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File #: 166407

July 8, 2019

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

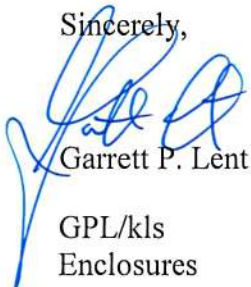
**Re: Application of Duquesne Light Company filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the 138 kV Transmission Lines Associated with the Brunot Island-Crescent Project in the City of Pittsburgh, McKees Rocks Borough, Kennedy Township, Robinson Township, Moon Township, and Crescent Township, Allegheny County, Pennsylvania
Docket No. A-2019-3008589**

Dear Secretary Chiavetta:

Enclosed for filing are the Preliminary Objections of Duquesne Light Company to the Protest of Victoria A. Adams.

Copies are being provided per the attached Certificate of Service.

Sincerely,



Garrett P. Lent

GPL/kls
Enclosures

cc: Certificate of Service

ALLENTOWN HARRISBURG LANCASTER PHILADELPHIA PITTSBURGH PRINCETON WASHINGTON, D.C.

A PENNSYLVANIA PROFESSIONAL CORPORATION

has resulted in damages to the Protestant via alleged damage to property, nuisance, roaming animals and other issues.

As explained herein, the Commission should dismiss Protest because the Commission lacks jurisdiction over the claims contained therein.

In support thereof, Duquesne states as follows:

I. BACKGROUND

1. Duquesne Light is a “public utility” and an “electric distribution company” as those terms are defined under the Public Utility Code, 66 Pa. C.S. §§ 102 and 2803, subject to the regulatory jurisdiction of the Commission.

2. Duquesne Light furnishes electric service to approximately 596,000 customers throughout its certificated service territory, which includes all or portions of Allegheny and Beaver Counties and encompasses approximately 800 square miles in western Pennsylvania.

3. On March 15, 2019, Duquesne Light filed: (1) “Application of Duquesne Light Company filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the 138 kV Transmission Lines Associated with the Brunot Island – Crescent Project in the City of Pittsburgh, McKees Rocks Borough, Kennedy Township, Robinson Township, Moon Township, and Crescent Township, Allegheny County, Pennsylvania,” at Docket No. A-2019-3008589 (“BI-Crescent Full Siting Application”); and (2) “Application of Duquesne Light Company 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 George N. Schaefer of Moon Township, Allegheny County, Pennsylvania for the Siting and Construction of Transmission Lines Associated with the Proposed Brunot Island – Crescent Project is Necessary

or Proper for the Service, Accommodation, Convenience, or Safety of the Public,” at Docket No. A-2019-3008652 (“Schaefer Condemnation Application”).

4. On March 28, 2019, the Administrative Law Judge Mary D. Long (the “ALJ”) issued a Prehearing Conference Order, which scheduled a Prehearing Conference in the matters at Docket Nos. A-2019-3008589 and A-2019-3008652 for June 6, 2019.

5. Notice of the BI-Crescent Full Siting Application and the Schaefer Condemnation Application was published in the April 6, 2019 edition of the *Pennsylvania Bulletin*.

6. Duquesne Light published Proof of Publication of notice of the filings with the Commission on April 30, 2019.

7. A Prehearing Conference was held on June 6, 2019.

8. On June 7, 2019, the ALJ issued an Interim Order Extending Protest Period and Scheduling a Further Prehearing Conference at Docket Nos. A-2019-3008589, A-2019-3008652. Therein, the ALJ extended the deadline for filing a “protest or petition to intervene in order to become a party of record in this matter” to June 21, 2019.

9. Duquesne Light received a Formal Complaint from the Protestant on June 18, 2019. No docket number has been assigned to the pleading. As the pleading contests and opposes the electric transmission line siting application at Docket No. A-2019-3008589, Duquesne Light is treating the pleading as a Protest to the Application. A true and correct copy of the Protest is attached hereto as **Appendix A**.

10. As explained herein, the Commission should dismiss certain claims contained in the Protest because the Commission lacks jurisdiction over the claims contained therein.

II. STANDARD OF REVIEW

11. Pursuant to the Commission’s regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a) (emphasis added).

12. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom. *Stilp v. Cmwlth.*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (citing *Dep't of Gen. Servs. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005)). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007). Notwithstanding, any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781.

13. In addition, the Presiding Officer must determine whether, based on the factual pleadings, if recovery is possible. *See Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlth. 1987). Indeed, for preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery. *See Stilp*, at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998).

III. PRELIMINARY OBJECTIONS

A. PRELIMINARY OBJECTION NO. 1 – THE COMMISSION LACKS JURISDICTION OVER THE PROTESTANTS’ CLAIMS

14. Duquesne Light incorporates by reference Paragraphs 1 through 13 as if fully set forth herein.

15. The Protestant’s claims regarding property disputes should be dismissed because the Commission lacks jurisdiction over these claims. *See* 52 Pa. Code § 5.101(a)(1).

16. As a “creature of statute,” the Commission “has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication.” *Feingold v. Bell of Pa.*, 383 A.2d 791, 794 (Pa. 1977) (citing *Allegheny Cnty. Port Auth. v. Pa. PUC*, 237 A.2d 602 (Pa. 1967); *Del. River Port Auth. v. Pa. PUC*, 145 A.2d 172 (Pa. 1958)).

17. The Commission is without jurisdiction over other real property issues such as trespass and the location of utility facilities pursuant to valid easements. *See Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *see also Anne E. Perrige v. Metropolitan Edison Co.*, Docket No. C-00004110 (Order entered July 11, 2003) (Commission had no jurisdiction to interpret the meaning of a written right-of-way agreement); *Samuel Messina v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00968225 (Order entered Sept. 23, 1998) (“The Commission has clearly stated in prior decisions that it is without subject matter jurisdiction to adjudicate questions involving trespass and whether or not utility facilities are located pursuant to valid easements or rights-of-way.” (citation omitted)).

18. Finally, the Commission has recognized that the assessment of damages resulting from a line’s impact or individual land use was properly adjudicable in another forum. *See Re Philadelphia Electric Company*, 1992 Pa. PUC LEXIS 160 (Initial Decision dated June 29,

1992); *see also Re Philadelphia Electric Company*, 52 Pa. P.U.C. 198, 1978 Pa. PUC LEXIS 141 (Order dated May 17, 1978) and *Re West Penn Power Company*, 68 Pa. P.U.C. 262, 268, 1988 Pa. PUC LEXIS 462 (Order dated Oct. 3, 1988). Accordingly, determination of damages is not within the Commission's jurisdiction to hear and determine.

19. Applied here, the Protest avers that Duquesne Light has engaged in six categories of actions without the property owners' and/or residents' permission:

- Allegedly trespassing onto 306 Konter Road. *See* Protest ¶ 4 (attachment page 1, number 1).
- Allegedly damaging the Protestants' property. *See* Protest ¶ 4 (attachment page 1, number 2).
- Allegedly increasing noise, wear and tear of road condition and decreasing privacy, *i.e.* nuisance claims. *See* Protest ¶ 4 (attachment page 1, number 3).
- Allegedly causing free-roaming domestic animals on the Protestants' property. *See* Protest ¶ 4 (attachment page 1, number 4).
- Property-owner liability related to injuries that may occur to Duquesne Light and/or its contracted vendors' personnel. *See* Protest ¶ 4 (attachment page 1, number 5).
- Allegedly increasing potential physical/medical and emotional stress/anxiety. *See* Protest ¶ 4 (attachment page 1, number 6).

20. With respect to each of these claims, the Protest then requests as relief that: (1) Duquesne Light refrain from trespassing; (2) Duquesne Light restore land to original states; (3) Duquesne Light refrain from accessing the road; and (4) the Commission deny the BI-Crescent Fully Siting Application.

21. The Commission lacks jurisdiction with respect to each and every one of these claims.

22. The Protest asks the Commission to adjudicate a property dispute, *i.e.* whether Duquesne Light has committed a trespass or otherwise damaged the Protestant's property. *See*

Protest ¶ 4 (attachment page 1). In order to render the relief requested by the Protestant, the Commission would have to determine the parties' respective property rights, a function that is beyond the Commission's power, authority and jurisdiction.

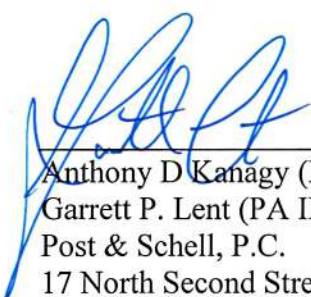
23. Accordingly, and assuming all of the well-pleaded facts contained in the Protest are true, any claim's regarding the alleged trespass, nuisance or associated damages are not within the Commission's jurisdiction because, as a matter of law, the acts complained of relate to a property dispute between a landowner and a utility. Protest ¶ 4 (attachment pages 1-2). The Commission is without jurisdiction to grant the relief requested based such claims.

24. Therefore, the Protest should be dismissed with prejudice.

IV. CONCLUSION

WHEREFORE, Duquesne Light Company respectfully requests the above-captioned Protest filed by Victoria A. Adams be dismissed with prejudice pursuant 52 Pa. Code § 5.101(a)(1).

Respectfully submitted,



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Date: July 8, 2019

Attorneys for Duquesne Light Company

APPENDIX A

**PROTEST FILED BY VICTORIA A. ADAMS
AGAINST DUQUESNE LIGHT COMPANY**

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

COPY

Filing this form begins a legal proceeding and you will be a party to the case. If you do not wish to be a party to the case, consider filing an informal complaint.

To complete this form, please type or print legibly in ink.

1. Customer (Complainant) Information

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name Victoria A. Adams
Street/P.O. Box 306 Kontar Road Apt #
City Coraopolis State PA Zip 15108
County Allegheny

Telephone Number(s) Where We Can Contact You During the Day:

724 457-1626 (home) 724 513-0193 (mobile)

E-mail Address (optional): adamsvic62@gmail.com

Utility Account Number: (from your bill) A-2019-3008589 (PUC)
BRUNOT Island - Crescent Project #

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name
Street/P.O. Box
City State Zip

2. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

Douglas Light Company

3. Type of Utility Service

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- ELECTRIC WASTEWATER/SEWER
 GAS TELEPHONE/TELECOMMUNICATIONS (local, long distance)
 WATER MOTOR CARRIER (e.g. taxi, moving company, limousine)
 STEAM HEAT

4. Reason for Complaint

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. **Your complaint may be dismissed without a hearing if you do not provide specific information.**

- The utility is threatening to shut off my service or has already shut off my service.
- I would like a payment agreement.
- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.
- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.
- Other (explain).

(PUC A-2019-3008589)
BRUNOT² Island - Crescent Project
PLEASE SEE ATTACHED
4 R...

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

5. **Requested Relief**

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

PLEASE SEE ATTACHED # 5
RESPONSES:

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

6. **Protection From Abuse (PFA)**

Has a court granted a "Protection From Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection From Abuse" order for your personal safety or welfare?

YES

NO

If your answer to the above question is "yes," attach a copy of the current Protection From Abuse order to this Formal Complaint form.

7. **Prior Utility Contact**

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES

NO

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES

NO

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

- c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

Does not Apply

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. Legal Representation

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name "Self Representation"
Street/P.O. Box _____
City _____ State _____ Zip _____
Area Code/Phone Number _____
E-mail Address (if known) _____

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

PUC: A-2019-3008589
Brunot Island-Crescent Project
Date Provided 6/17/2019

#4 Reason for Complaint:

As of the filing date, 6/17/2019, of this Formal Complaint Document, Duquesne Light Company has engaged in the following actions without property owner and/ or resident's permission:

- 1.) Trespassing onto 306 Konter Road (Private Road) several times. The posted "No Trespassing" signs at the entrance of the road were ignored/disregarded by Duquesne Light Company and contracted vendor personal. Note: Photographs of "No Trespassing" Postings can be provided upon request.**
- 2.) Damage to property (real estate land) by Duquesne Light Company and contracted Vendors on 5/31/2019. Duquesne Light Company Project Manager ,Travis Moore, Witnessed the damage on 5/31/2019. Note: Photographs of damage can be provided Upon request**
- 3.) Increase of noise, wear and tear of private road condition and decrease in resident's Privacy.**
- 4.) Free-roaming domestic animals on the property- liability of pet owner to secure domestic Animals**
- 5.) Property's owner's liability relating to any injuries that may occur to Duquesne Light Company and/ or contracted vendor personnel while performing assigned responsibilities**
- 6.) Increase of both potential physical/medical and absolute emotional (stress/anxiety) Related as a result of the Brunot Island-Crescent Project**

PUC: A-2019-3008589
Brunot Island- Crescent Project
Date Provided 6/17/2019

#5 Requested Relief:

Requesting Duquesne Light Company initiate communication with both the property owners John P & Jennifer A.Crowe, as well as the resident of 306 Konter Road, Victoria A. Adams

- 1.) No Trespassing**
- 2.) Restore land to original state prior to access on 5/31/2019**
- 3.) Refrain from accessing Private Road**
- 4.) Refrain from accessing Private Road**
- 5.) Refrain from accessing Private Road**
- 6.) Deny Approval of the Brunot Island-Crescent Project**

CERTIFICATE OF SERVICE
(A-2019-3008589 and A-2019-3008652)

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA FIRST CLASS MAIL

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Joseph G. and Suzanne L. Rabosky
104 Wynview Drive
Coraopolis, PA 15108

Dated: July 8, 2019



Garrett P. Lent