

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Transcontinental Gas Pipe Line Company, LLC ) Docket No. CP15-138-000

**REQUEST FOR REHEARING**

Pursuant to the Federal Power Act (“FPA”),<sup>1</sup> and Rule 713 of the Rules and Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”),<sup>2</sup> PPL Electric Utilities Corporation (“PPL Electric”) requests rehearing of the Commission’s February 3, 2017 Order Issuing Certificate issued regarding the Transcontinental Gas Pipe Line Company, LLC (“Transco”) Atlantic Sunrise Project (“Atlantic Sunrise”).<sup>3</sup> For the reasons set forth below, PPL Electric respectfully requests that the Commission issue an order on rehearing consistent with the comments set forth herein.<sup>4</sup>

The Commission should find that the Certificate Order is arbitrary and capricious, does not reflect reasoned decision-making and is not supported by substantial record evidence. In issuing the Certificate Order, the Commission relied on a Final Environmental Impact Statement (“EIS”), which in turn relied upon incomplete and inaccurate information presented by Transco. Among other things, Transco did not make clear that its plans to exercise eminent domain in order to site a portion of the

---

<sup>1</sup> 16 U.S.C. § 825l(a) (2012).

<sup>2</sup> 18 C.F.R. § 385.713 (2016).

<sup>3</sup> *Transcontinental Gas Pipe Line Company, LLC*, 158 FERC ¶ 61,125 (2017) (the “Certificate Order”).

<sup>4</sup> 15 U.S.C. § 717r(a).

Atlantic Sunrise pipeline across the Montour-Columbia 500 kV future use Right of Way (“ROW”) maintained by PPL Electric that would adversely impact PPL Electric’s ability to use its ROW for needed future electric transmission development. In fact, because transmission system conditions dictate a near term need for development of a new high voltage electric transmission line, PPL Electric’s near-term use of that ROW to meet its customers’ needs is contemplated. Transco’s proposed use of the ROW is expected to interfere with PPL Electric’s planned use of the ROW.

#### **I. Statement of Issues and Specification of Errors**

In accordance with Rule 713 of the Commission’s Rules of Practice and Procedure, PPL EU hereby identifies each issue as to which it seeks rehearing of the Certificate Order and provides representative precedent in support of its position on each of those issues:

- A. The EIS that the Commission relied upon in issuing the Certificate Order is inadequate and incomplete, and as such is invalid, must be rescinded and performed anew in accordance with the National Environmental Policy Act (“NEPA”).<sup>5</sup>
- B. Because the EIS is flawed, it cannot form the basis for approval of the Certificate Order.<sup>6</sup> Because the Commission relied on a flawed EIS, its decision was arbitrary and capricious, did not reflect reasoned decision-making and was not supported by substantial evidence.<sup>7</sup>

---

<sup>5</sup> See *Certificate of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order clarified*, 90 FERC ¶ 61,128, *order further clarified*, 92 FERC 61,094 (2000).

<sup>6</sup> 42 U.S.C. § 4321, *et seq.*

<sup>7</sup> See, e.g., *Motor Vehicle Mfrs. Ass’n. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. U.S.*, 371 U.S. 156, 168 (1962) (“Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’”); *Illinois Commerce Comm’n*, 576 F.3d 470, 477 (7<sup>th</sup> Cir. 2009) (“ICC”) (explaining that a reviewing court cannot “uphold a regulatory decision that is not supported by substantial evidence on the record as a whole”); *Pacific Gas & Elec. Co. v. FERC*, 373 F.3d 1315, 1319 (D.C. Cir. 2004) (“PG&E”); *Missouri Pub. Serv. Comm’n v. FERC*, 337 F.3d 1066, 1072-75 (D.C. Cir. 2003) (vacating and

## II. Request for Rehearing

- A. The flawed EIS must be rescinded and performed anew in accordance with NEPA.

The Commission must balance all relevant factors before issuing a Certificate Order.<sup>8</sup> It is incumbent on the applicant for the Certificate to be open and transparent regarding its project and to address all direct and indirect consequences of its project, as well as to provide alternative and mitigating options.<sup>9</sup> It appears that Transco did not proceed with the level of required openness and transparency in its dealings with the Commission or others with respect to the Atlantic Sunrise pipeline project. Transco did not make clear to the Commission the implications of its plans regarding the use of PPL

---

remanding Commission orders because it found, among other things, that the Commission had failed to articulate the actual reasons for its decision, and the reasons it did cite were “speculative,” unsupported by record evidence, and did not support its decision). *See also* 5 U.S.C. § 557(c) (the Commission is charged with addressing “all the material issues of fact, law, or discretion presented on the record”); 5 U.S.C. § 706(2)(A). *Nw. Env'tl. Def. Ctr. v. Bonneville Power Admin.*, 477 F.3d 668, 687-88 (9th Cir. 2007) (“[A]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute.”) (internal quotation marks and citation omitted); *Atchison, Topeka & Santa Fe Ry. v. Wichita Bd. of Trade*, 412 U.S. 800, 808, 93 S.Ct. 2367, 37 L.Ed.2d 350 (1973) (“*Atchison*”) (“Whatever the ground for the [agency’s] departure from prior norms, . . . it must be clearly set forth so that the reviewing court may understand the basis of the agency’s action and so may judge the consistency of that action with the agency’s mandate.”).

<sup>8</sup> *See Certificate of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order clarified*, 90 FERC ¶ 61,128, *order further clarified*, 92 FERC 61,094 (2000).

<sup>9</sup> *See* 18 C.F.R. §§ 157 and 380. *See also* 18 C.F.R. § 157(a)-(c) (“ (a) . . . every applicant shall file all pertinent data and information necessary for a full and complete understanding of the proposed project . . . (b) Every requirement of this part shall be considered a forthright obligation of the applicant and can only be avoided by a definite and positive showing that the information or data called for by the applicable rules is not necessary for the consideration and ultimate determination of the application. (c) This part will be strictly applied to all applications as submitted and the burden of adequate presentation in intelligible form as well as justification for omitted data or information rests with the applicant.”); and 18 C.F.R. §380(l) (Resource Report 10 - Alternatives) (“This report is required for all applications. It must describe alternatives to the project and compare the environmental impacts of such alternatives to those of the proposal.”).

Electric's Montour-Columbia corridor right-of-way ("ROW") so as to permit the Commission to make an informed decision in light of the adverse impacts of its preferred route and consider an alternative route. In particular, a route on the periphery of the ROW would not be expected to have the substantial negative repercussions on PPL Electric's transmission expansion plans as the route that is central to the ROW.

Because the EIS relied upon an incomplete picture of the facts, its assessment was not fulsome and it did not provide the Commission and others with the opportunity fully to evaluate Transco's proposal. Transco now has instituted eminent domain proceedings against PPL Electric relating to the ROW, despite PPL Electric's need for its ROW for electric transmission development to meet near term transmission system conditions. While Transco could have pursued a route on the periphery of the ROW to minimize or avoid adverse transmission infrastructure impacts, its selected central path within the ROW imposes significant adverse impacts on PPL Electric's use of its ROW for near-term transmission development dictated by transmission customer needs.

The Montour-Columbia 500 kV future use ROW is an integral part of PPL Electric's plans to meet demand and to improve the reliability of the bulk electric grid. PPL Electric expects to utilize this ROW in building North to South bulk transmission line in near future to address following challenges:

- 1) The generation in the PPL Electric zone is approximately 70% more than the load, and is expected to increase to 150% in the next five years. PPL Electric's transmission system needs to be expanded to accommodate the frequent influx of generator interconnection requests. Approximately 5,600 MW of new generation requests are in queue in the PPL Electric zone presently.

Construction of a bulk transmission line over the ROW is contemplated in the next five years to accommodate these requests.

- 2) PP Electric is working with the industry peers to improve the resiliency of the electric grid. The ROW is anticipated to be used in PPL Electric's efforts to improve grid resiliency.

Routing the pipeline through the middle of PPL EU's ROW, rather than at its periphery, will pose a significant disruption and harm PPL Electric and its customers. While it is PPL Electric's understanding that Transco initially contemplated a route on the periphery of the ROW, and thus could now pursue an alternative route that would minimize or eliminate the impact on PPL Electric, PPL Electric has not to date identified any reasonable alternatives for its transmission line construction. The EIS fails to evaluate this adverse impact and the lack of reasonable alternatives to mitigate the disruption to PPL Electric. This is a fundamental flaw that must be corrected.<sup>10</sup> Because the Certificate Order relied on an EIS that was conducted without a full understanding of the adverse impacts on transmission infrastructure development that would be caused by Transco's use of the ROW, the Certificate Order must be reversed. Failure to do so will jeopardize the ability to accommodate new generator interconnection requests and efforts to increase grid resiliency, harming the general public, wholesale and retail electric generation and transmission and distribution customers, electric generators, and PPL Electric alike.

---

<sup>10</sup> *Johnston v. Davis*, 698 F.2d 1088, 1095 (10<sup>th</sup> Cir. 1983) (revision of EIS necessary where artificially low discount rate resulted in unreasonable comparison of alternatives to proposed project).

The EIS should be withdrawn so that these significant impacts can be considered. The Commission should direct that a revised EIS be prepared that specifically examines Transco's proposed use of the ROW, alternatives to the selected route, and impacts on PPL Electric's ability to use the ROW.

- B. Because it relied on a flawed EIS, the Commission's decision was arbitrary and capricious, did not reflect reasoned decision-making and was not supported by substantial evidence.<sup>11</sup>

The EIS failed to comply with the basic requirements of the NEPA regulations. By improperly expediting authorization of this project without conducting a thorough review, the Certificate Order is arbitrary and capricious, does not reflect reasoned decision-making and is not supported by substantial record evidence. Therefore, it must be reversed on rehearing.

---

<sup>11</sup> See, e.g., *Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. U.S.*, 371 U.S. 156, 168 (1962) ("Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'"); *Illinois Commerce Comm'n*, 576 F.3d 470, 477 (7<sup>th</sup> Cir. 2009) ("*ICC*") (explaining that a reviewing court cannot "uphold a regulatory decision that is not supported by substantial evidence on the record as a whole"); *Pacific Gas & Elec. Co. v. FERC*, 373 F.3d 1315, 1319 (D.C. Cir. 2004) ("*PG&E*"); *Missouri Pub. Serv. Comm'n v. FERC*, 337 F.3d 1066, 1072-75 (D.C. Cir. 2003) (vacating and remanding Commission orders because it found, among other things, that the Commission had failed to articulate the actual reasons for its decision, and the reasons it did cite were "speculative," unsupported by record evidence, and did not support its decision). See also 5 U.S.C. § 557(c) (the Commission is charged with addressing "all the material issues of fact, law, or discretion presented on the record"); 5 U.S.C. § 706(2)(A). *Nw. Env'tl. Def. Ctr. v. Bonneville Power Admin.*, 477 F.3d 668, 687-88 (9<sup>th</sup> Cir. 2007) ("[A]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute.") (internal quotation marks and citation omitted); *Atchison, Topeka & Santa Fe Ry. v. Wichita Bd. of Trade*, 412 U.S. 800, 808, 93 S.Ct. 2367, 37 L.Ed.2d 350 (1973) ("*Atchison*") ("Whatever the ground for the [agency's] departure from prior norms, . . . it must be clearly set forth so that the reviewing court may understand the basis of the agency's action and so may judge the consistency of that action with the agency's mandate.").

PPL Electric notes that, to date, two other Requests for Rehearing and Motions for Stay have been filed with the Commission. On February 10, Allegheny Defense Project, Clean Air Council, Concerned Citizens of Lebanon County, Heartwood, Lancaster Against Pipelines, Lebanon Pipeline Awareness and Sierra Club (collectively "Intervenors") filed a Request for Rehearing and Motion for Stay. On February 24, a Request for Rehearing and Motion for Stay was filed by Accokeek, Mattawoman, Piscataway Creeks Communities Council, Inc. ("AMP Creeks"). These parties also separately request that the Commission rescind the defective EIS and reverse the Certificate Order, due to significant errors underlying approval of the Certificate. The significant objection to the Certificate Order warrants prompt attention by the Commission.

### **III. COMMUNICATIONS**

Communications regarding this filing should be directed to:

Michael J. Shafer, Esq.  
2 North Ninth Street, GENTW4  
Allentown, PA 18101-1179  
Tel: (610) 774-6077  
Fax: (610) 774-2881  
Email: mjshafer@pplweb.com

Sandra E. Rizzo  
Rebecca J. Michael  
Renee Beaver  
Arnold & Porter Kaye Scholer LLP  
601 Massachusetts Ave., N.W.  
Washington, D.C. 20001  
Tel: (202) 942-5000  
Fax: (202) 942-5999  
Email: Sandra.Rizzo@apks.com  
Rebecca.Michael@apks.com  
Renee.Beaver@apks.com

### **IV. CONCLUSION**

For the reasons set forth herein, PPL Electric respectfully requests that the Commission withdraw the defective environmental impact statement and prepare a

revised EIS that considers the direct, indirect and cumulative impacts of the project; and grant rehearing and reversal of the Certificate Order.

Respectfully submitted,

/s/ Michael J. Shafer, Esq.  
Michael J. Shafer, Esq.  
2 North Ninth Street, GENTW4  
Allentown, PA 18101-1179  
Tel: (610) 774-6077  
Fax: (610) 774-2881  
Email: mjshafer@pplweb.com

/s/ Sandra E. Rizzo  
Sandra E. Rizzo  
Rebecca J. Michael  
Renee Beaver  
Arnold & Porter Kaye Scholer LLP  
601 Massachusetts Ave., N.W.  
Washington, D.C. 20001  
Tel: (202) 942-5000  
Fax: (202) 942-5999  
Email: Sandra.Rizzo@apks.com  
Rebecca.Michael@apks.com  
Renee.Beaver@apks.com

March 6, 2017

*Attorneys for PPL Electric Utilities Corporation*



## CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing pleading this 6th day of March 2017, upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Darrell Reddix  
Darrell Reddix