel 35.
- c. As a result of the changes identified at paragraph 2(a) above, the proposed route will cross from Parcel 38 to Parcel 37 at a more southeast location, as shown on DLH-5 PPL St. 1-RJ-2, p.2. This change would allow for greater distance between the proposed line and the existing walking path from Phelps Road to Choke Creek Falls. *Id.* This modification resolves NP CARE's concerns with the route location on Parcel 37.
- d. NP CARE withdraws its objection to the proposed location of line on Parcel 43.
- e. The Commission's approval of the Application does not preclude PPL from obtaining through negotiations or condemnation any additional rights of way within the 1,000 foot corridor approved by the Commission, where necessary to comply with the requirements of other agencies. Where necessary to comply with requirements of other agencies, PPL will acquire, by agreement or condemnation, additional ROW within the area of 1000' deemed approval. PPL St. 1-RJ-2 at p.5, 1.4-7 and p.6, 1.4-8; Douglas L. Haupt, Tr.389.
- f. PPL agrees to use the Selective Clearing protocol in Attachment 12 of the Application within 150' of all streams within the Border Zone of the Right-of-Way.

8. PPL has proposed the Project, a 57 mile 230kV transmission line and adjoining right-of-way between an existing substation in Jenkins, PA and a planned substation in Paupack, PA, and rebuilding of the existing Peckville to Honesdale transmission line. The new transmission line will also be connected with other existing transmission lines by constructing a substation in West Pocono and a 69kV/138kV connector line, and constructing a substation in North Pocono and a 69kV/138kV connector line with the existing Gouldsboro substation. NP CARE St. 4, pp.2-3.

9. The project between Jenkins and Paupack, with substations and connector lines, will involve the clearing of a 150 foot right-of-way (Attachment WHE-B, Int. Set I, R.5) and erection of 113 steel poles/towers (Attachment WHE-B, RPD. Set I, R.34) that will be on average 145 feet tall, and stringing of the transmission lines. The 69kV/138kV line cleared right-of-way will generally be 100 feet wide, but a large portion of the 69kV/138kV lines leaving the North Pocono substation will exist in parallel; therefore the cleared right-of-way will be 225 feet (in some places PPL states it will be 200 feet). The project will also require maintenance in perpetuity. The proposed Alternative D1 will cross the Pocono Plateau in Luzerne and Lackawanna County. NP CARE St. 4, pp.2-3.

10. A number of individuals at the Public Input Hearings on May 2, 2013 testified in opposition to the Project. Utilizing some of that testimony, the Office of Consumer Advocate has challenged the need for the Project and provided viable alternatives to the Project. NP CARE supports the position of the Office of Consumer Advocate in challenging the need for the Project and presenting alternatives to the Project. NP CARE therefore adopts those positions and arguments by reference, including that public testimony. NP CARE St. 2-R, p.3.

11. With the above in mind, NP CARE's testimony and brief are focused on opposing only activities which are proposed to occur at a portion of the route and not the whole route for the Project. NP CARE has limited its review and testimony to: 1) the West Pocono to North Pocono Segment, 2) the West Pocono Substation and its associated 69/138 kV Connector Lines, and 3) the North Pocono Substation and its associated 69/138 kV Connector Lines. NP CARE St. 2-R, p.1. By so doing, NP CARE is focusing its case in the area it has worked diligently to protect from environmental degradation – the North Pocono area. *Id.*

12. The proposed Project would cross approximately thirty Exceptional Value ("EV") streams in a portion of the upper Lehigh River basin in which lie the headwaters of the Lehigh River.

NP CARE St. 2, p.6; and NP St.2, Attachment BLS – 1. They are part of the network of EV streams that qualified to receive the designation of “Exceptional Value” pursuant to 25 Pa. Code Chapter 93, on the basis of exceptional ecological significance. NP CARE St. 2, pp.4-6.

13. The EV designation is very rare. The section of the Lehigh River and its tributaries in Lackawanna County are the only EV streams in Lackawanna County. *Id.*, p.6. In Luzerne County, there is only one other EV stream other than the section of the Lehigh River and its tributaries in Luzerne County. *Id.* Across the Commonwealth, approximately 7% of all stream miles are designated as EV and less than 1% of all stream miles qualify as EV on the basis of exceptional ecological significance. *Id.*

14. In looking at Figure 1 of the Pennsylvania Department of Environmental Protection’s (“PADEP” or “DEP”) Water Quality Standards Review Stream Redesignation Evaluation Report, the upper Lehigh River and the streams that feed it from the west (Luzerne and Lackawanna counties) all qualify based on exceptional ecological significance in the area of the proposed PPL HV line, except for Sand Spring Creek which qualifies based on exceptional aquatic life. *Id.*; NP CARE St.2, Attachment BLS – 2.

15. The Nature Conservancy named the Pocono Plateau and surrounding mountaintop ridges one of the world’s “Last Great Places” because it harbors the highest concentration of globally rare plants, animals and habitats in Pennsylvania. *Id.*, p.10, Attachment BLS-6. The Nature Conservancy has also identified this area as critical for conservation because of its extensive intact forest lands. *Id.*, Attachment BLS-7.

16. In light of the special nature of the environment in the North Pocono area, NP CARE partnered with The Nature Conservancy, the Conservation Fund, Wildlands Conservancy, Monroe County and the Department of Conservation and Natural Resources (“DCNR”) to acquire 2,650 acres in

the upper Lehigh River watershed and add it to the Lackawanna State Forest. NP CARE St. 2, p.7. Forming what is called the Lehigh River Conservation Corridor, the newly acquired property coupled with the existing conservation lands provides prime upland forest, waterway access, significant wetland acreage and ideal habitat for black bear, bobcat, river otter, coyote, fisher, snowshoe hares and white tailed deer. *Id*; Attachment BLS – 3.

17. As just one example of an important effort to preserve undeveloped land, recently DCNR arranged to exchange property interests in Westmoreland County for 376 acres in Thornhurst Township, Lackawanna County. NP CARE St. 2, pp.8-9. In its public notice, DCNR state that the “parcel is adjacent to existing State Forest land, improves public access, and further conserves lands within an exceptional quality watershed.” *Id*. DCNR’s public notice and map are included in the record in NP CARE St. 2 as Attachment BLS – 5. *Id*. The land being acquired through this property exchange is along Phelps Road. It is land through which PPL proposes to run its HV line and it is designated as parcel 38 on PPL Pocono Aerial Exhibit B3. *Id*.

18. Within the proposed Project area, significant natural resources, including Species of Special Concern in Pennsylvania such as endangered, threatened, rare or uncommon plants and animals, as well as Communities of Special Concern, occur and be impacted by the proposed Project. NP CARE St. 3, pp.2-3. These species and community types have been ranked by the Pennsylvania Natural Heritage Program and identified for protection by the Pennsylvania Wildlife Action Plan, which was compiled by the Pennsylvania Game Commission (“PGC”) and the Pennsylvania Fish and Boat Commission (“PFBC”) to provide “a statewide overview of the integrated efforts needed to sustain wildlife and habitat.” NP CARE St.3-R, p.4.

19. Species and Communities of Special Concern have been identified in the Project area through available materials, but also largely through the field work of Richard Koval on behalf of NP CARE. *Id.*

20. Mr. Koval's field work was limited to public lands and a few private lands to which he had access in the proposed Project area. As of June 2, 2013, Mr. Koval personally identified and documented 17 species considered Pennsylvania Species of Special Concern, with the possibility of three additional species. *Id.* at p.3. These were either found within the proposed Right-of-Way or could exist within the proposed Right-of-Way based on having been found in close proximity to the Right-of-Way. *Id.*

21. Mr. Koval also identified several plant communities of special concern within or in close proximity to the proposed Right-of-Way. *Id.* at p.9.

22. Mr. Koval determined that four additional Species of Special Concern also might exist, but that their presence cannot be confirmed until later in the year, due to their life cycle. These include the globally rare Fly-Poison Lily Borer Moth. NP CARE St. 3, p.11.

23. Neither the Application nor any document possessed by PPL or introduced in this matter suggested that PPL intended to conduct full-scale initial clearing of all vegetation. NP CARE St. 1-R, pp.3, 4. PPL admitted this in testimony under oath at the hearing. Tr. 422-32.

24. PPL's Application contains Attachment 12, entitled "Specifications for Initial Clearing and Control Maintenance on or Adjacent to Electric Line Right-of-Way through Use of Herbicide, Mechanical and Hand-Clearing Techniques." *See* Attachment 12 (emphasis added). In Attachment 12, PPL explained that it intended to use the "Wire Zone/Border Zone method" (and in limited circumstances where necessary either Selective Clearing or Restricted Clearing) to manage vegetation within the Right-of-Way. Attachment 12, p.5, Section III.A and Section III.A.1.

25. PPL's Application proposed establishing two zones within the Right-of-Way: an inner zone called the Wire Zone, and an outer zone called the Border Zone. Attachment 12, pp.5-5. Within the Wire Zone, PPL generally proposed preserving all "Small Shrubs" and all "Native Grasses, Ferns and Herbaceous Plants. *Id.*

26. Within the Border Zone, PPL generally proposed that both "compatible" and "non-compatible" vegetation would be preserved except as necessary to prevent growth into the WSZ by the time of the next three-year maintenance event. *Id.*

27. PPL's Attachment 12 is ambiguous as to the differences in treatment between "compatible" and "non-compatible" species. However, there are a number of additional species which would not grow high enough to pose a clearance threat. These are identified in Appendix RLK-3, and should be included within PPL's list of "compatible" species. NP CARE, St. 3, p.14.

28. The vegetation management area may additionally extend significantly (as much as 50') beyond the specified 150' right-of-way for management of "danger trees". Application, Attachment 12.

29. In the Application, PPL explained that "where the wire zone/border zone is not appropriate" due to limitations such as "environmental concerns", PPL would employ greater efforts to minimize impacts by employing either "selective clearing" or "restrictive clearing." *Id.* at pp. 6-7. NCARE St. 1-R, p.4. In such cases, rather than only preserve "Small Shrubs" and "Native Grasses, Ferns and Herbaceous Plants in the Wire Zone, instead all vegetation in the wire zone is generally treated like vegetation in the Border Zone – the vegetation is to be managed only if it would interfere with the WSZ by the time of the next three-year maintenance event. *Id.*

30. PPL never defines "environmental concerns", and apparently (as discussed below) never intended to equate it with very much, if any, of the Project area.

31. NP CARE took issue with the proposal to use the “wire zone/border zone” method, and with the ambiguities in the “selective clearing” and “restrictive clearing” methods. NP CARE St. 1. NP CARE’s concerns apply to both the areas along the streams, wetlands and vernal ponds and along the whole Right-of-Way.

32. Evidence from other stream crossings indicates that clearing the vegetation from a stream can alter water quality (total suspended solids, temperature, and flow), physical habitat (substrate particle size, channel morphology), benthic invertebrate community structure and drift (abundance, species composition, diversity, standing crop), and fish behavior and physiology (hierarchy, feeding, respiration rate, loss of equilibrium, blood hematocrit and leukocrit levels, heart rate and stroke volume) (Levesque and Dube 2007). NP CARE St. 4, p.7-8.

33. Changing the vegetation within the right of way adjacent to the stream may result in long-term warming of stream temperatures from removal of the forest canopy, increased erosion and sedimentation from loss of bank stabilizing vegetation and upslope vegetation, and increased overland flow during storm events, which can increase stream temperature and carry sediments and dissolved chemicals. *Id.*

34. Many aquatic organisms found in healthy streams in largely unmodified watersheds in Pennsylvania, such as would be likely be found in the EV and HQ streams of the Pocono Plateau, are sensitive to sediment loading, warming, and changes to the flow regime. *Id.* at pp.8-9.

35. Brook trout are particularly sensitive to changes in land cover and temperature. An increase in temperature may stress brook trout and result in their being replaced by brown trout or rainbow trout, neither of which is native to Pennsylvania, or the complete loss of all trout species (Wenger et al. 2011). In Maryland, brook trout are mostly absent from streams with greater than 4% impervious surface in the watershed (Stranko et al. 2008). *Id.*

36. Aquatic species that build a nest in gravel substrate, such as brook trout, may experience reduced survival through early development due to increased levels of fine sediments (Argent and Flebbe 1999). *Id.* Increased turbidity may also reduce the distance at which brook trout detect prey (Sweka and Hartman 2001). *Id.* Brook trout are also sensitive to changes in flood frequency and intensity, particularly over the winter when embryos are in the gravel (Wenger et al. 2011). *Id.*

37. Even outside away from streams, wetlands and vernal pools, PPL's plan to conduct full-scale clearing of all vegetation within the Right-of-Way on its face constitutes a profound environmental impact. Pennsylvania's Bureau of Forestry recognizes that:

- a. Most of the forested land in Pennsylvania is second growth. Scattered throughout the forests, however, are large, old trees that were left from the earlier cuttings. These trees usually have many limbs and branches that allow the trees to dominate the forest canopy and are therefore excellent producers of mast. Their numerous limbs provide a variety of roosting sites, and the large trunks may have cavities that animals can use for dens. Many animal species, including barred owls, porcupines, and raccoons, find haven in these trees.
- b. All forest seres or systems are important components of managing state forestlands under an ecosystem management approach. Old growth forests provide ecological niches for a myriad of fauna species. There is generally a substantial level of structural diversity, including vertical diversity and dead and down wood, in old growth forests.

NP CARE St. 3-R, p.15 (citing State Forest Resource Management Plan, <http://www.apps.dcnr.state.pa.us/forestry/sfrmp/flora.htm>).

38. PPL's full-scale clearing constitutes the complete elimination of existing forest, leaving only grasses, ferns and other herbaceous plants. This full-scale clearing will eradicate the forest land use, eliminate existing habitat, and destroy the visual landscape. It will also allow the introduction of invasive species. NP CARE St. 3-R, p.18.

39. Mr. Koval explained, in addition to its overall impacts, the practice of full-scale clearing has direct impacts on plant Species of Special Concern such as the Balsam Fir, and Communities of

Special Concern such as the Hemlock Palustrine Forest and the Coniferous-Broadleaf Palustrine Forest. NP CARE St.3-R, pp.8-10.

40. The fact that PPL never intended much, if any, of the Project to qualify as “environmental concerns” which would trigger Selective Clearing or Restrictive Clearing became clear well after PPL submitted the Application. During discovery, PPL responded to questions about its clearing protocols with the shocking announcement that, rather than initially employ any of the clearing protocols proposed in Attachment 12, PPL intends to conduct complete, full-scale initial clearing of all vegetation within the right of way, and then follow Attachment 12 only for subsequent maintenance vegetation management. PPL explained that during initial clearing of the entirety of the entire Right-of-Way, PPL will remove all trees and shrubs. See PPL’s response to Question 17 in the Response to Interrogatories of the North Pocono Citizens Alert , Set I; NP CARE St. 1, p.11.

41. NP CARE took issue with the plan to conduct this full-scale initial clearing. As Ms. Donna Alker testified on behalf of NP CARE, the siting of the lines in Special Protection (Primarily Exceptional Value) watersheds and in riparian buffer and wetland areas, are instances where there are environmental concerns and, as such, Restricted Clearing procedures are more appropriate than the Wire Zone/Border Zone procedures. NP CARE St. 1-R, p.4.

42. The environmental concerns of the negative impacts of vegetation management are applicable to the entire project in the delicate Lehigh River Headwaters of the Pocono Plateau. The entire length of the proposed lines in NP CARE’s area of concern are located in special protection watersheds, mostly in exceptional value watersheds, so minimizing the impact to the natural vegetation is important throughout the Right-of-Way. NP CARE St. 1, p.13.

43. Exhibit DA-R-1, shows the maximum heights of trees that could be preserved on a sample cross-section of the right-of-way using the Selective Clearing and Restrictive Clearing

vegetation management procedures set for in Attachment 12. NP CARE St. 1-R, p.5. The diagram presents one scenario at the lowest point of the conductor, based on several assumptions, which are listed on the diagram, including level ground across the entire section. *Id.* As illustrated on the diagram, the vegetation that could remain, while still protecting the WSZ, is significant. *Id.*

44. There can be no dispute that PPL's "Scorched Earth" practice of initially clearing all vegetation from within the entire Right of Way has significant environmental impacts. As discussed elsewhere in this brief, NP CARE's concerns include thermal impacts, loss of habitat, soil erosion and sediment flow into streams.

45. The land use along the length of the Project consists largely of forested lands, both public and private. *See* Attachment 3, Figures 3-10a and 3-10b of the Application.

46. Once a shrub layer is removed, it will take decades to regenerate in the thin soils of the Pocono Plateau. In the interim the sensitive ecological communities will be destroyed. NP CARE St. 2, p.16.

47. Shortly before the hearing in this matter, PPL agreed that, only within 150 feet of streams, PPL will 1) use the Selective Clearing protocol for initial and maintenance vegetation management in the Border Zone, and 2) conduct full-scale initial clearing in the Wire Zone but will leave stumps in place. *See* PPL St. 7-RJ at pp.5-6; PPL St. 8-RJ at p5, 1.15-20. If the Commission approves the Application, the Commission should include in its Order a condition clarifying and mandating this agreement.

48. PPL clearly has another approach – employing Selective Clearing or Restrictive Clearing throughout the Right-of-Way, not just within 150 feet of streams. These clearing protocols, as defined in Attachment 12, allow vegetation to remain in place if it will not interfere with the WSZ. *See*

Attachment 12, p.5. Importantly, these protocols also allow PPL to fully clear defined areas needed for access roads, work areas, and structures. *See* Attachment 12, p.7.

49. This approach achieves PPL's ultimate goals – ensuring sufficient distance between vegetation and conductors (the Wire Security Zone); and allowing for necessary construction activities. *Id.*

50. Despite now wanting to employ full-scale initial clearing of all vegetation in most areas, PPL still has not provided any documents which explain either the practice of conducting initial full-scale clearing of all vegetation, or which demonstrate that this was required by any governing entity. Even in the face of NP CARE's objections, PPL has made absolutely no demonstration that full-scale clearing of all vegetation is necessary, or that selective or restrictive management is not a reasonably available alternative to initially managing all vegetation in all areas of the Right-of-Way. *See* testimony of Douglas L. Haupt, Tr. 397.

51. The most PPL provides to support the idea of full-scale vegetation clearing along the Right-of-Way are six unsupported words suggesting why PPL wants to initially clear all vegetation: to “establish the right of way” and for “construction activities.” NP CARE St. 1-R, p.6.

52. Despite the ambiguity of PPL's assertions, it appears that the Selective Clearing and Restrictive Clearing methods already accommodate construction activities by permitting full clearing at defined work areas.

53. It bears noting that in an earlier application, PPL agreed to do the following remove only vegetation that has the potential to grow more than 20 feet. *See* Opinion and Order in A-2008-2022941, regarding the Proposed Coopersburg # 1 and # 2 138/69 kV Tap, dated July 24, 2009.

54. The parties do not really disagree that clearing vegetation from within 150 feet of streams can have some impact on stream temperature. *See* PPL St. 8-R, pp.10-11. On behalf of PPL, Peter S.

Footo testified that thermal impacts may occur on at least forty percent of the stream crossing planned for the Project. *Id.* He testified that “The extent of vegetation clearing along the stream course is a major factor in the extent of warming that may occur....” PPL St. 8-R, p.5.

55. As Dr. Eldridge explained in more detail:

Evidence from other stream crossings indicates that clearing the vegetation from a stream can alter water quality (total suspended solids, temperature, and flow), physical habitat (substrate particle size, channel morphology), benthic invertebrate community structure and drift (abundance, species composition, diversity, standing crop), and fish behavior and physiology (hierarchy, feeding, respiration rate, loss of equilibrium, blood hematocrit and leukocrit levels, heart rate and stroke volume) (Levesque and Dube 2007). Changing the vegetation within the right of way adjacent to the stream may result in long-term warming of stream temperatures from removal of the forest canopy, increased erosion and sedimentation from loss of bank stabilizing vegetation and upslope vegetation, and increased overland flow during storm events, which can increase stream temperature and carry sediments and dissolved chemicals.

NP CARE St.4, pp.7-8.

56. Dr. Eldridge went on to explain that:

Many aquatic organisms found in healthy streams in largely unmodified watersheds in Pennsylvania, such as would be likely be found in the EV and HQ streams of the Pocono Plateau, are sensitive to sediment loading, warming, and changes to the flow regime. Brook trout are particularly sensitive to changes in land cover and temperature. An increase in temperature may stress brook trout and result in their being replaced by brown trout or rainbow trout, neither of which is native to Pennsylvania, or the complete loss of all trout species (Wenger et al. 2011). In Maryland, brook trout are mostly absent from streams with greater than 4% impervious surface in the watershed (Stranko et al. 2008). Aquatic species that build a nest in gravel substrate, such as brook trout, may experience reduced survival through early development due to increased levels of fine sediments (Argent and Flebbe 1999). Increased turbidity may also reduce the distance at which brook trout detect prey (Sweka and Hartman 2001). Brook trout are also sensitive to changes in flood frequency and intensity, particularly over the winter when embryos are in the gravel (Wenger et al. 2011).

Id. at pp.8-9.

57. The parties’ disagreement is not over whether there will be impacts, but in the degree and duration of impact, and what should be done about it.

58. To minimize impacts, Mr. Foote agreed PPL should avoid clearing understory and scrub-shrub vegetation to the stream's edge to maintain shade and minimize thermal impacts to streams. PPL St. 1-R, p.11. As noted *supra*, PPL has available a means of minimizing those impacts.

59. PPL's current proposed vegetation management proposal fails to satisfy 52 Pa. Code § 57.76 (a)(4), because it fails to employ an available alternative to minimize environmental impacts.

60. Particularly within 150 feet of streams, in both the Border Zone and the Wire Zone, PPL should be prohibited from employing full-scale initial clearing, and should be required to employ selective clearing or restrictive clearing as set forth in Attachment 12.

61. The sensitive nature of the waters in the area of the proposed Project cannot be overstated. Based on the PPL mapping, there are about 30 crossings of special protection streams (perennial streams shown as blue line streams on the USGS maps), the majority of which also have adjacent wetlands associated with them; eight (8) identified wetland crossings/encroachments not related to the identified streams, including three locations where poles will be located in identified wetlands; and two additional riparian buffer encroachments proposed. NP CARE St. 1, p.4.

62. All of the streams that will be impacted are exceptional value (EV) streams with the exception of Emerson Run, Lake Run and Roaring Brook which are classified as high quality, cold water fisheries (HQ-CWF). *See* Table 3-7 in Attachment 3 of the PUC Filing Documents for the PPL Northeast/Pocono Reliability Project.

63. All of the streams are included on the Pennsylvania Wild Trout Waters (Natural Reproduction) list. All of the wetlands are classified as exceptional value (EV) wetlands per 25 Pa. Code Section 105.17(1)(iii). *Id.* at pp.4-5.

64. Several streams located in the proposed Project Area and classified as EV contain breeding populations of native Brook Trout, such as Choke Creek, Sand Springs Creek, Ash Creek and Lehigh River. NP CARE St. 3, p.11.

65. The Pennsylvania Fish and Boat Commission manages and protects native brook trout and the streams they reside. Ash Creek and Sand Spring Creek are labeled "Class A Wild Trout Streams" for Brook Trout. They are able to sustain a naturally reproducing population of wild trout, and are not stocked. *Id.* At least seven others are Wild Trout Waters which the PFBC has recognized as Stream Sections that Support Natural Reproduction of Trout. NP CARE St. 2, p.10; *see* http://fishandboat.com/trout_repro.htm.

66. As headwater streams, the streams in the proposed Project area have an immediate and intimate connection with the terrestrial environment, forming an extensive terrestrial/aquatic mosaic. These attributes make headwaters critical to the health of stream networks but also exceedingly vulnerable to degradation when landscapes are altered. Because small streams are so integrated into landscapes, they are most at risk to disturbance, and because of their small size, the impacts of the degradation of a single stream on larger downstream reaches are difficult to observe or quantify. NP CARE St. 4, pp.11-12

67. Importantly, the cumulative effects of headwater stream degradation on biodiversity and the energy contributions to downstream biota, especially when multiple headwater streams are disturbed and feed into the same larger stream within the watershed network, need to be considered at a watershed scale. *Id.*

68. For example, scientific evidence clearly shows that healthy headwaters — tributary streams, intermittent streams, and spring seeps — are essential to the health of stream and river ecosystems (Kaplan et al. 2008). The authors point out that evidence demonstrates that protecting these

headwater streams with forested riparian buffer zones and protecting and restoring the watersheds in which they arise will provide benefits vital to the health and well-being of Pennsylvania's water resources and its citizens. *Id.* at p.12.

69. Healthy, undisturbed headwaters supply organic matter that contributes to the growth and productivity of higher organisms, including insects and fish. Headwaters also help to keep sediment and pollutants out of the stream system's lower reaches. In addition, headwaters enhance biodiversity by supporting flora and fauna that are uniquely acclimated to this habitat. *Id.* at p.12.

70. PADEP recognizes that riparian buffer areas provide many benefits relating to the water quality and stream habitat. PADEP indicates that:

Riparian buffers play a vital role in mitigating the effects of stormwater runoff from land development activities. Riparian buffers are useful in mitigating or controlling point and nonpoint source pollution by keeping the pollutants out of the water body and increasing the level of instream pollution processing...Riparian buffers can be effective in removing excess nutrients and sediment from surface runoff and shallow groundwater, stabilizing stream banks and shading streams and rivers to optimize light and temperature conditions for aquatic plants and animals. Riparian buffers provide significant flood attenuation and storage functions within the watershed. They prevent pollution both during and after earth disturbance activities and provide natural, long-term sustainability for aquatic resource protection and water quality enhancement. A riparian forest buffer is a specialized type of riparian buffer.

NP CARE St. 1, pp.10-11 (citing the Background and Purpose section of 25 Pa. Code Ch. 102 Rules and Regulations published in Pennsylvania Bulletin, Vol. 40, No. 34, August 21, 2010 on Page 4871).

71. Similar to EV streams, vernal pools and EV wetlands are important, sensitive ecological areas. Vernal pools are critical breeding habitat for a variety of amphibian species, as well as other animals including dragonflies and damselflies. NP CARE St. 3, p.10. Reptiles such as turtles and snakes frequent vernal pools for refuge and foraging. *Id.* Vernal pools lack state regulation on private land, but they are ranked S3- Vulnerable by the Pennsylvania Natural Heritage Program's Species Ranks and Definitions on their website at <http://www.naturalheritage.state.pa.us/>.

72. The Pennsylvania State Forest Resource Management Plan found on the webpage at <http://www.dcnr.state.pa.us/forestry/stateforestmanagement/sfrmp/index.htm> addresses management and protection of vernal pools, but only those which are located on State Forest lands. It states:

Areas around wetlands, vernal ponds, spring seeps, streams, lakes, ponds, and impoundments should be designated as aquatic habitat buffers. These guidelines provide a standard set of operating procedures to be followed when conducting management activities in or near aquatic habitats on State Forest land. Management efforts should focus on providing connectivity, wildlife habitat, and protecting water quality.

NP CARE St. 3-R, p.10.

73. According to the Pennsylvania Natural Heritage Program and Pennsylvania Wildlife Action Plan, vernal pools should remain undisturbed, and a forested buffer of at least 300 feet and up to 1,000 feet should be kept undisturbed surrounding the pool. NP CARE St. 3, p.10. Otherwise, excessive timber harvesting, clear cutting and drainage displacement adjacent to vernal pools leads to premature wetland drying and warming of the forest floor, which impacts plants and animals utilizing the pools. *Id.*

74. As just one example, disturbance of vernal pools negatively impacts amphibian Species of Special Concern such as the Four-Toed Salamander. NP CARE St. 3, p.5. Given their sensitivity and importance, Selective Clearing and Restrictive Clearing of these areas are especially appropriate.

75. PPL has not seriously demonstrated why it cannot employ its Selective Clearing and Restrictive Clearing methods in these aquatic areas. PPL's argument is that it should simply be left to implement engineered Best Management Practices ("BMPs") applicable to the Project under regulations of the Department of Environmental Protection – after invoking an exclusion for utility projects. PPL St. 4-R-2, pp.14-15.

76. PPL ignores the limitations of engineered BMPs and the fact that they do not completely alleviate impacts. NP CARE St. 1, pp.14-18. As PADEP recognized when it adopted its BMP

regulations, “Scientific literature supports the riparian forest buffer (with stormwater entering the buffer as sheet flow or shallow concentrated flow) as the only BMP that can do all of the following: capture and hold stormwater runoff from the majority of storms in this Commonwealth; infiltrate most of that water or transport it, or both, as shallow flow through the forest buffer soils where contaminate uptake and processing occurs; release excess storm flow evenly, further processing dissolved solids and particulate substances associated with it; sequester carbon at significant levels; and improve the health of the stream and increase its capacity to process organic nutrients generated on the site or upstream of the site.” NP CARE St. 1, pp.10-11 (emphasis added). Thus, preserving riparian buffer vegetation is a far better BMP than constructing an engineered substitute.

77. PPL’s argument ignores that engineered BMPs often fail, and often are not enforced, and their efficacy is not verified by testing. NP CARE St. 1, pp.14-18. In fact, engineered BMP failures are quite common. NP CARE St. 1, p.15. There’s always a chance for failure of engineered BMPs due to lack of proper installation and maintenance, the occurrence of a stormwater event that exceeds the design of the BMPs or other unforeseen circumstances. *Id.*, pp.14-15.

78. The potential for failure of engineered BMPs is acknowledged by PADEP. In fact, there are two standard notes that are required to be placed on erosion and sediment (“E&S”) Plans to address these circumstances. One reads “Immediately upon discovering unforeseen circumstances posing the potential for erosion and/or sediment pollution, the operator shall implement appropriate best management practices to minimize the potential for erosion and sediment pollution and notify the local conservation district and/or the regional office of the Department.” The other standard note addresses penalties for failure to correctly install engineered E&S BMPs, failure to prevent sediment-laden runoff from leaving the construction site, or failure to take immediate corrective action to resolve failure of engineered E&S BMPs. *Id.*

79. BMP compliance is primarily determined through self-monitoring and self-reporting which, as one might expect, can be unreliable. NP CARE St. 1, p.16.

80. As discussed in detail herein, these activities pose definite risks to streams, wetlands and vernal pools:

- a. using herbicides, especially foliar application of herbicides;
- b. using heavy equipment;
- c. using concrete washouts;
- d. placing staging areas;
- e. placing transmission line poles.

NP CARE St. 1, p.19; NP CARE St. 3, pp.5, 10.

81. It bears noting that in an earlier application, PPL agreed not to use herbicides except with the permission of the landowner. *See* Opinion and Order in A-2008-2022941, regarding the Proposed Coopersburg # 1 and # 2 138/69 kV Tap, dated July 24, 2009.

82. For the same reasons identified above, PPL should be required to employ available alternatives in order to minimize impacts to vernal pools, streams and wetlands. The chief alternative is simply to conduct these activities away from those waters. To protect these waters, the Commission should prohibit PPL from engaging in these activities within 150 feet of streams, wetlands, and vernal pools unless PPL demonstrates that it is impracticable and that PPL will implement reasonable protections.

83. Where avoidance is not possible, the following management practices should be employed: provide a site specific management plan for each of the riparian buffer, wetland and vernal pool areas encroached upon by the utility right-of-way; include a landscape plan for re-vegetation of disturbed areas including the planting native shrubs and a plan for maintenance and replacement, when needed of planted vegetation; and post notices in the field in the areas of concern in conspicuous places

to alert work crews that there is a special management plan for the area that must be adhered to. NP CARE St. 1, p.14; NP CARE St. 4, p.10.

84. Within the proposed Project area, significant natural resources, including Species of Special Concern in Pennsylvania such as endangered, threatened, rare or uncommon plants and animals, as well as Communities of Special Concern, occur and be impacted by the proposed Project, as noted above,. NP CARE St. 4, pp.2-3. For each of these species and communities, PPL should be required to conduct an assessment of the extent to which they exist, prepare a management plan, document implementation of that plan, and assess the results. *Id.*

85. As noted *supra*, the Commission has previously issued conditions requiring the applicant to perform environmental studies and to report the results to the Commission, in *Energy Conservation Counsel*. The Commission further required the applicant to prepare and submit to the Commission mitigation plans to address impacts revealed in those environmental studies. *Id.* Finally, the Commission required the applicant to file with the Commission all required environmental permits from state and federal agencies before commencing construction of the proposed project. *Id.* The Court upheld these conditions pursuant to Section 1103(a) of the Pennsylvania Public Utility Code, specifically authorizes the Commission to “impose such conditions as it may deem to be just and reasonable” when granting a certificate. *Id.*; 66 Pa. C.S. § 1103(a).

86. Even if the Commission grants all of the requests by NP CARE in this matter (except the request to reject the Application in its entirety), PPL will undoubtedly conduct some degree of vegetation clearing within 150 foot riparian buffer areas. In doing so, PPL will hopefully also implement some degree of engineered BMPs to control erosion and sediment control. However, as noted *supra*, PADEP itself recognizes that only natural riparian buffers can do all of the following: 1) capture and hold stormwater runoff from the majority of storms in this Commonwealth; 2) infiltrate that

water and/or transport it as shallow flow through the forest buffer soils where contaminate uptake and processing occurs; 3) release excess storm flow evenly, further processing dissolved solids and particulate substances; 4) sequester carbon at significant levels; 5) and improve the health of the stream and increase its capacity to process organic nutrients generated on the site or upstream of the site. NP CARE St. 1, pp.10-11 (citing the Background and Purpose section of 25 Pa. Code Ch. 102 Rules and Regulations published in Pennsylvania Bulletin, Vol. 40, No. 34, August 21, 2010 on Page 4871).

87. Engineered BMPs are used to meet minimum standards set by regulation. NP CARE St. 1, p.17. They aren't necessarily going to produce results that exactly replicate pre-construction conditions. *Id.* Additionally, as noted *surpa*, engineered BMPs often suffer from lack of maintenance, monitoring, and enforcement.

88. There is no question that engineered BMPs cannot replicate pre-construction conditions. Additionally, engineered BMPs are only required for certain impacts of the proposed Project.

89. The degree of difference during and after construction of the proposed Project can be very hard to determine. NP CARE St. 1, p.17. Unfortunately, there is nothing in the PADEP permitting programs to require baseline and post-activity monitoring, so there is not even an obligation to determine the difference or ensure there is no detrimental impact. *Id.*

90. If the Commission approves the Project, no other agency is going to require PPL to evaluate the overall impact of the Project to ascertain the extent to which it causes aquatic degradation, or require PPL to identify and remediate specific areas causing significant degradation. This is especially important at Ash Creek and Mash Creek (which contain breeding populations of native Brook Trout), and Sand Spring Creek (which contains breeding populations of Brook Trout and is parallel and downstream from the proposed line).

91. The BACI approach is often applied in Environmental Effects Monitoring, is recommended as a basis for impact assessment, as is consideration of site-specific sensitivities, assessment of significance, and cumulative effects (Levesque and Dube 2007). A BACI design requires both pre-and post-disturbance monitoring of the section of stream immediately downstream from the impact (the Impact site) and upstream from the impact (the Control site). Assessing recovery would then include both the pre-versus post- comparison for the affected area and the comparison between the affected area versus the surrounding areas to determine if the physical, chemical and biological communities are similar in density and cover to both pre-disturbed and adjacent undisturbed streams.

92. Using the BACI approach, PPL should be required to provide monitoring results to the Commission, and make it available to NP CARE and PADEP as soon as possible after monitoring events. NP CARE St. 4, pp.14-15. This monitoring should address:

- a. Erosion and sedimentation (suspended solids)
- b. Temperature
- c. Flow rate and volume
- d. Channel morphology
- e. Fish population diversity and density
- f. Benthic invertebrate community structure and drift

93. PPL should also be required to evaluate what is and isn't working, and develop a response plan to evaluate additional and/or alternate controls and/or maintenance where necessary. *Id.* at p.18. The Commission should require PPL to prepare and submit studies of impacted aquatic areas, and to prepare, submit and implement plans to mitigate impacts to them.

94. Mr. Baker indicates that all required studies, plans, and permits will be completed, submitted and authorized prior to any construction, and that they need to be completed on an appropriate in-service and construction schedule. PPL St. 4-R-2, p.5, l.16. He states that the last segment to be constructed is the West Pocono to North Pocono segment, and therefore this segment has the lowest priority in PPL's planning and permitting schedule. This indicates the intent is for construction on

portions of the route to take place prior to completing the studies and plan and obtaining permits on other portions of the route.

95. By initiating construction prior to having completed all studies and obtaining all permits, there is a risk of locking in an adjacent route that would have otherwise been modified based on the studies and detailed planning. As it did in the TrAILCo case, in order to avoid this situation, the studies and permitting should be completed and submitted to the Commission prior to initiating any construction. NP CARE St. 2-R, p.7.

B. CONCLUSIONS OF LAW

1. As the proponent of a rule or order, PPL bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a). As a fundamental rule, “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

2. A preponderance of the evidence means that PPL must present evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. *See Se-Ling Hosiery v. Marquies*, 364 Pa. 45, 70 A.2d 854 (1950) (emphasis added). Finally, the Commission’s decision on an application must be supported by substantial evidence in the record. A mere trace of evidence or a suspicion of the existence of a fact sought to be established will not suffice. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980) (emphasis added).

3. Although the degree of PPL’s showing is only a preponderance of the evidence, the required substantive scope and depth of its demonstration is severe. “[U]nder Pennsylvania law every applicant for a siting certificate has an intensified burden to show on the record that the environment has been considered in its planning and that every reasonable effort has been made to reduce the

environmental incursion to a minimum.” *See Re Overhead Electric Transmission Lines*, 1978 Pa. PUC LEXIS 203, 51 Pa. PUC 682 (March 1, 1978) at *14 (citing *Payne v. Kassab*, 11 Pa. Commw. Ct. 14, 312 A2d 86 (1973), *aff’d* 468 Pa. 226, 361 A.2d 263 (1976) and *Pa. DER v. Pa. PUC*, 18 Pa Commw Ct. 558, 335 A2d 860 (1975), *aff’d per curiam* 473 Pa. 378, 374 A.2d 693 (1977)) (emphasis added).

4. This “intensified burden” arises out of Article 1, Section 27 of the Pennsylvania Constitution. Article 1, Section 27 states:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

Pa. Const. art.I, § 27. To satisfy this constitutional requirement, the Pennsylvania Courts have established a three-part test, first enunciated in *Payne v. Kassab, supra*, which requires as the following:

(a) Was there compliance with all applicable statutes and regulations relevant to the protection of the Commonwealth’s public natural resources? (2) Does the record demonstrate a reasonable effort to reduce the environmental incursion to a minimum? (3) Does the environmental harm which will result from the challenged decision or action so clearly outweigh the benefits to be derived therefrom that to proceed further would be an abuse of discretion?

Pa. DER, supra, 18 Pa Commw Ct. at 567, 335 A2d at 865.

5. The Commission crafted siting and construction regulations intended to encompass the elements of the three part test of *Payne v. Kassab*. Those regulations are codified at 52 Pa. Code Part I, Subpart C, Chapter 57, Subchapter G, entitled “Commission Review of Siting and Construction of Electric Transmission Lines” (the “Siting and Construction Regulations”). When it adopted the Siting and Construction Regulations, the Commission stated that the demonstrations a utility must make pertain not only to the proposed means of addressing electricity needs but also to the proposed location of siting the proposed line, and the proposed manner of construction and maintenance. The Commission stated:

It is essential in the siting, construction, and maintenance of overhead electric transmission facilities to minimize any adverse effect upon the environment and upon the quality of human life in the area in which new facilities will be located, and to minimize any potential hazards to public health and safety.

Re Proposed Electric Regulation, 49 Pa. P.U.C. 709, 710 (1976) (emphasis added).

6. The relevant provisions of the Siting and Construction Regulations therefore require the following of the Commission before it can approval an application:

§ 57.76. Determination and order.

(a)The Commission will not grant the application, either as proposed or as modified, unless it finds and determines as to the proposed HV line:

...

(3) That it is in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth.

(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.

52 Pa. Code § 57.76 (emphasis added).

7. Pennsylvania's Statutory Construction Act is instructive here. The rules of statutory construction and interpretation apply equally to regulations. *Presock v. Department of Military and Veterans Affairs*, 855 A.2d 928, 931 (Pa. Cmwlth. 2004). "The object of all interpretation is to ascertain and effectuate the intention of the General Assembly or, in this instance, the PUC." *Energy Conservation Council of Pennsylvania v. Public Utility Commission*, 995 A.2d 465, 483 (Pa. Commw. 2010) (citing Section 1921(a) of the Statutory Construction Act of 1972, 1 Pa. C.S. § 1921(a)). "When the words of the regulation are clear and free from ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." *Id.* (citing 1 Pa. C.S. § 1921(b)). Additionally, the intent of a statute is that the entire statute be given effect. 19 Pa. C.S. §1922.2.

8. Applying the Statutory Construction Act to 52 Pa. Code § 57.76, the unambiguous language of Section 57.76(a)(4) requires that an applicant not only must demonstrate compliance with applicable statutes and regulations, but additionally demonstrate that the siting, construction and

maintenance will have minimum adverse environmental impacts, to the extent that actions to minimize those impacts will not interfere with the electric power needs of the public and can be achieved using available technologies and available alternatives.

9. PPL took the position in its testimony that minimization of environmental impacts merely requires compliance with the statutes and regulations of other agencies. Of course, if this were true, it would render 52 Pa. Code Section 57.76(a)(4) of no effect. Thus, PPL's interpretation is mistaken. That provision means just what it says – that the siting and construction of the proposed line must achieve minimum adverse environmental impacts, even with respect to impacts that are not governed by existing statutes and regulations.

10. Consistent with this demonstration the Siting and Construction Regulations place on applicants, the Commission stated that applications cannot be approved unless the applicant demonstrates that “the environmental harm is clearly outweighed by the benefits to be derived from the facilities to be constructed.” *Re Proposed Electric Regulation* at 712 (emphasis added).

11. The Commission has indicated the types of evidence it will consider to determine whether the above demonstrations have been made. The Siting and Construction Regulations state:

§ 57.75. Hearing and notice.

...

(e) At hearings held under this section, the Commission will accept evidence upon, and in its determination of the application it will consider, inter alia, the following matters:

(1) The present and future necessity of the proposed HV line in furnishing service to the public.

...

(3) The impact and the efforts which have been and will be made to minimize the impact, if any, of the proposed HV line upon the following:

- (i) Land use.
- (ii) Soil and sedimentation.
- (iii) Plant and wildlife habitats.
- (iv) Terrain.
- (v) Hydrology.
- (vi) Landscape.

- ...
- (x) Scenic areas.
- (xi) Wilderness areas.
- (xii) Scenic rivers.

(4) The availability of reasonable alternative routes.

52 Pa. Code § 57.75 (emphasis added).

12. The applicable Pennsylvania regulation, 52 Pa. Code § 57.76 (a)(4), prohibits the Commission from approving the Application unless the proposed Project will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives. PPL must therefore analyze impacts of the proposed Project, and must demonstrate that every reasonable effort has been made to keep impacts to a minimum. PPL must also demonstrate that the remaining harms are clearly outweighed by the benefits to be derived from the Project.

13. To boil the analysis down to its fundamental point, “the regulations do not demand “no impact” by a project; rather, it requires a ‘minimum’ impact.” *Energy Conservation Council*, 995 A.2d 465, 482 (emphasis added).

14. Where the Commission concludes that an Application lacks sufficient information or fails to propose necessary activities, the Commission may impose conditions on its approval. *Energy Conservation Council*, 995 A.2d 465, 479. In *Energy Conservation Council*, the Commission issued conditions requiring the applicant to perform environmental studies and to report the results to the Commission. *Id.* The Commission further required the applicant to prepare and submit to the Commission mitigation plans to address impacts revealed in those environmental studies. *Id.* Finally, the Commission required the applicant to file with the Commission all required environmental permits from state and federal agencies before commencing construction of the proposed project. *Id.* The Court upheld these conditions pursuant to Section 1103(a) of the Pennsylvania Public Utility Code,

specifically authorizes the Commission to “impose such conditions as it may deem to be just and reasonable” when granting a certificate. *Id.*; 66 Pa. C.S. § 1103(a).

15. The Court in Energy Conservation Council held that:
the conditions the PUC imposed requiring TrAIL Co. to perform additional studies and submit the results of those studies, as well [as] all environmental permits obtained from federal and state government agencies, to the PUC before commencing construction on the 502 Facilities ensure the minimization of the environmental impact...

Id. at 482 (emphasis added). Thus, the Court has made clear both that the applicant must ensure minimum impacts, that the Commission may require further studies, plans and activities to do so, and that compliance with the regulations of other agencies is not always enough.

16. PPL has not met its burden of proving that the Commission should approve the Application.

17. PPL’s application fails to satisfy the Commission’s siting and construction regulations and the balancing required under Article 1, Section 27.

18. PPL had a duty to evaluate every reasonable alternative to minimize environmental impacts, but failed to do so. 52 Pa. Code § 57.75(e)(4).

19. PPL’s failure to minimize environmental impacts should not be condoned by the Commission. Therefore, Commission should deny PPL’s application.

20. The Project is to be located in a nearly pristine area of the Commonwealth, one wherein government and private organizations have made substantial efforts to set aside land and classify waters for perpetual protection. Unfortunately, PPL’s testimony and exhibits barely mention many environmental attributes of the Project area. PPL’s testimony and exhibits also fail to describe the Project’s impact on those attributes, or what efforts that will be made to minimize those impacts. This failure renders PPL’s Application deficient, and precludes the Commission from making the necessary determination under 52 Pa. Code § 57.76 (a)(4) that the proposed Project will have minimum adverse

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

21. PPL claims that all environmental impacts will be addressed by other agencies in subsequent approval applications. PPL St. R-4-2, p.6. However, this ignores the fact that those agencies have jurisdictional limits, and that PPL has a separate obligation to minimize impacts which are outside the jurisdiction (outside the statutes and regulations) of other agencies, and to the extent that the requirements of those agencies are insufficient to minimize impacts. These impacts include vegetation management practices, impacts to streams, wetlands and vernal (occurring primarily in the Spring season) pools, impacts to species and communities of special concern on private lands, and other impacts that for various reasons are not, or are not sufficiently, regulated by other agencies. PPL has failed to evaluate and demonstrate minimization of such impacts. Accordingly, PPL's Application should be denied.

22. If the Commission does grant the Application, the Commission should impose conditions set forth herein to ensure minimization of environmental impacts.

23. PPL's current proposed vegetation management proposal fails to satisfy 52 Pa. Code § 57.76 (a)(4), because it fails to employ an available alternative to minimize environmental impacts. *See Energy Conservation Council.*

24. The Commission should not allow PPL, as an afterthought to the Application and without any justification, to conduct this scorched-earth initial clearing of all vegetation within the Right-of-Way. If PPL truly could support these bald assertions, which is arguable at best, then PPL should have decided to do so at the onset, and should have provided support when it submitted the Application.

25. Even now, after development of the record, PPL has still failed to support the idea of full-scale vegetation clearing. Having failed to do so, PPL cannot ask the Commission to blindly follow

PPL's unsupported plan. To minimize environmental impacts, the Commission should prohibit this practice of full-scale stripping of all the vegetation within the Right-of-Way. See 52 Pa. Code § 57.76 (a)(4) and *Energy Conservation Council*. Instead, the Commission should require that PPL use the "Selective Clearing" and "Restrictive Clearing" methods set forth in Attachment 12 of the Application throughout the Right-of-Way, not just within 150 feet of streams.

26. PPL's current vegetation management proposal fails to satisfy 52 Pa. Code § 57.76 (a)(4), because it fails to employ an available alternative to minimize environmental impacts. That alternative is simply to preserve existing vegetation. Accordingly, the Commission should require that PPL use the Selective Clearing and Restrictive Clearing methods in both the Border Zone and the Wire Zone within 150 feet of all streams, wetlands and vernal pools in the Project area, and not allow PPL to simply *carte blanche* conduct full-scale initial clearing and resort to engineered BMPs.

27. Within 150 feet of streams, wetlands, and vernal pools, unless PPL demonstrates it is impracticable and that PPL will implement reasonable protections, PPL should be prohibited from:

- a. using herbicides, especially foliar application of herbicides;
- b. using heavy equipment;
- c. using concrete washouts;
- d. placing staging areas;
- e. placing transmission line poles.

28. PPL's current proposal to undertake these activities within 150 feet of streams, wetlands and vernal pools fails to satisfy 52 Pa. Code § 57.76 (a)(4), because it fails to employ available alternatives to minimize environmental impacts.

29. PPL has claimed that it will minimize impacts to Species and Communities of Special Concern where required by other Commonwealth agencies, primarily by DCNR and PGC on state lands; however, no specific regulation (other than the Public Utility Commission's 52 Pa. Code § 57.76(a)) compels PPL to do so in areas outside the jurisdiction of Commonwealth agencies.

30. PPL's current proposal to ignore Species and Communities of Special Concern in areas outside the jurisdiction of other agencies fails to satisfy 52 Pa. Code § 57.76 (a)(4), because it fails to employ available alternatives to minimize environmental impacts – the studies and mitigation it presumably will conduct at areas which are under the jurisdiction of other agencies. See *Energy Conservation Council*.

31. PPL has also argued that it should not have to do anything with respect to these Species and Communities of Special Concern because they are not listed on State or federal endangered or threatened species lists. However, there are many reasons a Species or Community of Concern may not be listed as endangered or threatened, including legislative roadblocks, apathy, ignorance, unfamiliarity, and simply timing. NP CARE St. 3-R, p.5. None of these reasons overcome the sound science behind listing these species and communities as being of concern – including as being globally rare. More importantly, accepting PPL's argument on this point would render 52 Pa. Code § 57.76 meaningless. To minimize environmental impacts to these documented Species and Communities of Special concern, PPL must evaluate them and take reasonable efforts to minimize impacts to them. The Commission should require PPL to do so in order to comply with 52 Pa. Code § 57.76(a).

32. In the instant case, the Commission should require PPL to prepare and submit studies of Species and Communities of Special Concern, and to prepare, submit and implement plans to mitigate impacts to them.

33. As indicated supra, construction and maintenance of PPL's proposed Project will result in numerous direct and indirect stream impacts. Many of these impacts will not be regulated by any agency other than the Commission, such as vegetation management, herbicide application, and vehicle and equipment staging outside of state lands and areas of PADEP jurisdiction. Other impacts are regulated by other state agencies, but only to a point.

34. PPL's current proposal to ignore remaining stream impacts fails to satisfy 52 Pa. Code § 57.76 (a)(4), because it fails to employ an available alternative to minimize environmental impacts – studies and mitigation of those impact. Studies and mitigation plans which rightfully should have been included in the Application in the first place.

35. For the above reasons, the Commission should require that PPL document baseline (pre-construction) conditions for comparison to post-construction conditions, using the Before-After-Control-Impact (BACI) approach.

36. PPL's failure precludes the Commission from making the necessary determination under 52 Pa. Code § 57.76 (a)(4) that the proposed Project will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives. Accordingly, PPL's application should be denied.

37. Alternatively, if the Commission decides to approve the Application, the Commission should enter an order containing conditions applicable to: 1) the West Pocono to North Pocono Segment of the proposed Project, 2) the West Pocono Substation and its associated 69/138 kV Connector Lines, and 3) the North Pocono Substation and its associated 69/138 kV Connector Lines. Those conditions are set forth in NP CARE's Conclusion and Ordering Paragraphs section of its Initial Brief.

VII. PROPOSED ORDERING PARAGRAPHS

PPL has not met its burden of proving by a preponderance of the evidence that it is entitled to have its Application approved. PPL had a duty to evaluate every reasonable alternative to minimize these risks, but failed to do so. 52 Pa. Code § 57.75(e)(4). PPL's failure precludes the Commission from making the necessary determination under 52 Pa. Code § 57.76 (a)(4) that the proposed Project will have minimum adverse environmental impact, considering

the electric power needs of the public, the state of available technology and the available alternatives. Accordingly, PPL's application should be denied. Alternatively, if the Commission decides to approve the Application, the Commission should enter an order containing the following conditions, applicable to: 1) the West Pocono to North Pocono Segment of the proposed Project, 2) the West Pocono Substation and its associated 69/138 kV Connector Lines, and 3) the North Pocono Substation and its associated 69/138 kV Connector Lines:

1. On Parcel 38, PPL Electric will move the proposed route 300 feet southeast from the property line, as shown on PPL Electric Exhibit DLH-5 and presented PPL St. 1-RJ-2, p.2.

2. On Parcel 35, PPL Electric will extend the proposed route approximately 75 west at the northern portion of the route on Parcel 35 and then continue south to tie into the location for the proposed route at the southern part of Parcel 35, as shown on PPL Electric Exhibit DLH-8 and presented at PPL St.1-RJ-2, p.3.

3. As a result of the changes identified at paragraph 2(a) above, the proposed route shall cross from Parcel 38 to Parcel 37 at a more southeast location, as shown on PPL Exhibit DLH-5 and presented at PPL St. 1-RJ-2, p.2.

4. NP CARE withdraws its objection to the proposed location of line on Parcel 43.

5. The Commission's approval of the Application does not preclude PPL from obtaining through negotiations or condemnation any additional rights of way within the 1,000 foot corridor approved by the Commission, where necessary to comply with the requirements of other agencies. Where necessary to comply with requirements of other agencies, PPL will acquire, by agreement or condemnation, additional ROW within the area of 1000' deemed approval.

6. PPL use the Selective Clearing and Restrictive Clearing methods in both the Border Zone and the Wire Zone throughout the Right-of-Way, as well as within 150 feet of all streams, wetlands and vernal pools in the Project area, and shall not simply *carte blanche* conduct full-scale initial clearing.

7. To minimize impacts, Mr. Foote agreed PPL should avoid clearing understory and scrub-shrub vegetation to the stream's edge to maintain shade and minimize thermal impacts to streams.

8. PPL's Attachment 12 is ambiguous as to the differences in treatment between "compatible" and "non-compatible" species. However, there are a number of additional species which would not grow high enough to pose a clearance threat. These are identified in Appendix RLK-3, and shall be included within PPL's list of "compatible" species.

9. Unless PPL demonstrates that it is impracticable and that PPL will implement reasonable protections, within 150 feet of streams, wetlands, and vernal pools, PPL shall be prohibited from conducting these activities:

- a. using herbicides, especially foliar application of herbicides;
- b. using heavy equipment;
- c. using concrete washouts;
- d. placing staging areas;
- e. placing transmission line poles.

10. Where avoidance of streams, wetlands, and vernal pools is not possible, the following management practices shall be employed: provide a site specific management plan for each of the riparian buffer, wetland and vernal pool areas encroached upon by the utility right-of-way; include a landscape plan for re-vegetation of disturbed areas including the planting native shrubs and a plan for maintenance and replacement, when needed of planted vegetation; and post notices in the field in the areas of concern in conspicuous places to alert work crews that there is a special management plan for the area that must be adhered to.

11. PPL shall conduct an assessment of the extent to which Species and Communities of Special Concern, and to the extent they exist shall prepare a management plan to minimize impacts to them, document implementation of that plan, and assess the results.

12. PPL shall evaluate what is and isn't working, and develop a response plan to evaluate additional and/or alternate controls and/or maintenance where necessary. PPL shall document baseline (pre-construction) conditions of impacted aquatic areas for comparison to post-construction conditions, using the Before-After-Control-Impact (BACI) approach. Using the BACI approach, PPL shall prepare and submit studies, and prepare, submit and implement plans to mitigate impacts to them. PPL shall these to the Commission, and make them available to NP CARE and PADEP as soon as possible. This monitoring should address:

- a. Erosion and sedimentation (suspended solids)
- b. Temperature
- c. Flow rate and volume
- d. Channel morphology
- e. Fish population diversity and density
- f. Benthic invertebrate community structure and drift

13. All studies and permitting shall be completed and submitted to the Commission prior to initiating any construction.

Respectfully submitted,

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