

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held February 10, 2011

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
John F. Coleman, Jr.
Wayne E. Gardner
Robert F. Powelson

Application of Duquesne Light Company for
the Siting and Construction of a 345 kV
Transmission Line in the City of Pittsburgh,
Municipality of Penn Hills,
Verona Borough and Plum Borough,
Allegheny County, PA

A-2010-2159814

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Recommended Decision (R.D.) of Administrative Law Judges (ALJs) John H. Corbett, Jr. and Mary D. Long, the Exceptions of Paul Jenkins and the Reply Exceptions of David A. Parrendo as well as the Reply Exceptions of Duquesne Light Company (Duquesne or Company).

History of the Proceeding¹

Duquesne filed its Application for the siting and construction of a 345 kV transmission line on February 11, 2010. By notice dated February 25, 2010, the Office of Administrative Law Judge issued a hearing notice scheduling the prehearing conference on the application for April 21, 2010.

Notice of the prehearing conference was further published in the *Pennsylvania Bulletin* on March 8, 2010,² and in the *Pittsburgh Tribune Review* on March 4, 2010 and March 11, 2010. A prehearing conference order was issued on March 5, 2010. All of these notices informed members of the public that protests to the Application were due to the Commission on or before April 16, 2010.

Administrative Law Judges John H. Corbett, Jr. and Katrina L. Dunderdale were assigned to preside over the matter. After reviewing the Application, Judge Dunderdale, by letter dated March 5, 2010, informed the parties that she owns real estate within the Municipality of Penn Hills, albeit more than 100 feet from the centerline of the proposed transmission line. By letter dated March 25, 2010, Duquesne requested Judge Dunderdale to recuse herself. Judge Dunderdale granted the request by Interim Order dated March 26, 2010, and Administrative Law Judge Mary D. Long was assigned to take her place.

No public input hearings were scheduled and no protests were filed. However, Messrs. Jenkins, Ericksen and Elinich expressed an interest in providing public input testimony and were therefore invited to do so at the technical hearing which was

¹ The History of the Proceeding is taken largely from the Recommended Decision at 2-3.

² 40 Pa. Bull. 1280.

scheduled to begin on June 2, 2010 in Pittsburgh. Additionally, the ALJs granted the request of David A. Parrendo for active party status.

Duquesne submitted the written testimony of five witnesses on April 28, 2010. No written testimony was submitted by any other party.

The hearing on the Application commenced on June 2, 2010. Duquesne offered the written testimony of Michelle Antantis, Megan Sullivan, Jim Boyle, George T. Reese, and Dr. Linda Erdreich. Ms. Antantis, Ms. Sullivan and Mr. Boyle testified about the need for the project, the selection of the route, and the construction of the line. Mr. Reese testified about the environmental assessment and route selection of the line. Dr. Erdreich testified about EMF exposure. Duquesne also offered Exhibit 2, a map from the Application; Exhibit 7 of the Application which was the environmental assessment; and Exhibits 11, 12, and 13 which were graphs illustrating potential exposure from electric and magnetic fields. These exhibits were admitted into the record without objection. Finally, Mr. Jenkins and Mr. Ericksen made sworn statements for the record in opposition to the proposed transmission line. No other individuals testified.³

The hearing generated a transcript of 100 pages. By order dated July 6, 2010, the record in this case was closed. No briefs were ordered.

On September 29, 2010, the Recommended Decision was issued which approved Duquesne's Application. Exceptions were filed by Paul Jenkins on October 19, 2010, which were served on the Parties by Secretarial Letter issued October 29, 2010. Timely Replies to Exceptions were filed by David A. Parrendo on November 6, 2010, and by Duquesne on November 8, 2010.

³ Mr. Parrendo was not present at the technical hearing.

Discussion

As a preliminary matter, we note that any issue or Exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pennsylvania Public Utility Commission*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pennsylvania Public Utility Commission*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In the Recommended Decision, ALJs Corbett and Long reached forty-four Findings of Fact, R.D. at 4-12, and four Conclusions of Law, R.D. at 19-20. We shall adopt and incorporate herein by reference the ALJs' Findings of Fact and Conclusions of Law unless they are either expressly or by necessary implication overruled or modified by this Opinion and Order.

Legal Standards

Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), provides that the party seeking relief from the Commission has the "burden of proof." "Burden of proof" is a duty to establish a fact by a "preponderance of the evidence." The term "preponderance of the evidence" means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950). In other words, "preponderance" is not dependent on the number of witnesses testifying on either side but rather on the credibility of the testimony in the light of all the evidence in a case. *Burch v. Reading Co.*, 240 F.2d 574 (3d Cir. 1957) *cert. denied*, 353 U.S. 965 (1957).

It is also well established that, when the proponent of a rule or order establishes a *prima facie* case in support of its requested relief, the burden of going forward then shifts to the other party to rebut the evidence produced by the proponent. However, the burden of proof remains with the proponent. *Morrissey v. Pennsylvania Department of Highways*, 424 Pa. 87, 225 A.2d 895 (1967); *Burleson v. Pennsylvania Public Utility Commission*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd* 501 Pa. 443, 461 A.2d 1234 (1983). Under these principles, Duquesne, as the Applicant, has the burden of proof.

The Commission's regulations applicable to the siting and construction of high voltage transmission lines are found at 52 Pa. Code §§ 57.71-57.77 (siting regulations). These regulations provide that a public utility is required to obtain Commission approval to locate and construct a high voltage transmission line. 52 Pa. Code § 57.71. The siting regulations set forth the elements that the Commission must consider when deciding to approve or deny an application for the siting of a high voltage transmission line. 52 Pa. Code § 57.76. The Commission's siting regulations, and in particular 52 Pa. Code § 57.76, were promulgated, *inter alia*, to meet the requirement for a consideration of environmental impacts mandated by Article I, Section 27 of the Pennsylvania Constitution,⁴ and to apply the three-part test enunciated in

⁴ Article I, Section 27 of the Pennsylvania Constitution 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.”

Payne v. Kassab, 312 A.2d 86 (Pa. Cmwlth. 1973),⁵ which implements the Constitutional requirements. *Energy Conservation Council of Pennsylvania v. Pennsylvania Public Utility Commission*, 995 A.2d 465, 477-78 (Pa. Cmwlth. 2010); *see, also, Re: Proposed Electric Regulation*, 1976 Pa. PUC LEXIS 114 at *6, 49 Pa. PUC 709 at 712 (March 2, 1976). The Commission uses this test to determine whether a proposed transmission line having environmental impacts should be approved.

Section 57.76 of the siting regulations provides, in pertinent part, as follows:

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

- (1) That there is a need for it.
- (2) That it will not create an unreasonable risk of danger to the health and safety of the public.
- (3) That it is in compliance with the 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(a).

The Commonwealth Court has determined that a transmission line should not be approved unless the electric utility proposing the line demonstrates that the line is “necessary or proper for the accommodation, convenience and safety of its patrons,

⁵ The three-part test established in *Payne v. Kassab* requires consideration of the following: (1) Was there compliance with all applicable statutes and regulations relevant to the protection of the Commonwealth’s environment? (2) Does the record demonstrate a reasonable effort to reduce the environmental incursion to a minimum? (3) Does the environmental harm which would 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? 312 A.2d at 94.

employees and the public.” *Pa. Power & Light Co. v. Pennsylvania Public Utility Commission*, 696 A.2d 248, 250 (Pa. Cmwlth. 1997), *quoting* 66 Pa. C.S. § 1501. In applying this standard, the Commonwealth Court held that the Commission should consider the “electric power needs of the public, the state of the available technology and the available alternatives.” *Id.*, *quoting* 52 Pa. Code § 57.76.

Regarding route selection issues, the Commonwealth Court has explained as follows:

The applicable legal standards for review of the selection of a route for utility lines are whether the powers conferred upon the public utility have been wantonly, capriciously or arbitrarily exercised. *West Penn Power Co. v. Pennsylvania Public Utility Commission*, 184 A.2d 143 (1962). The degree of inconvenience to a landowner, therefore, would not constitute grounds for withholding the exercise of the power to condemn the easement, *see Stone v. Pennsylvania Public Utility Commission*, 162 A.2d 18 (1960), where the record establishes that the utility’s route selection was reasonable considering all of the factors involved in the selection of the line.

Paxtowne v. Pennsylvania Public Utility Commission, 398 A.2d 254, 256 (Pa. Cmwlth. 1979).

Similarly, the selection of a route for transmission lines was explained by the Superior Court as follows:

Appellant’s [affected landowner’s] first two contentions are sufficiently answered by our opinion in *Phillips v. Pa. P.U.C.*, [124 A.2d 625 (Pa. Super. 1956)], wherein we restated the well-established proposition that the selection of routes for transmission lines is a matter for the utility in the first instance and, unless it is shown that it proposes to exercise the powers conferred upon it wantonly or capriciously, or that the rights of the landowner have been unreasonably disregarded, the Commission is not required to withhold its

approval merely because another route might have been adopted.

Laird v. Pennsylvania Public Utility Commission, 133 A.2d 579, 581 (Pa. Super. 1957).

The Proposed Line

Duquesne proposes to construct a 345 kV transmission line in the City of Pittsburgh, Municipality of Penn Hills, Verona Borough and Plum Borough, all located in Allegheny County. The proposed line will be 7.8 miles in length and will utilize existing rights-of-way. R.D. at 1. The proposed line will replace an existing 69 kV transmission line. *Id.* at 4. The proposed line is part of Duquesne's upgrade project known as the Duquesne Transmission Enhancement Plan (DTEP). The DTEP is the result of system reliability studies which were conducted in the aftermath of the regional transmission outage that affected much of the northeastern United States in August 2003. *Id.* at 5. The DTEP provides for the development of a 345 kV ring around the City of Pittsburgh. It calls for an upgrade of several 138 kV lines, the conversion of 69 kV circuits to 138 kV operation and the development of 345 kV substations at Brunot Island, Arsenal and Carson. *Id.* at 6.

Primary components of the DTEP are intended to reduce Duquesne's reliance on the Brunot Island substation to serve Pittsburgh by providing an additional transmission feed into the city, and reducing Duquesne's dependence on two generating stations to the east by providing greater access to generating resources in the west. R.D. at 6. The Application before us seeks approval for the construction and siting of part of a 345 kV transmission backbone and related facilities between the Brunot Island and Logans Ferry substations, using a combination of existing, new and up-rated transmission lines. *Id.*

The existing line which the proposed line replaces is a 69 kV line originally constructed in 1927 and 1953. There have been no significant modifications to the existing line since construction. Duquesne rejected continuation of a maintenance regimen on the line in favor of replacement and upgrade because most of the existing line is at or has exceeded the expected lifetime of the materials in that line. In addition, the existing 69 kV line was deemed inadequate to support the capacity necessary to achieve the desired voltage and contingency support for the northeastern portion of the territory. R.D. at 6-8.

The Recommended Decision

In their Recommended Decision, the ALJs reviewed the record before them and reviewed the criteria for siting transmission lines established in our regulations: need for the line; health and safety of the public; protection of natural resources; and the potential for adverse environmental impact, considering the electric power needs of the public, the state of available technology and available alternatives.

With regard to the need for the line, the ALJs found that the proposed line was a result of reliability studies which “revealed significant shortcomings in Duquesne’s ability to provide reliable electric service to its customers and violations of North American Electric Reliability Corporation (NERC) standards.” R.D. at 15. The proposed line is part of a backbone system of transmission lines which provide for the replacement and upgrade of existing 69 kV lines in order to mitigate low voltage and contingency overload scenarios. *Id.* at 16. The proposed line offers alternative transmission service in the event that one or more other Duquesne facilities fail. In addition, the ALJs were persuaded by the evidence which established that the existing 69 kV line has reached the end of its useful life and the upgrade to a 345 kV line was a proper replacement, particularly in view of Duquesne’s plan to provide a 345 kV loop extending from the western portion of Duquesne’s system where there is a high concentration of generation

facilities into the downtown area. The proposed line is part of that system which will continue the loop from the center into the northeast portion. The ALJs found that the record evidence established a need for the proposed line. *Id.*

The ALJs next examined the route selection for the proposed line to determine whether the route “was reasonable and does not pose an unreasonable risk to health and safety or unduly impact the environment.” R.D. at 17. The ALJs found that Duquesne had evaluated six possible routes for the proposed line. The evidence of record established that the proposed route was the best of all considered. The proposed route will be built entirely within an existing right-of-way held by Duquesne. The record also established that by using the existing right-of-way, the proposed route minimizes any new environmental impacts because the area has already been impacted by the existing 69 kV line. There will be no additional clearing of forests or stream crossings. *Id.*

The ALJs noted that the proposed alternative will impact 89 homes which are located within 100 feet of the centerline. However, those homes have already been impacted by the presence of a transmission line. The ALJs found that while alternative routes may impact fewer homes, the impact on those residences would be a completely new impact rather than the incremental impact to homes near the existing 69 kV right-of-way. R.D. at 18. The ALJs also found that the materials to be used for the new line are taller than the existing poles and are designed to withstand the wind and weather typical in Western Pennsylvania. The design meets or exceeds National Electric Safety Code (NESC) Standards. The ALJs found that the Commission has held “that transmission lines that meet or exceed the NESC requirements do not create an unreasonable risk or danger to the health and safety of the public.” R.D. at 18, *citing Application of PPL Electric Utilities Corporation for the Siting and Construction of The Proposed Susquehanna-Roseland 500 kV Transmission Line*, Docket No. A-2009-2082652 (Order entered February 12, 2010).

The ALJs also found that the proposed line “will not cause an unreasonable risk from exposure to electromagnetic fields (EMF).” R.D. at 18. The ALJs stated:

Dr. Erdreich’s unrefuted testimony was that the weight of scientific evidence does not provide a reliable basis to conclude that long-term exposure to EMF will cause or contribute to adverse health effects in children or adults living near a 345 kV transmission line. Indeed, because the lines will be further from the ground than the current line, exposure to the magnetic fields generated by the proposed line will actually be of a lower intensity.

R.D. at 18-19.

The ALJs specifically discussed Mr. Jenkins’ testimony as follows:

Mr. Jenkins testified that he was concerned about exposure to EMF and other safety concerns relative to the proposed 345 kV line. Mr. Erickson also expressed concern that Duquesne would not properly maintain the line or respect the property rights of residents in proximity to the proposed line. While we take these concerns very seriously, the fact is that high voltage transmission lines are a fixture of modern life and are a necessity in order for a utility company to be able to provide adequate, safe and reliable electric utility service to its customers. If Duquesne did not use its existing right-of-way in this community, it would have to impact other property owners along alternate routes who are not currently impacted by a transmission line and who will be subjected to the new impact caused by a new line. While this by itself is not basis upon which to approve a selected route for a transmission line, it is persuasive in this case. Duquesne considered the safety of the homeowners located in proximity of the proposed line in choosing the materials and design for the line, as well as other health risks such as EMF exposure.

R.D. at 19.

The ALJs found that the proposed line complies with this Commission's regulations at 52 Pa. Code §§ 57.76(a)(2)-(4) and 57.75(e). The ALJs further found that the proposed line will not pose an unreasonable risk to health and safety and will have minimum adverse environmental impact considering the electric power needs of the public. R.D. at 19.

The Exceptions and Replies

As noted above, Mr. Jenkins filed Exceptions⁶ to the ALJs' Recommended Decision. Mr. Jenkins' one page Exceptions challenge the findings relating to: the danger from EMFs, the impact of higher supporting poles for the proposed line, the appropriateness of other alternative routes and the failure of the ALJs to address Duquesne's "aggressive" vegetation removal. Mr. Jenkins also argues that there was no discussion of the fact that the current 69 kV line is inactive and that Duquesne had failed to show that reactivation of this particular line is necessary.

Mr. Parrendo filed Reply Exceptions stating that he "concur[s]" with Mr. Jenkins' Exceptions. Mr. Parrendo states that no evidence contrary to that of Duquesne was offered in this proceeding. On that basis, Mr. Parrendo asserts that this proceeding "is devoid of unbiased, independent experts and their testimony. . . ."

Duquesne filed a response to Mr. Parrendo's Reply Exceptions urging that they be rejected because Mr. Parrendo "lacks standing to file reply exceptions." Duquesne Letter of November 24, 2010. Duquesne argues that Mr. Parrendo failed to file a written request for leave to intervene in accordance with our Regulations at 52 Pa.

⁶ We note that Mr. Jenkins' Exceptions and Mr. Parrendo's Reply Exceptions are one page documents.

Code § 57.75(d). Duquesne also argues that Mr. Parrendo's Reply Exceptions are merely cumulative to the concerns raised by Mr. Jenkins' Exceptions. *Id.*

Duquesne further asserts that Mr. Jenkins does not have standing to file Exceptions. Duquesne R.Exc. at 5-6. Duquesne argues that, similar to Mr. Parrendo, Mr. Jenkins failed to file a request for leave to intervene as required by Section 57.75(d) of our Regulations. Duquesne observes that, although Mr. Jenkins provided sworn testimony, the failure to seek formal party status prevents Mr. Jenkins from filing Exceptions. *Id.* at 6.

Disposition

Duquesne makes valid arguments regarding both Mr. Parrendo and Mr. Jenkins' standing to file Exceptions. In the normal course, a formal filing for intervention pursuant to 52 Pa. Code § 57.75(d) would be required. However, we note that the ALJs conferred "active party" status on both Mr. Jenkins and Mr. Parrendo. R.D. at 3; Duquesne R.Exc. at 5. There is no question that both Mr. Parrendo and Mr. Jenkins have a substantial interest in the proceeding, one of the requirements for formal intervention pursuant to Section 57.75(d). Our concern is that, while Duquesne is technically correct in its arguments regarding standing to file Exceptions, the designation of "active party" by the ALJs may have created the impression that Mr. Jenkins and Mr. Parrendo had done all that was required to fully participate. In addition, we find that Duquesne will not be disadvantaged by our consideration of Mr. Jenkins' Exceptions and Mr. Parrendo's Reply Exceptions. Duquesne has had a full and fair opportunity to advance its Application before this Commission. On that basis, we will entertain both Mr. Jenkins' Exceptions and Mr. Parrendo's Reply Exceptions.

At the onset, we find that Mr. Parrendo's Reply Exceptions are simply cumulative to the Exceptions filed by Mr. Jenkins. Accordingly, they will be considered together.

In its Reply Exceptions, Duquesne goes to some length to provide record citations for the record evidence which support the findings of the ALJs. Duquesne R.Exc. at 9-16. As described above, the ALJs addressed each of the issues required by our siting regulations in their Recommended Decision. Our review of Mr. Jenkins' Exceptions and Mr. Parrendo's Reply Exceptions provides us with no record support for their position that the ALJs erred.

As noted by Duquesne, contrasted with the complete lack of any record support for the arguments in the Exceptions, the ALJs conducted a thorough analysis of the regulatory standards governing the Application and the evidence produced in support of the Application. In particular, we note the ALJs' Findings of Fact which appear at Pages 4 through 12 of the Recommended Decision. Each finding is supported by evidence of record. That evidence was not successfully rebutted by any other Party (or witness) in this proceeding. We have stated above that Duquesne's burden of proof in this proceeding is a preponderance of the evidence standard. The ALJs correctly found that Duquesne successfully carried that burden. Nothing in Mr. Jenkins' Exceptions or Mr. Parrendo's Reply Exceptions supports a contrary determination.

Based upon the foregoing, we will deny the Exceptions of Mr. Jenkins and the Reply Exceptions of Mr. Parrendo. We will adopt the Recommended Decision for all of the reasons set forth therein. Based upon our review of the record and the Recommended Decision, we make the following findings:

1. Duquesne has shown that there is a need for the proposed line, R.D. 5-7, 15-16;

2. Duquesne has shown that the proposed line will not create an unreasonable risk of danger to the health and safety of the public, R.D. 8, 18-19;

3. Duquesne has shown that it is in compliance with the applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth, R.D. 9-11, 17-19;

4. Duquesne has shown that the proposed route for the line will have minimum adverse impact, considering the electric power needs of the public, the state of available technology and the available alternatives, R.D. 9-11, 17-18.

Conclusion

For the foregoing reasons, we will deny the Exceptions of Paul Jenkins and the Reply Exceptions of David A. Parrendo. We will adopt the ALJs' Recommended Decision which grants Duquesne's Application, consistent with this Opinion and Order; **THEREFORE,**

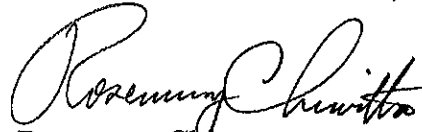
IT IS ORDERED:

1. That the Exceptions filed by Paul Jenkins are denied.
2. That the Reply Exceptions filed by David A. Parrendo are denied.
3. That the Recommended Decision of Administrative Law Judges John H. Corbett, Jr. and Mary D. Long, issued on September 29, 2010, at this Docket is adopted.

4. That the Application of Duquesne Light Company for the Siting and Construction of a 345 kV Transmission Line in the City of Pittsburgh, Municipality of Penn Hills, Verona Borough and Plum Borough, Allegheny County, Pennsylvania, filed at this Docket is granted.

5. That the Secretary shall mark this Docket closed.

BY THE COMMISSION,


Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: February 10, 2011

ORDER ENTERED: February 10, 2011