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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 Zachariah R. Nave.

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

18942268v1

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Duquesne Light Company :  
filed Pursuant to 52 Pa. Code Chapter 57, :  
Subchapter G, for Approval of the Siting and :           Docket No. A-2019-3008589  
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 :  
:  
:  
:  
Protest of Zachariah R. Nave :

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**NOTICE TO PLEAD**

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YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY ANSWER THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTIONS MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL FOR DUQUESNE LIGHT COMPANY.

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Emily Farah (PA ID # 322559)  
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Date: July 8, 2019

Attorneys for Duquesne Light Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Duquesne Light Company :	
filed Pursuant to 52 Pa. Code Chapter 57, :	
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Protest of Zachariah R. Nave :	

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**PRELIMINARY OBJECTIONS OF  
DUQUESNE LIGHT COMPANY TO THE  
PROTEST OF ZACHARIAH R. NAVE**

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**TO THE HONORABLE ADMINISTRATIVE LAW JUDGE MARY D. LONG:**

AND NOW, comes Duquesne Light Company (“Duquesne Light” or the “Company”) and hereby files Preliminary Objections, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the Commission dismiss certain of the claims contained in the above-captioned Protest filed by Zachariah R. Nave (“Protestant”)<sup>1</sup> with prejudice.

A substantial portion of the Protest deals with non-jurisdictional issues related to the interpretation, enforcement or adjudication of a pre-existing easement agreement between

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<sup>1</sup>The Protestants filed the above-captioned pleading as a Formal Complaint on June 20, 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.

Duquesne Light and the Protestants. The Protest avers, *inter alia*, that the Company's practices and the contemplated transmission line project violate the easement.

As explained herein, the Commission should dismiss certain claims contained in the Protest because the Commission lacks jurisdiction over certain of 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 20, 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 PROTESTANT’S CLAIMS

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

15. The Protestants' claims regarding easement interpretation and 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. In fact, the Commission generally lacks jurisdiction to interpret, enforce, or adjudicate claims regarding a contract between private entities. *See Pettko v. Pa. Am. Water Co.*, 39 A.3d 473, 478 n.9 (Pa. Cmwlth. 2012) ("[T]here can be no dispute that the courts of common pleas have subject matter jurisdiction over common law claims such as conversion and breach of contract involving private individuals and businesses."); *Adams v. Pa. PUC*, 819 A.2d 631, 635 (Pa. Cmwlth. 2003) ("[T]he PUC lacks jurisdiction over private contractual disputes."). The Commission is not even "jurisdictionally empowered to decide private contractual disputes between a citizen and a utility." *Allport Water Auth. v. Winburne Water Co.*, 393 A.2d 673, 675 (Pa. Super. 1978) (citations omitted); *see also Virgilli v. Sw. Pa. Water Authority*, 427 A.2d 1251, 1254 (Pa. Cmwlth. 1981) ("[T]he Code does not grant the PUC general supervisory powers over contracts involving public utilities."). Such contract issues are reserved for courts of common pleas.

18. The Pennsylvania Supreme Court has further held that the Commission does not have jurisdiction to determine the scope and validity of an easement. *Fairview Water Company v. Pa. Pub. Util. Comm'n*, 502 A.2d 162 (Pa. 1985) (“...the PUC does not have jurisdiction to determine the scope and validity of an easement. Once there has been a determination by the PUC that the proposed service is necessary and proper, the issues of scope and validity and damages must be determined by a Court of Common Pleas exercising equity jurisdiction.”).

19. The Commission is similarly 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)).

20. 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 due to alleged decreases in market value is not within the Commission's jurisdiction to hear and determine.



21. Applied here, the Protest avers the existence of an easement agreement between the Protestant and the Company. *See* Protest ¶ 4 (attachment page 1 of 2). The Protest then asks the Commission to determine the scope and applicability of the easement, to determine whether Duquesne Light's existing easement agreement "is sufficient to build new monopole structures" or whether must obtain additional right-of-way from the Protestant for the contemplated use. *See* Protest ¶ 4 (attachment page 1 of 2).

22. In addition, the Protest requests that the Commission either order Duquesne Light to purchase additional right of way from the Protestant, or purchase the Protestant's property at fair market value, in order to compensate the Protestant. *See* Protest ¶ 5 (attachment page 2 of 2). In this regard, the Protestant has requested monetary relief, a function that is beyond the Commission's power, authority and jurisdiction.

23. Finally, the Protest avers that Duquesne Light would have to commit a "trespass" to disconnect and remove damaged equipment, in the even that a tower or line were to fall. Protest ¶ 5 (attachment pages 1-2 or 2). In this regard, the Protest requests that the Commission determine a trespass may occur if a tower or line falls on or near the Protestant's property.

24. Accordingly, and assuming all of the well-pleaded facts contained in the Protest are true, any claim's regarding the scope and validity of an existing easement and/or the Company's compliance therewith are not within the Commission's jurisdiction because, as a matter of law, the acts complained of relate to a private contract between a landowner and a utility and/or a potential trespass. Protest ¶¶ 4-5 (attachment pages 1-2 of 2). The Commission is without jurisdiction to grant the relief requested based such claims.


25. Therefore, any claims regarding a potential trespass, the scope or validity of an easement agreement, compliance therewith, damages resulting from an alleged violation of an easement and/or monetary relief, should be dismissed with prejudice.

IV. CONCLUSION

WHEREFORE, Duquesne Light Company respectfully requests that certain of the claims contained in the above-captioned Protest filed by Zachariah R. Nave be dismissed 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 ZACHARIAH R. NAVE  
AGAINST DUQUESNE LIGHT COMPANY**

### 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 Zachariah R. Nave

Street/P.O. Box P.O. Box 524 Apt # \_\_\_\_\_

City Clorion State PA Zip 16214

County Clorion

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

(\_\_\_\_) \_\_\_\_\_ (home) (814) 227-9665 (mobile)

E-mail Address (optional): zaknave@yahoo.com

Utility Account Number (from your bill) \_\_\_\_\_

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 Zachariah R. Nave

Street/P.O. Box 7 McGovern Blvd.

City Crescent State PA Zip 15046

**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.
- 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).

*See Attachment*

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.

*See Attachment*

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.

**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.



If you are unable to speak to a utility or company representative about your complaint but were not able to do so, please explain why.

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 Sarah G. Hancher  
Street/P.O. Box 101 N. Green Lane  
City Zelienople State PA Zip 16063  
Area Code/Phone Number (724) 452-6251  
E-mail Address (if known) sarah.hancher@hancherlaw.com

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.



Zak Nave

PUC Formal Complaint

Answer to question 4.

Duquesne Light Company is looking to upgrade the powerline running across my property and claims they do not need to update the current Right of Way Agreement from 1914. They have an existing 25ft R/W first agreed upon in 1914 by Alpha Power and Light and claim that is sufficient to build new monopole structures to be energized at 138KV. According to some rules and regulations they would need to expand to a minimum of 100ft R/W to run 138KV across my property. They have approached others and even settled with some with 150ft R/W which means they would be energizing above 230KV. The only lines DLC currently have above that running in their system is 345KV which both Crescent and Brunot Island are capable of running and currently are using for other lines running in and out of the stations. Originally they made mention to upgrading the one line to 345KV in a vertical stacked construction on the monopoles making the lines higher up in the air to attempt to lessen the EMF foot print on the ground below with the second line remaining at 138KV. They need to disclose the entire plan for the project such as construction plans and the final plan if it is to upgrade to 345KV. Since 1914, a time before chemical herbicides were used in R/W maintenance, the advances in chemical maintaining has not only become available but common practice to use. There needs to be a new R/W agreement made so it's possible to stop the use of these harmful chemicals near water wells and land used by families and children for picnics and other recreation.

Answer to question 5.

I am very willing to sit down with DLC to negotiate a new R/W agreement and have decided on a few different options to settle but I have a few health and safety concerns I would like to mention first. The distance the lines are located from my house is alarming for the proposed upgrade to 345KV. The Electro magnetic Radiation from such lines is beyond the government acceptable limits for the amount of hours exposed to such. Since the house on the property is too close to the lines that go across the property where they do and there is no sufficient space to build a different house anywhere on that property to be outside the acceptable range of the EMFs so as a first offer I would like DLC to purchase my property at fair market value. If that isn't possible DLC will have to agree to not allow DLC or any contractor to use any herbicides on the R/W within a 1/2mile of my property otherwise DLC would need to provide me with an alternative to the well on my property. If DLC will agree to pay for the city water and sewage hookup and associated cost to keep my house inhabitable I would consider selling the appropriate R/W to DLC. If they are unwilling to pay for the utilities they need to buy the whole property at fair market value. The additional footage needed to complete the project is a minimum of 150ft but I have a concern that the proposed 150ft R/W may be insufficient since they are installing a 175ft tower on the property next to mine. I think they need to own the R/W needed in the event that tower falls over to prevent damage to my property. They should own enough to limit the liability in the event of a fire. They recently had one or two monopole towers of identical structure fall and several other different styles of towers fall in the past two years all within ten miles from my property. I am asking they

purchase a 350ft R/W at fair market value for the additional footage to limit the liability and loss of property if a tower or line were to fall they could bring any machinery in a 350ft R/W to reconstruct without needing to trespass to disconnect and remove to damaged equipment.

Question to question 7.

After a few brief discussions about updating the R/W agreement DLC claimed they do not need to speak with me about it because they believe they do not need to change anything to begin the project for the new towers and lines. They refuse to return phone calls and continue to attempt to stonewall and bully myself and others around about proceeding with the project without negotiating a new agreement. They have not only lied to our faces but also lied about several other aspects of this 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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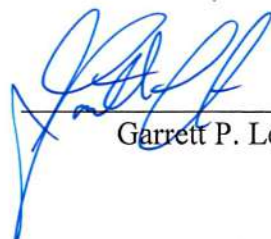
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Dated: July 8, 2019

  
\_\_\_\_\_  
Garrett P. Lent