



17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
717-731-1970 Main
717-731-1985 Main Fax
www.postschell.com

Garrett P. Lent
Associate

glent@postschell.com
717-612-6032 Direct
717-731-1979 Direct Fax
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

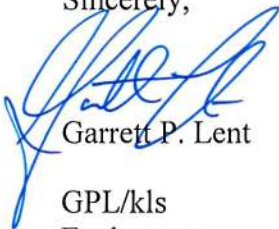
**Re: Application of Duquesne Light Company filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the 138 kV Transmission Lines Associated with the Brunot Island-Crescent Project in the City of Pittsburgh, McKees Rocks Borough, Kennedy Township, Robinson 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 Second Protest of John P. and Jennifer A. Crowe (1123 Juanita Drive).

Copies are being provided per the attached Certificate of Service.

Sincerely,



Garrett P. Lent

GPL/kl
Enclosures

cc: Certificate of Service

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

A PENNSYLVANIA PROFESSIONAL CORPORATION

18942298v1

alia, that the Company’s proposed electric transmission line will result in damages (*i.e.* the Second Protest requests a payment agreement “To be further discussed with DLC Legal Counsel”, *see* Second Protest ¶ 4) related to an alleged “loss of timber financial compensation” and an alleged “increase static noise & potential health risk to self & surrounding residence.”

As explained herein, the Commission should dismiss Second 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 Protestants on June 18, 2019. No docket number has been assigned to the pleading. Duquesne Light then received the aforementioned Second Formal Complaint from the Protestants on June 20, 2019. 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 the Second Protest to the Application. A true and correct copy of the Second Protest is attached hereto as **Appendix A**.

10. As explained herein, the Commission should dismiss certain claims contained in the Second 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. Cmwlt.*, 910 A.2d 775, 781 (Pa. Cmwlt. 2006) (citing *Dep't of Gen. Servs. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlt. 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. Cmwlt. 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. Cmwlt. 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 Protestants’ claims regarding property disputes and associated damages 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 Second Protest avers that Duquesne Light's BI-Crescent Full Siting Application will result in:

- Alleged "loss of timber financial compensation." *See* Second Protest ¶ 4.
- Alleged "Increase static noise & potential health risk to self & surrounding residence." *See* Second Protest ¶ 4.

20. With respect to each of these claims, the Protest than requests as relief a "payment arrangement," which it avers is "to be further discussed with DLC Legal Counsel." Second Protest ¶ 4. The complaint further requests "...compensation and plans in place to restore property." Second Protest ¶ 5.

21. The Commission lacks jurisdiction with respect to the Second Protest's claims regarding property disputes and claims for damages.

22. The Second Protest asks the Commission to adjudicate a property dispute, *i.e.* whether Duquesne Light's proposed BI-Crescent Project will result in a loss of financial compensation or a nuisance. *See* Second Protest ¶ 4. The Protestants then specifically request that they be awarded damages with respect to these claims. *See* Second Protest ¶¶ 4-5 (requesting a payment agreement and compensation).

23. In order to render the relief requested by the Protestants, the Commission would have to determine the parties' respective property rights, a function that is beyond the Commission's power, authority and jurisdiction. In addition, the Commission would have to award the Protestants damages, another function that is beyond its power, authority and jurisdiction.

24. Accordingly, and assuming all of the well-pleaded facts contained in the Second Protest are true, any claim's regarding the property damage, nuisance or associated monetary damages are not within the Commission's jurisdiction because, as a matter of law, the acts complained of relate to a property dispute or the award of damages. Second Protest ¶¶ 4-5. The Commission is without jurisdiction to grant this relief requested and hear these claims.


25. Therefore, the Second Protest should be dismissed with prejudice.

IV. CONCLUSION

WHEREFORE, Duquesne Light Company respectfully requests that the non-jurisdictional claims contained in the above-captioned Second Protest filed by John P. and Jennifer A. Crowe be dismissed with prejudice pursuant 52 Pa. Code § 5.101(a)(1).

Respectfully submitted,

Tishekia William (PA ID # 208997)
Emily Farah (PA ID # 322559)
Duquesne Light Company
411 Seventh Avenue
Pittsburgh, PA 15230
E-mail: twilliams@duqlight.com
efarah@duqlight.com



Anthony D. Kanagy (PA ID # 85522)
Garrett P. Lent (PA ID # 321566)
Post & Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
Voice: 717-731-1970
Fax: 717-731-1985
E-mail: akanagy@postschell.com
E-mail: glent@postschell.com

Date: July 8, 2019

Attorneys for Duquesne Light Company

APPENDIX A

**SECOND PROTEST FILED BY JOHN P. AND
JENNIFER A. CROWE AGAINST DUQUESNE
LIGHT COMPANY**

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

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 John P. & Jennifer A. Crowe

Street/P.O. Box 1123 Juanita Drive Apt # -

City Coraopolis State Pa Zip 15108

County Allegheny

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

() n/a (home) (724) 417-5585 (mobile)

E-mail Address (optional): jacrowe4@gmail.com

Utility Account Number (from your bill) PUC A-2019-3008589/A-2019-3008152

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 n/a

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.

Duquesne 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. *To be further discussed with DLC Legal Counsel*

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). *(Allegheny County Parcel ID# 209-A-89)*
- siting and construction of 138KV transmission lines on property located @ 1123 Juanita Drive, Coraopolis, PA 15108 (Robinson Twp.) (PUC A-2019-3008589)
- Loss of timber financial compensation
- increase static noise & potential

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.

Additional information (detailed) provided by Duquesne light company as to the specific plans to access my property and installation of any new equipment/maintenance of existing equipment in order to determine safety of neighboring residences. - after provided documentation continued discussion with DLC legal counsel. Also compensation and plans in place to restore property to original state prior to installation of equipment (transmission lines/towers).

Requesting minimum of 7 day notice of any activity in order to determine safety & necessity; to be further

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.

discussed with DLC legal counsel

★

no trespassing on property until agreed upon contract between property owner & DLC legal counsel is executed ★

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 Chris Melnit @ (412) 393-8946
NO Told him "no trespassing" on land.

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.

n/a

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 _____ n/a _____
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.

Verification and Signature

You must sign your complaint. Individuals filing a Formal Complaint **must** print or type their name on the line provided in the verification paragraph below and **must** sign and date this form in **ink**. If you do not sign the Formal Complaint, the PUC **will not accept it**.

Verification:

I, John P. & Jennifer A. Crowe, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and I understand that I am subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn testimony).

John P. Crowe
Jennifer A. Crowe
(Signature of Complainant)

6/17/19
(Date)

Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification **must** be signed by an authorized officer or authorized employee. If the Formal Complaint is **not signed** by one of these individuals, the PUC **will not accept it**.

10. Two Ways to File Your Formal Complaint

Electronically. You must create an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/eFiling/default.aspx>.

Note: If you are appealing your Bureau of Consumer Services (BCS) decision, you must file your formal complaint by mail.

Mail. Mail the completed form with your original signature and attachments by certified mail, first class mail, or overnight delivery to this address.

Pennsylvania Public Utility Commission
400 North Street

Note: Formal Complaints sent by fax or e-mail will **not** be accepted.

BUREAU at 717-779-7777

Parcel ID : 0209-A-00089-0000-00
Property Address : 1123 JUANITA DR
CORAOPOLIS, PA 15108

Municipality : 939 Robinson
Owner Name : CROWE JOHN P & JENNIFER A (W)

School District :	Montour	Neighborhood Code :	93903
Tax Code :	Taxable	Owner Code :	Regular
Class :	Residential	Recording Date :	4/23/2014
Use Code :	SINGLE FAMILY	Sale Date :	4/23/2014
Homestead :	Yes	Sale Price :	\$227,500
Farmstead :	No	Deed Book :	15577
Clean And Green :	No	Deed Page :	308
Other Abatement :	No	Lot Area :	15.0717 Acres

2019 Full Base Year Market Value

2019 County Assessed Value

Land Value	\$83,700	Land Value	\$83,700
Building Value	\$116,400	Building Value	\$98,400
Total Value	\$200,100	Total Value	\$182,100

2018 Full Base Year Market Value

2018 County Assessed Value

Land Value	\$83,700	Land Value	\$83,700
Building Value	\$116,400	Building Value	\$98,400
Total Value	\$200,100	Total Value	\$182,100

Address Information

Owner Mailing : 1123 JUANITA DR
CORAOPOLIS, PA 15108-3469

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

Michael Syme
Partner
Fox Rothschild LLP
500 Grant Street
Suite 2500
Pittsburgh, PA 15219

George N. Schaefer
Schaefer Boulevard
Coraopolis, PA 15108

John P. Crowe
Jennifer A. Crowe
1123 Juanita Drive
Coraopolis, PA 15108

Victoria Adams
306 Konter Road
Coraopolis, PA 15108

Aaron Siegel
Rebecca Siegel
110 Wynview Drive
Coraopolis, PA 15108

Dennis J. Zona
Jeanne M. Zona
108 Wynview Drive
Coraopolis, PA 15108

Richard I. Gable
126 Flaugherty Run Road
Coraopolis, PA 15108

Zachariah R. Nave
P.O. Box 524
Clarion, PA 16214


Zachariah R. Nave
7 McGovern Boulevard
Crescent, PA 15046

Folezia A. Marinkovic
Steve M. Marinkovic
205 Purdy Road
Crescent, PA 15046

Cynthia Chamberlin Wilson
Patrick Wilson
9 McGovern Boulevard
Crescent, PA 15046

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

Dated: July 8, 2019



Garrett P. Lent