



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 is the Answer 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/kl
Enclosures

cc: Certificate of Service

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

A PENNSYLVANIA PROFESSIONAL CORPORATION

18943394v1

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

**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 :

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

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE MARY D. LONG:

Duquesne Light Company (“Duquesne Light” or the “Company”) files this Answer to the Protest of Zachariah R. Nave (“Protestant”)¹ pursuant to Section 5.61 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.61. Although the Commission’s regulations do not require an answer to a Protest, Duquesne Light responds to each of the separately-numbered paragraphs of the Nave Protest as follows:

ANSWER

1. Admitted.
2. Denied as stated. The Company’s name is Duquesne Light Company.
3. Admitted.

¹ 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.

4. Admitted in part and denied in part. It is admitted Duquesne Light recently 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”).²

It is also admitted that Duquesne Light possesses a valid easement through the property now known as 7 McGovern Blvd., Crescent, PA 15108. Any characterization of the language of the right-of-way or Duquesne Light’s rights thereunder is denied. By way of further response, the Commission is without authority to interpret the language of easements and lacks jurisdiction over property disputes, including disputes related to proper use of easements. *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

² While the Protest references the Schaefer Condemnation Application and/or its docket number, Duquesne Light denies that the Protestant is a property owner of record for the subject property.

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.”); *see also 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)). It is further denied that Duquesne Light has failed in its obligation to acquire land to support its infrastructure or that the Company has used or is using insufficient right-of-way to support its transmission line projects.

It is denied that Duquesne Light’s existing right-of-way at or near the Protestants’ address is insufficient. By way of further response, it is denied that the Commission has the authority to interpret the relevant easement or determine whether Duquesne Light has acted inconsistent with its rights under the easement. It is denied that the current or intended future operation of Duquesne Light’s facilities within the existing right-of-way are unreasonable or unsafe. Duquesne Light designs, installs and operates its transmission facilities in compliance with all applicable National Electric Safety Code (“NESC”) standards. By way of further response, Duquesne Light incorporates by reference Attachment 11 – Design Criteria and Safety

Practices and Duquesne Light St. No. 3, the direct testimony of Meenah Shyu, both of which were attached to the BI-Crescent Full Siting Application.

It is denied that Duquesne Light did not properly disclose its intent to, at some point in the future, raise the voltage of electricity transmitted over these structures from 138 kV to 345 kV constitutes a misuse of the right-of-way. By way of further response, Duquesne Light detailed its plans regarding the need to design one of the circuits to 345 kV standards in Attachment 2 – Necessity Statement and Duquesne Light Statement No. 1, the direct testimony of Jason Harchik, both of which were attached to the BI-Crescent Full Siting Application, and incorporates by reference the information contained therein.

It is denied that Duquesne Light's decision to obtain 150 foot wide rights-of-way or otherwise settle with other landowners regarding other specific rights-of-way demonstrates that Duquesne Light would be energizing the BI-Crescent Project above 230 kV. By way of further response, Duquesne Light's right-of-way traversing the Protestant's property is sufficient.

It is denied that the BI-Crescent Project presents a health or safety risk due to electromagnetic fields ("EMFs"). By way of further response, Duquesne Light Company described its EMF practices and policies in Attachment 11 – Design Criteria and Safety Practices to the BI-Crescent Full Siting Application and incorporates the information contained therein into this Answer.

It is denied that Duquesne Light's Vegetation Management plan is unreasonable, or will otherwise adversely impact water wells or land on or near the Protestants' property. By way of further response, Duquesne Light makes reference to and incorporates herein Attachment 12 –

Duquesne Light's Vegetation Management Practices, which was attached to the BI-Crescent Full Siting Application.

It is also denied that the minimum right-of-way necessary to complete the project is 150 foot wide, in order to limit the liability of potential fire or potential damage from towers falling. By way of further response, Duquesne Light designs, installs and operates its transmission facilities in compliance with applicable NESC standards. Duquesne Light incorporates by reference Attachment 11 – Design Criteria and Safety Practices and Duquesne Light St. No. 3, the direct testimony of Meenah Shyu, both of which were attached to the BI-Crescent Full Siting Application.

It is further denied that Duquesne Light would commit or would be required to commit a trespass to access or repair any damaged equipment or facilities. By way of further response, the Commission is without jurisdiction to adjudicate property disputes, such as a potential trespass.

5. Denied. The averments contained in Paragraph 5 (referencing the requests for relief on page 3 of 3 of the attachment to the Protest) of the Protest are requests for relief to which no responsive pleading is required. To the extent a response is deemed necessary, Duquesne Light denies that the Protestants are entitled to the relief requested.

By way of further response, Duquesne Light incorporates Paragraphs 2 through 4, *supra*, as though fully set forth herein.

6. Paragraph 6 of the Protest relates to Protection from Abuse orders, to which no responsive pleading is required.

7. Admitted in part and denied in part. It is admitted that the Protest is not an appeal from a decision by the Commission's Bureau of Consumer Services. It is also admitted that Duquesne Light representatives have been in contact with the Protestant regarding the subject matter of the Protest. It is denied that Duquesne Light has lied to the Protestant or lied regarding any aspect of the BI-Crescent Project. By way of further response, Duquesne Light has attempted to be responsive to all contacts and communications from the Protestant and has treated the Protestant in the same respectful and fair manner that it treats all other customers.

8. Paragraph 8 of the Protest pertains to the Protestants' legal representation, to which no responsive pleading is required. However, upon information and belief, Attorney Sarah G. Hancher is not representing the Protestant before the Commission; Attorney Hancher represented the Protestant in other real estate negotiations with Duquesne Light.

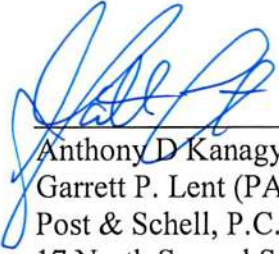
9. Paragraph 9 sets forth the verification and signature, to which no responsive pleading is required.

10. Paragraph 10 sets forth the instructions for filing the Protest, to which no responsive pleading is required.

WHEREFORE, Duquesne Light Company respectfully requests that the Protest of Zachariah R. Nave, be denied and with prejudice as against Duquesne Light.

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

**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 :

VERIFICATION

I, MEENAH SHYU, 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 that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).



Dated: 7/8/2019