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File #: 123973/02176

April 17, 2008

Honorable Sylvia H. Rambo  
United States District Court  
Middle District of Pennsylvania  
Federal Building  
228 Walnut Street  
Harrisburg, PA 17108

**RE: Eric Joseph Epstein v. Susquehanna River Basin Commission and  
PPL Susquehanna, LLC  
Docket No. 1:08-CV-00419**

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Dear Judge Rambo:

In accordance with your Order of Court dated March 26, 2008, this letter brief addresses the subject matter jurisdiction of this Court to hear the above-referenced matter, generally, and addresses the suggested procedure to be followed in adjudicating the matters in Plaintiff's Complaint in the event that Defendant PPL Susquehanna, LLC's Motion to Dismiss is not granted.

The history of the Susquehanna River Basin Commission ("SRBC") and the Susquehanna River Basin Compact, P.L. 91-575, 84 Stat. 1509 *et seq.*, December 24, 1970 (the "Compact"), are set forth in PPL's Brief in Support of its Motion to Dismiss and, therefore, will not be reiterated herein but, instead, will be incorporated herein by reference. In short, however, the Compact was enacted in response to a recommendation made by the State of New York, the State of Maryland and the Commonwealth of Pennsylvania to create a permanent intergovernmental agency for the management and effective utilization of the resources of the Susquehanna River Basin. See The Mayor and City Council of Baltimore, Maryland v. Susquehanna River Basin Commission, 2000 U.S. Dist. LEXIS 8199, \*4-5 (D.C. Md. 2000). The Compact was signed by the applicable Governors of Maryland, New York and Pennsylvania and, thereafter, was signed by the President.

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Pursuant to the Compact, the SRBC was vested with the power and duty to, *inter alia*, review projects impacting the resources of the Susquehanna River Basin and to approve projects, where appropriate. Such powers and duties of the SRBC are set forth in Article 3 of the Compact. Critically, Congress required that certain conditions and reservations be included as part of the Compact. In relevant part, one of the Congressional reservations explicitly vests jurisdiction to hear cases or controversies arising under the Compact with the United States District Courts. Specifically, this congressional reservation provides:

Notwithstanding paragraph 7 of section 3.10 of the compact, the United States district courts shall have original jurisdiction of all cases or controversies arising under the compact and this Act, and any case or controversy so arising initiated in a state court shall be removable to the appropriate United States district court in the manner provided by section 1446 of title 28, United States Code. Nothing contained in the compact or elsewhere in the Act shall be construed as a waiver by the United States of its immunity from suit.

See Compact, Part 11, § 2, Reservations (o).

Pursuant to the explicit provisions of the Compact, this Court has original jurisdiction over cases or controversies arising thereunder. Hence, jurisdiction is vested in this Court pursuant to 28 U.S.C. § 1331. See e.g. Delaware Water Emergency Group v. Hansler, 536 F. Supp. 26, 35 (E.D. Pa. 1981) (Interpreting a jurisdictional provision of the Delaware River Basin Compact, which provision is substantially similar to, if not identical to, the above-referenced provision of the Compact, the Court opined that “[t]his controversy arises under the Compact, and under the laws of the United States – thus, there is jurisdiction under 28 U.S.C. § 1331.”).

Of course, in order for the jurisdiction of this Court to be obtained, such must be done so in accordance with the Compact. As more fully set forth in PPL’s Brief in Support of Motion to Dismiss, the Compact required Plaintiff to seek review of the decision at issue within ninety (90) days from the effective date of the termination sought to be reviewed. Plaintiff failed to do the same and, accordingly, Plaintiff failed to secure the jurisdiction of this Court.

In the event that this Court were to conclude that Plaintiff somehow secured this Court’s jurisdiction and that this matter should go forward, this Court’s review is not *de novo* but, instead, is a “record review.” This issue was addressed by both the Maryland District Court in Mayor and City Council of Baltimore and the United States District Court for the Eastern District of Pennsylvania in Hansler.

As the foregoing reflects, if this Court decides to address the merits of this case, this matter should not proceed in the “traditional” manner in which civil actions are commenced via the filing of a complaint, with an answer to follow, coupled with discovery. Instead, the record has already been created. The appropriate course of action would be to brief the merits based upon a

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certified record (with Plaintiff having the burden in that process), subject to the scope of review and standard of review set forth above.

Respectfully submitted,

*/s/ Terry R. Bossert*

Terry R. Bossert

TRB:jtm

cc: Robert B. Hoffman, Esquire  
Eric Joseph Epstein