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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 and A-2019-3008652**

Dear Secretary Chiavetta:

Enclosed for filing is the Initial Brief of Duquesne Light Company in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Garrett P. Lent

GPL/kl
Enclosures

cc: Honorable Mary D. Long
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Duquesne Light Company filed	:	Docket Nos. A-2019-3008589
Pursuant to 52 Pa. Code Chapter 57,	:	A-2019-3008652
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.	:	

**INITIAL BRIEF OF
DUQUESNE LIGHT COMPANY**

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I. INTRODUCTION

In these consolidated proceedings, Duquesne Light Company (“Duquesne Light”) seeks the approvals and findings necessary from the Pennsylvania Public Utility Commission (“Commission”) to reconstruct approximately 14.5 miles of overhead double-circuit 138 kV transmission lines in the City of Pittsburgh, McKees Rocks Borough, Kennedy Township, Robinson Township, Moon Township, and Crescent Township, Allegheny County, Pennsylvania (hereinafter called the “BI-Crescent Project” or “Project”).¹ Specifically, Duquesne Light seeks (a) approval for the reconstruction of approximately 14.5 miles of overhead double-circuit 138 kV transmission lines associated with the BI-Crescent Project as reflected in the Amended Application that was filed on August 10, 2020, and (b) findings that the exercise of the power of eminent domain to acquire rights-of-way across one (1) tract of land is necessary or proper for the service, accommodation, convenience or safety of the public.

The BI-Crescent Project is required to replace aging transmission system infrastructure. The BI – Crescent corridor has some of Duquesne Light’s oldest in-service steel lattice towers. Structural evaluations have determined that the structures are approaching end of useful life. Based on current condition and structure deterioration, these structures are beyond permanent repair and require replacement, although temporary repairs have been made to ensure reliable

¹ As noted in Section II, below, On March 15, 2019, Duquesne Light filed a line siting application seeking Commission approval to site and construct approximately 14.5 miles of overhead double-circuit 138 kV transmission lines 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. Duquesne Light also filed an application for eminent domain to acquire a certain portion of the lands of George N. Schaefer of Moon Township, Allegheny County, in connection with the transmission line project, docketed at A-2019-3008652. Based upon the input Duquesne Light received from its customers through multiple channels and forums, including the feedback received at the public input hearing on October 9, 2019, Duquesne Light filed a Motion for a Continuance on October 21, 2019, to re-engineer the initial project. The Company indicated its intent to eliminate the proposal to build one of the circuits at issue to 345 kV standards and instead rebuild both circuits at the current 138 kV design voltage. The Amended Application was filed on August 10, 2020. The Amended Application reflects the elimination of the proposal to build one of the circuits at issue to 345 kV standards and instead rebuild both circuits at the current 138 kV design voltage. As explained herein, Duquesne Light requests approval of the BI-Crescent Project, as amended by the Amended Application.

service until new replacement structures can be installed. The BI-Crescent Project will permit Duquesne Light to permanently replace this aged transmission infrastructure to the benefit of the overall condition and reliability of its transmission system.

Importantly, none of the active parties to this proceeding have contested the need for the BI-Crescent Project, as reflected in the Amended Application. Rather, the individual protestants in this case raised concerns regarding the design and safety features of the project, the route selection, and other issues related to Duquesne Light's acquisition of rights-of-way ("ROW") and landowner outreach efforts. In addition, although Allegheny County Sanitary Authority ("ALCOSAN") intervened in the amended proceeding, it did not contest the need for the BI-Crescent Project and, ultimately, Duquesne Light and ALCOSAN achieved a Settlement of all issues as between themselves that adequately balances and protects each party's interests in the safe and reliable construction, operation and maintenance of their public utility facilities.

Accordingly, Duquesne Light requests that Administrative Law Judge Mary D. Long (the "ALJ") and the Commission find that the BI-Crescent Project, as set forth in the Amended Application, satisfies the requirements of the applicable statutes and regulations and approve the pending siting application, and one eminent domain application.

II. BACKGROUND AND HISTORY OF THE PROCEEDING

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. Duquesne Light is a "public utility" and an "electric distribution company" as defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 102, 2803.

On March 15, 2019, Duquesne Light filed, pursuant to 52 Pa. Code § 57.72, a full siting application requesting Commission approval to site and construct approximately 14.5 miles of overhead double-circuit 138 kV transmission lines 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. Duquesne Light also filed an application for eminent domain to acquire a certain portion of the lands of George N. Schaefer of Moon Township, Allegheny County, in connection with the transmission line project, docketed at A-2019-3008652 (“Schaefer Condemnation Application”).

Protests were filed by Victoria Adams, John P. and Jennifer Crowe, Richard Gable, Folezia Marinkovic, Zachariah Nave, Joseph G. and Suzanne Rabosky, Aaron and Rebecca Siegel, Cynthia and Patrick Wilson,² and Dennis J. and Jeanne Zona, hereinafter collectively referred to as the “Protestants.”

Prehearing conferences were held on April 29, 2019 and June 6, 2019.

On September 10, 2019, the Protestants offered testimony at an evidentiary hearing.

A public input hearing was held in Moon Township on October 9, 2019.

Technical evidentiary hearings were scheduled to begin on October 29, 2019.

On October 22, 2019, Duquesne Light filed a motion to continue the October 29, 2019 hearing in order to permit the Company time to file an amendment to the application under consideration.

By Interim Order entered October 24, 2019, Duquesne Light’s motion was granted.

On August 10, 2020, Duquesne Light filed an amended application, which modified the original proposal to eliminate the construction of one of the two circuits to 345 kV engineering

² Duquesne Light entered into a settlement agreement with Mr. and Mrs. Wilson related to this proceeding. As a condition of the agreement, the Wilsons agreed not to oppose the BI-Crescent Project.

standards, and reducing the average height of the poles that will be constructed as part of the amended Project.

On August 24, 2020, the ALJ issued a Prehearing Conference Order.

On September 18, 2020 a petition to intervene was filed by ALCOSAN.

A further prehearing conference was held as scheduled on September 25, 2020.

Protestants Victoria Adams, Jennifer Crowe, Richard Gable, Folezia Marinkovic, Zachariah Nave, Joseph Rabosky, Cynthia Wilson and Dennis Zona appeared. The petition to intervene of ALCOSAN was granted.

On September 28, 2020, the ALJ issued an Interim Order, which set a litigation schedule for the proceeding on the amended application.

Duquesne Light and ALCOSAN engaged in discovery during the course of this proceeding.

On November 13, 2020, a Motion for Protective Order was filed. The Motion was granted and a Protective Order was issued on November 20, 2020.

On November 17, 2020, the Presiding Judge issued an interim order granting an extension for ALCOSAN to submit its direct testimony from November 25, 2020 to December 9, 2020 due to a COVID-19 quarantine emergency impacting certain ALCOSAN employees involved in preparing ALCOSAN's direct testimony.

On December 9, 2020, ALCOSAN served its written direct testimony and exhibits of Michael Lichte, P.E.

On January 21, 2021, Duquesne Light served its written rebuttal testimony.

On February 3, 2021, the parties all participated in the telephonic evidentiary hearings scheduled in this matter. ALJ Long presided over the hearing. Prepared Statements and Exhibits were entered into the record by stipulation or by appearance of the witnesses.

In accordance with the Commission's Rules of Practice and Procedures, 52 Pa. Code § 5.231, Duquesne Light and ALCOSAN engaged in settlement discussions throughout the course of this proceeding. As a result of those discussions, the Joint Petitioners were able to reach a settlement in principle of all issues related to ALCOSAN's intervention prior to the date for filing Main Briefs. The agreement of the Company and ALCOSAN is embodied in this Settlement.

On February 26, 2021, Duquesne Light informed the ALJ that the Company and ALCOSAN have reached a settlement in principle with respect to the issues raised by ALCOSAN in this proceeding.

On March 2, 2021, Duquesne Light filed and served a Joint Petition for Settlement between ALCOSAN and Duquesne Light, along with accompanying statements in support. None of the Protestants objected to the Joint Petition for Settlement.

III. LEGAL STANDARDS

A. BURDEN OF PROOF

Duquesne Light is seeking Commission approval of the reconstruction of existing high voltage transmission lines and one (1) eminent domain application for the remaining rights-of-way needed for the Amended Project. Section 332(a) of the Public Utility Code ("Code"), 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth of Pennsylvania v. Williams*, 557 Pa. 207, 732 A.2d 1167 (Pa. 1999). This standard is satisfied by presenting evidence more convincing, by even

the smallest amount, than that presented by another party. *Brown v. Commonwealth of Pennsylvania*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

Additionally, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa. C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Service Commission*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008). Although substantial evidence must be “more than a scintilla and must do more than create a suspicion of the existence of the fact to be established,” *Kyu Son Yi v. State Board of Veterinarian Medicine*, 960 A.2d 864, 874 (Pa. Cmwlth. 2008) (citation omitted), the “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mechanical and Elec., Inc. v. Pennsylvania Prevailing Wage Appeals Board*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

If the applicant sets forth a *prima facie* case, then the burden shifts to the opponent. *McDonald v. Pennsylvania Railroad Co.*, 348 Pa. 558, 36 A.2d 492 (Pa. 1940). Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case on a point has been established, if contrary evidence is not presented, there is no requirement that the applicant produce additional evidence in order to sustain its burden of proof. *District of Columbia’s Appeal*, 343 Pa. 65, 21 A.2d 883 (Pa. 1941). See, e.g., *Application of Pennsylvania Power & Light Co.*, Docket Nos. A-110500F0196, *et al.*; 1994 Pa. PUC LEXIS 65 (Oct. 21 1994) (holding that the company met its burden to prove that there was an immediate need for the reinforcement of the power supply where

the need for the project was uncontested and no party presented any evidence challenging the need for the project).

B. STANDARDS FOR APPROVAL OF THE SITING APPLICATION

Pursuant to Section 1501 of the Public Utility Code, an electric distribution company has a statutory obligation to provide safe, adequate, and reliable electrical service to its customers. 66 Pa. C.S. § 1501. The Commission's regulations provide that an electric distribution company may not construct high voltage ("HV") transmission lines, *i.e.*, electrical lines with a voltage of 100 kV or higher, without prior Commission approval. 52 Pa. Code § 57.71. As explained by the Commonwealth Court, the Commission's transmission line siting regulations set forth the following:

(1) the procedures for applying for approval of an HV line -- 52 Pa. Code § 57.72; (2) the procedures for hearings on HV line applications -- 52 Pa. Code § 57.75; and (3) what the [Commission] will consider when deciding whether to approve or deny an HV line application -- 52 Pa. Code § 57.76(a). These regulations, and 52 Pa. Code § 57.76 in particular, represent a codification of the review required by article I, section 27 of the Pennsylvania Constitution. *Re Proposed Electric Regulation*, 1976 Pa. PUC LEXIS 114, 49 Pa. P.U.C. 709, 712 (March 2, 1976) (stating that the "review required by article I, section 27 is being incorporated into our siting regulations").

Energy Conservation Council of Pennsylvania v. Pa. PUC, 995 A.2d 465, 477-78 (Pa. Cmwlth. 2010) (hereinafter "*Trailco*").

In order to grant an application for the construction and siting of a HV transmission line, the Commission must find and determine the following as to the proposed 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 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 the available technology and the available alternatives.

52 Pa. Code § 57.76(a).

The Public Utility Code does not define need; however, Pennsylvania courts have recognized that there is a need for reliable regional electric service and transmission systems. *Stone v. Pa. PUC*, 162 A.2d 18, 19-221 (Pa. Super. 1960); *Dunk v. Pa. PUC*, 232 A.2d 231, 234-35 (Pa. Super. 1967). Moreover, the General Assembly has recognized the importance of ensuring the reliability of electric transmission systems, and the provision of sufficient electrical power at affordable rates. Section 2802(12) of the Code states that “[r]eliable electric service is of the utmost importance to the health, safety and welfare of the citizens of the Commonwealth. Electric industry restructuring should ensure the reliability of the interconnected electric system by maintaining the efficiency of the transmission . . . system.” 66 Pa. C.S. § 2802(12). Section 2802(20) of the Code provides, *inter alia*, that ensuring the reliability of electric service depends on conscientious maintenance of transmission systems, and that electric system operators shall establish inspection, maintenance, repair and replacement standards. 66 Pa. C.S. § 2802(20). Finally, Section 2803 of the Code defines “reliability” as:

Includes adequacy and security. As used in this definition, “adequacy” means the provision of sufficient generation, transmission and distribution capacity so as to supply the aggregate electric power and energy requirements of consumers, taking into account scheduled and unscheduled outages of system facilities; and “security” means designing, maintaining and operating a system so that it can handle emergencies safely while continuing to operate.

66 Pa. C.S. § 2803. The Commonwealth Court has explained, however, that nowhere in any of the foregoing statutory or regulatory provisions is there a requirement that a public utility

demonstrate a “need” for the installation of the transmission line from an “engineering” prospective. *Pennsylvania Power & Light Co. v. Pa. PUC*, 696 A.2d 248, 250 (Pa. Cmwlth. 1997).

Indeed, an electric utility can demonstrate that the transmission line project is needed where the project resolves violations of the utility’s internally developed planning and reliability criteria. *See Hess v. Pa. Pub. Util. Comm’n*, 107 A.3d 246, 262-263 (Pa. Cmwlth. 2014), *appeal denied*, 632 Pa. 678, 117 A.3d 1282 (Pa. 2015); *Application of PPL Electric Utilities Corporation filed Pursuant to 52 Pa. Code Chapter 47, Subchapter G, for Approval of the Siting and Construction of the North Lancaster Honey Brook # 1 & # 2 138/69 kV Transmission Lines in Lancaster County, Pennsylvania*, Docket Nos. A-2014-2430565 et al., 2015 Pa. PUC LEXIS 77, at *49 (Order dated Feb. 27, 2015) (“*PPL North Lancaster-Honey Brook*”) (holding that a project which alleviates violations of an electric utility’s own planning criteria provides sufficient evidence to support a finding of need).

With respect to health and safety, the Commission has held in numerous cases that transmission lines that meet or exceed the National Electric Safety Code (“NESC”) requirements do not create an unreasonable risk of danger to the health and safety of the public. *See Application of PPL Electric Utilities Corporation Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the Pennsylvania Portion of The Proposed Susquehanna-Roseland 500 kV Transmission Line*, Docket Nos. A-2009-2082652, et al., 2010 Pa. PUC LEXIS 434 at *166 (February 12, 2010); *Application of PP&L for Approval to Locate and Construct a 138 kV Transmission Line Between West Allentown and Salisbury Substations*, Docket No. A-00104160 (July 20, 1984); *Application of PP&L for Authorization to Locate and Construct its Hamlin 138 kV Electric Transmission Line*, Docket No. A-00101826 (April 3, 1981); *Larken v. Philadelphia Electric Co.*, 39 Pa. PUC 777 (1961).

With respect to natural resources and the environment, recent Pennsylvania Supreme Court case law has concluded that Article I, Section 27 of the Pennsylvania Constitution, PA. CONST. art. I, § 27, *i.e.*, the Environmental Rights Amendment, placed Pennsylvania’s public natural resources in trust and named the Commonwealth as its trustee, to conserve and maintain those resources for the benefit of all people, including future generations. *Pa. Environmental Defense Foundation v. Com. Of Pa.*, 161 A.3d 911 (Pa. 2017) (“*PEDF*”). In carrying out these obligations, the Commonwealth, and its agencies, may subject the individual rights of citizens to clean air, pure water, and to the preservation of natural, scenic, historic, and esthetic values to reasonable regulation. *PEDF*, 161 A.3d at 931; *see also Application of Pennsylvania Electric Company Seeking Approval to Locate Construct, Operate and Maintain a High-Voltage Transmission Line Referred to as the Bedford North-Central City West 115 kV HV Transmission Line Project*, Docket Nos. A-2016-2565296 et al., at pp. 12-14 (Order entered March 8, 2018) (“*Penelec*”).

The Commission has determined that its existing rules and policy satisfy its obligations under the Environmental Rights Amendment as described in *PEDF. Penelec*, at p. 13-14 (“Our siting Regulations are in accord with the Environmental Rights Amendment by requiring that the environmental impact of the proposed transmission siting route be minimized.”); *see also* 52 Pa. Code §§ 69.3105, 69.3106. The Commission further explained in *Penelec* that:

The Commission’s regulatory scheme for high-voltage line transmission siting cases, therefore, provides for a robust, evidence-based deliberative process that provides due process for all interested parties. The Commission, consistent with our role as a fiduciary responsible for the preservation of the Commonwealth’s natural resources, and consistent with *PEDF*, acts with prudence, loyalty and impartiality when adhering to these regulations. In this manner, we fulfill our responsibility to protect the public’s natural resources from depletion or degradation, while also allowing legitimate development that improves the lot of Pennsylvania’s citizenry, as the Pennsylvania Supreme Court recognized in

Robinson Township v. Com. of Pa., 623 Pa. 564, 658, 83 A.3d 901, 958 (2013).

Penelec, p. 14.

Generally, the Commission has found compliance with the applicable environmental statutes and regulations where the applicant agrees to obtain any and all environmental permits necessary prior to construction and to comply with any conditions on those permits during construction.³ Importantly, however, the applicant is not required to receive all necessary permits before the Commission may approve the transmission line, or before construction of the proposed line begins. *Energy Conservation Council of Pennsylvania v. Pa. PUC*, 25 A.3d 440, 452 (Pa. Cmwlth. 2011) (hereinafter “*Susquehanna-Roseland*”).

Finally, with respect to the siting of the transmission line, the Commonwealth Court has held that a utility’s route for a proposed HV transmission line should be approved where the record evidence shows that the utility’s route-selection process was reasonable and that the utility properly considered the factors relevant to siting a transmission line:

[I]t is settled law that the designation of the route for a HV line is a matter for determination by [a utility's] management in the first instance, and the utility's conclusion will be upheld unless shown to be wanton or capricious. Thus, where the record establishes that the utility's route selection was reasonable, considering all the factors, its route will be upheld. The mere existence of an alternative route does not invalidate the utility's judgment. This reasoning is equally sound when considering whether a utility has complied with 52 Pa.

³ See, e.g., *Application of Pennsylvania Electric Company For Approval to Locate and Construct the Bedford North-Osterburg East 115 kV HV Transmission Line Project Situated in Bedford and East St. Clair Townships, Bedford County, Pennsylvania*, Docket Nos. A-2011-2247862, et al., 2012 Pa. PUC LEXIS 298 at *61 (Initial Decision February 9, 2012); *Application of Trans-Allegheny Interstate Line Company for the Approval to locate, construct, operate and maintain certain high voltage electric transmission line facilities and to exercise the power of eminent domain to construct and to install the proposed aerial electric transmission line facilities along the proposed route, being a 138 kV transmission line and related facilities collectively, the Osage-Whiteley Line Facilities or Project, in portions of Dunkard Township, Perry Township, and Whiteley Township, Greene County in Southwestern Pennsylvania*, Docket Nos. A-2010-2187540, et al., 2011 Pa. PUC LEXIS 2028 (Recommended Decision March 28, 2011); *Application of PPL Electric Utilities Corporation Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the Pennsylvania Portion of The Proposed Susquehanna-Roseland 500 kV Transmission Line*, Docket Nos. A-2009-2082652, et al., 2010 Pa. PUC LEXIS 434 at *191-201 (February 12, 2010).

Code § 57.72(c)(10), as the information required by this section goes towards establishing the reasonableness of the utility's route selection.

Susquehanna-Roseland, at 449-50 (quoting *Trailco*, 995 A.2d 465, 479-80). The route selected by the applicant must demonstrate reasonable efforts to minimize adverse environmental impacts when compared to the available alternative routes, but the utility need not consider all possibilities. *Susquehanna-Roseland*, at 448-49. Moreover, the applicant is not required to choose a route that has no adverse impacts. Instead a utility must make reasonable efforts to minimize and mitigate any impacts and ensure that any harm to the environment is outweighed by the benefits of the project. *Id.*

C. STANDARDS FOR APPROVAL OF THE EMINENT DOMAIN APPLICATIONS

Section 1511 of the Business Corporation Law of 1988 statutorily grants a public utility, such as Duquesne Light, the power or authority to take and condemn property for the purpose of providing electricity to the public. *See* 15 Pa.C.S. § 1511(a)(3). However, before a public utility may seek to exercise the authority to condemn property for an aerial transmission line, it must obtain approval from the Commission pursuant to Section 1511(c), which provides, in pertinent part, as follows:

(c) The powers conferred by subsection (a) [for the running of aerial electric facilities] may be exercised to condemn property ... only after the Pennsylvania Utility Public Commission, upon application of the public utility corporation, has found and determined ... that the service to be furnished by the corporation through the exercise of those powers is necessary or proper for the service, accommodation, convenience or safety of the public.

15 Pa.C.S. § 1511(c). Thus, on an application for condemnation, the Commission must determine whether the service—the transmission or distribution of electricity to or for the public that will be provided to the public if the subject property is condemned—is necessary or proper for the service,

accommodation, convenience, or safety of the public. Stated otherwise, the Commission does not determine whether to grant a condemnation application on the basis of the legal authority, scope, validity, damages, or the willingness of a condemnee to negotiate.

Pennsylvania Appellate Courts have interpreted Section 1511 as requiring a condemning utility to show that the proposed transmission line is necessary and that it has not acted wantonly, capriciously, or arbitrarily in selecting the proposed right-of-way. *Department of Environmental Resources v. Pa. PUC*, 335 A.2d 860 (Pa. Cmwlth. 1975), *aff'd.*, 473 Pa. 378, 374 A.2d 693 (1977); *Dickson v. Pennsylvania Service Commission*, 89 Pa. Super. 126 (1926). The selection of the right-of-way is a matter for the public utility in the first instance and, while the route selection must be reasonable, it need not be the “best alternative” in terms of reducing or eliminating inconvenience to particular landowners. *Stone v. Pa. PUC*, 162 A.2d 18 (Pa. Super. 1960).⁴

⁴ For example, in *Paxtowne v. Pa. PUC*, 398 A.2d 254, 256 (Pa. Cmwlth. 1979), the route selected by the public utility was affirmed. In order to establish that the selected route was reasonable in comparison with two alternative routes, the public utility established the following:

“[T]hat the proposed route was selected over alternative routes because the topography of petitioner’s property was superior with regard to land use, environmental and engineering considerations; and that the selection of other routes would be more costly in requiring rights-of-way from additional property owners.”

Id. at 647-648. The Court went on to hold that, although the proposed route clearly impacted the petitioner’s property, when balanced against the utility’s evidence, there was no indication that the utility’s selection of the proposed route was done wantonly, capriciously, or arbitrarily.

IV. SUMMARY OF ARGUMENT

Under the Commission's regulations, an electric utility must demonstrate the following for the Commission to approve a proposed HV transmission line project: (1) the project is needed for it; (2) the project will not create an unreasonable risk of danger to the health and safety of the public; (3) the project is in compliance with applicable statutes and regulations, providing for the protection of the natural resources in Pennsylvania; and (4) the project will have minimum adverse environmental impact, considering the electric power needs of the public, the state of the available technology and the available alternatives. As explained below, Duquesne has satisfied the Commission's criteria to demonstrate that the BI-Crescent Project, as amended by the Amended Application, should be approved.

Regarding need, the undisputed record evidence demonstrates that the BI-Crescent Project, as amended, is needed to replace aged transmission infrastructure that is reaching the end of its useful life and cannot be permanently repaired. Specifically, the structures associated with the Project are some of the oldest in-service steel lattice towers in Duquesne Light's system and were originally constructed in 1914. Although certain of the Protestants disputed the need for the proposal to design one circuit to 345 kV standards reflected in the initial Application, none of the Protestants have disputed that the Amended Application's proposal to design and operate both circuits at 138 kV is needed.

The record evidence further demonstrates that the BI-Crescent Project, as amended, will not create an unreasonable risk of danger to the health and safety of the public because Duquesne Light has designed the BI-Crescent Project to meet or surpass all requirements specified by the NESC. Although certain of the Protestants raised concerns regarding the design and safety features of the project, Duquesne Light fully responded to those concerns. In addition, although certain of the Protestants raised concerns regarding the Company's proposal to design one circuit to 345 kV

standards in the initial Application, the Amended Application reflects the removal of this proposal. Duquesne Light has, therefore, addressed any design and safety concerns associated with 345 kV design or operation because the BI-Crescent Project no longer contemplates the design of one circuit to 345 kV standards.

Duquesne Light has also demonstrated that the BI-Crescent Project will comply with all applicable statutes and regulations providing for the protection of natural resources in Pennsylvania. Duquesne Light will obtain all required permits prior to and will comply with any and all conditions placed on such permits by those agencies that have appropriate jurisdiction over environmental matters.

Duquesne Light has also shown that the Proposed Route for the BI-Crescent Project will have minimal adverse impacts compared to other reasonable alternatives. Duquesne Light conducted a detailed evaluation of potential and, subsequently, reasonable alternative routes that would allow the BI-Crescent Project to resolve the aforementioned reliability issues. Based on this evaluation, Duquesne Light proposed a route that would have significantly fewer overall impacts relative to the other reasonable alternatives it considered because it utilized the existing transmission corridor. While certain of the landowners raised concerns regarding the Company's Siting Study and the Proposed Route, Duquesne Light has fully rebutted those concerns. With respect to the criticisms of the Siting Study, Duquesne Light witness Ms. Aimee Kay fully explained the development of the criteria and weights used in the study and confirmed that the Siting Study was performed consistent with well accepted and longstanding industry standards. With respect to the property specific criticisms of the Proposed Route, Ms. Kay also addressed these concerns.

Certain of the protestants raised additional concerns regarding Duquesne Light's right-of-way acquisition efforts and landowner outreach efforts prior to the filing of the Amended Application. Duquesne Light's witnesses fully explained that the Company's right-of-way acquisition efforts and landowner outreach were consistent with the Commission's regulations. And, importantly, in response to many of the concerns raised by the Protestants, the Company filed an Amended Application and engaged in additional outreach as a part of that process.

Finally, in connection with the BI-Crescent Project, Duquesne Light also filed one (1) condemnation application. The BI-Crescent Project is necessary to replace aged transmission lines that are approaching the end of their useful lives and are beyond permanent repair, and, therefore, it is uncontested that the rights-of-way and easements for the construction, operation, and maintenance of the proposed BI-Crescent Project over the lands identified in the Schaefer Condemnation Application is necessary for the service, accommodation, convenience, or safety of the public. The selection of the right-of-way is a matter for the public utility in the first instance and, while the route selection must be reasonable, it need not be the "best alternative" in terms of reducing or eliminating inconvenience to particular landowners.

For these reasons and as more fully explained below, Duquesne Light requests that the ALJ and the Commission approve the Company's Amended Application and the Schaefer Condemnation Application, which necessary to permit the prompt construction of the BI-Crescent Project.

V. ARGUMENT

A. INTRODUCTION

Transmission facilities play a vital role in supplying reliable electric service. The nation's electric system is comprised of three basic components: generation, transmission, and distribution. Generating plants typically produce electricity at a relatively low voltage. Transformers located adjacent to the generating plants increase or "step up" the voltage to transmission-level voltages, depending on the size of the generating facility and the distance the electricity must travel for delivery to customers. After the voltage is stepped up, the power is transmitted to substations, where the voltage level is sequentially stepped down for ultimate delivery into the distribution system. Distribution transformers then further reduce the voltage from primary to secondary distribution levels for ultimate delivery to customers. *See Application of PPL Electric Utilities Corporation Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the Pennsylvania Portion of The Proposed Susquehanna-Roseland 500 kV Transmission Line in Portions of Lackawanna, Luzerne, Monroe, Pike and Wayne Counties, Pennsylvania*, Docket Nos. A-2009-2082652, et al., 2009 Pa. PUC LEXIS 2323 at *151-54 (Recommended Decision Nov. 12, 2009).

The nation's interconnected transmission grid is the backbone for the safe and reliable delivery of large amounts of electricity from generation stations over substantial distances to customers served from local distribution systems. It is critical that this interconnected transmission system be planned and designed to be highly reliable so that service can be provided under peak

loading conditions and when certain elements of the system are out of service due to planned or forced outages.⁵

Duquesne Light has a statutory obligation to provide safe and reliable service to its customers. *See* 66 Pa. C.S. § 1501. Duquesne Light employs a regional transmission system planning process and identifies facilities that require reinforcement to enable it to meet this obligation and plan appropriate measures to assure reasonably continuous supply to customers, even during adverse conditions. The planning process is described in detail in Section VI.B., below.

In order to grant an application for the construction and siting of a high voltage transmission line, the Commission must find and determine the following as to the proposed 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 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 the available technology and the available alternatives.

52 Pa. Code § 57.76(a).

Duquesne Light will separately address each of these required findings. Importantly, Duquesne Light's evidence regarding need is uncontested.⁶ Moreover, with respect to health and

⁵ The need to upgrade transmission infrastructure also is reflected in the American Recovery and Reinvestment Act of 2009 ("ARRA"), P.L. No. 111-5, 123 Stat. 115 (2009). Specifically, the Electricity Delivery and Energy Reliability section of Title IV of the ARRA provides appropriations for the development of regional transmission plans, future demand and transmission requirements, and interconnection-based transmission plans.

⁶ Although certain of the Protestants originally contested Duquesne Light's proposal to design one of the circuits involved in the BI-Crescent Project to 345 kV standards, the Amended Application reflects the removal of this proposal. With respect to the Amended Application, no Protestant has asserted that BI-Crescent Project, as amended to reflect the reconstruction of a double circuit 1389 kV transmission line designed to 138 kV standards, is

safety, compliance with applicable environmental statutes and regulations, and minimum adverse impacts of the Amended BI-Crescent Project, Duquesne Light has demonstrated that the Amended Application adequately addresses the concerns raised by the Protestants in this proceeding or that their concerns were unfounded and should be rejected. Therefore, and for the reasons explained below, the record evidence clearly demonstrates that Duquesne has met its burden with respect to each of the required findings under Section 57.76(a).

B. THERE IS A NEED FOR THE AMENDED BI-CRESCENT PROJECT

The planning process for a transmission line project is a two-part process. First, Duquesne Light identifies facilities that require reinforcement or construction to enable the Company to continue to provide adequate and reliable service to the public, even during adverse conditions. Second, Duquesne Light analyzes potential electrical solutions and selects the electrical solution that best resolves the underlying reliability issues. Duquesne Light's transmission planning process has demonstrated a need for the Amended BI-Crescent Project.

1. Duquesne Light Has A Comprehensive Transmission Planning Process

Duquesne Light explained that it implements an asset management process to ensure prudent repair and replacement of assets to maintain the reliability of the Duquesne Light system by proactively preventing equipment failures. In 2012, Duquesne Light contracted an independent structural engineering consultant to perform a below grade inspection to determine foundation member adequacy on this particular line. Duquesne Light Exh. 3, Attachment 2 at 2.

In addition to the Company's asset management process, the transmission system planning process, administered by PJM,⁷ assures that transmission and distribution systems can supply

not needed to replace transmission infrastructure that is approaching the end of its useful life and are beyond permanent repair.

⁷ PJM is a Regional Transmission Organization approved by the Federal Energy Regulatory Commission to ensure the reliable and efficient operation of the electric transmission system under its functional control, and

electricity to all customer loads reliably and economically. In order to ensure reliable transmission service, PJM prepares an annual Regional Transmission Expansion Plan (“RTEP”). The North American Electric Reliability Corporation (“NERC”), PJM, and transmission owner reliability criteria are used by PJM and the transmission owners to analyze the system and determine if specific transmission upgrade projects are needed to ensure long-term reliable electric service to customers. The reliable and economical operation of transmission and distribution systems requires planning guidelines for system expansion and reinforcement. Duquesne Light St. 1A at 3-4; Duquesne Light Exh. No. 3, Attachment 2 at 2-5.

Duquesne Light implements PJM’s reliability and planning mandates in part through the Planning Criteria. Using the Planning Criteria, Duquesne Light’s transmission system is planned so that it can be operated at all projected load levels and during normal scheduled outages. The system is also planned to withstand specific unscheduled contingencies without exceeding the equipment capability, causing system instability or cascade tripping, exceeding voltage tolerances, or causing large-scale, long term or frequent interruptions to customers. Duquesne Light St. 1A at 4-5; Duquesne Light Exh. No. 3, Attachment 2 at 2-5.

The planning process begins with the development of a computer model of the future system. Once the system model is complete, comprehensive power flow simulations and contingency analyses are performed to determine the ability of the system to comply with the Duquesne Light transmission planning and reliability criteria set forth in Planning Criteria. All conditions where the system is not in conformance with the Planning Criteria are identified, and system reinforcement alternatives are added to bring the system into compliance. Also identified are estimated costs and lead times to implement the reinforcements under consideration. Computer

coordinate the transmission of electricity in all or parts of thirteen states, including Pennsylvania, and the District of Columbia. Duquesne Light St. 1A at 3-4.

simulations of the system with the identified reinforcement alternatives are completed to identify the best overall reinforcement that will meet the needs of the area in a reliable and economical manner. Finally, all reinforcements are reviewed with stakeholders at either PJM's Transmission Expansion Advisory Committee ("TEAC") or Sub-Regional Transmission Expansion Plan ("SRTEP") meetings. Duquesne Light Exh. No. 3, Attachment 2 at 4-5.

The BI-Crescent Project was developed consistent with the above-described process, and was reviewed by PJM stakeholders and included in PJM's RTEP as projects s0320 and s0320.1. Duquesne Light Exh. 3, Attachment 2 at 7.

2. Duquesne Light's Transmission Planning Process Identified Asset Health Issues Associated With The BI-Crescent Corridor.

The BI-Crescent Project addresses and replaces aged transmission infrastructure that is reaching the end of its useful life and cannot be permanently repaired. Duquesne Light Exh. 3, Amended Application at 8. Specifically, the structures associated with the Project are some of the oldest in-service steel lattice towers in Duquesne Light's system and were originally constructed in 1914. Duquesne Light St. 1A at 5; Duquesne Light Exh. 3, Attachment 2 at 5-6. The structural evaluations and inspections of the subject facilities were completed by an independent engineering firm with experience in transmission tower design. Duquesne Light St. 1A at 5.

Importantly, the transmission corridor associated with the Project extends from the Brunot Island Substation to the Crescent Substation and provides a transmission source to three (3) distribution substations including Sewickley, Montour, and Neville Substations. Duquesne Light St. 1A at 5. As between these three distribution substations, 24,000, 35,000 and 5,500 customers are respectively provided electrical service. *See* Duquesne Light St. 1A at 5-6. In addition, this transmission corridor allows for a significant flow of load current from the western portion of the system to the City of Pittsburgh as well as its eastern suburbs. Duquesne Light St. 1A at 6.

The BI-Crescent Project will resolve the above-described asset health issues and ensure that reliable electric service is continued to be provided to approximately 75,000 Duquesne Light customers. Duquesne Light Exh. 3, Attachment 2 at 6-7. The extremely old existing steel lattice towers will be replaced with new monopoles with concrete foundations. Duquesne Light Exh. 3, Attachment 2 at 7. In addition, the facilities will be designed to withstand potential landslides⁸ and as such will support reliable electric service of the Bulk Electric System. Duquesne Light Exh. 3, Attachment 2 at 7.

As noted above, the Amended Application reflects the removal of the Company's initial proposal to design one circuit of the proposed 138 kV double circuit configuration to 345 kV standards. Although certain of the Protestants disputed the need for the proposal to design one circuit to 345 kV standards, none of the Protestants have disputed that the amended proposal to design and operate both circuits at 138 kV is needed. Therefore, and for the reasons explained in Duquesne Light's Amended Application, testimony and associated exhibits, the unrebutted evidence demonstrates that the BI-Crescent Project is needed to address essential asset health and reliability issues.

C. THE BI-CRESCENT PROJECT WILL NOT CREATE AN UNREASONABLE RISK OF DANGER TO THE HEALTH AND SAFETY OF THE PUBLIC.

The second requirement under Section 57.76 of the Commission's regulations for approval of the siting and construction of transmission lines is that the project will not create an unreasonable risk of danger to the health and safety of the public. As explained below, the

⁸ As noted in the Amended Application, certain of the facilities that are the subject of the Project have been impacted by landslides as recently as the Spring of 2018. *See* Duquesne Light Exh. 3, Amended Application at 3, n.1. In addition, Duquesne Light witness Ms. Shyu responded to claims regarding landslides in the area of the proposed facilities in or around January 2020 and explained that the proposed facilities would be designed to withstand surface movement. Duquesne Light St. 3A-R at 18-19.

proposed transmission lines will be designed, constructed, and maintained to ensure the health and safety of the public.

1. The Transmission Lines Associated With The Amended BI-Crescent Project Will Meet And Exceed The NESC Standards

The double circuit 138 kV transmission lines associated with the Amended BI-Crescent Project have been designed to meet or surpass all requirements specified by the NESC. Duquesne Light St. 3A at 6-9; Duquesne Light Exh. 3, Attachment 11. The Commission has held in numerous cases that transmission lines that meet or exceed the NESC requirements do not create an unreasonable risk of danger to the health and safety of the public.⁹

In addition to the safety features incorporated by designing the line in accordance with the NESC, Duquesne Light designs all of its transmission lines for “Grade B construction,” which has more stringent design standards, including the BI-Crescent Project. Duquesne Light Exh. 3, Attachment 11 at 1-2. Duquesne Light also surpasses NESC standards for clearance requirements and structure overload or multiplying factors. Duquesne Light Exh. 3, Attachment 11 at 2. For the BI-Crescent Project, Duquesne Light’s design loading conditions for structures, wires, and clearances exceed NESC standards. Duquesne Light St. 3A at 9.

Furthermore, work procedures and tooling have been developed to allow work to be performed in a safe manner on energized facilities. Personnel are also furnished with appropriate protective equipment for the performance of construction or maintenance activities in a safe manner. Duquesne Light St. No. 3A at 9.

⁹ See, e.g. *Application of PPL Electric Utilities Corporation Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the Pennsylvania Portion of The Proposed Susquehanna-Roseland 500 kV Transmission Line*, Docket Nos. A-2009-2082652, et al., 2010 Pa. PUC LEXIS 434 at *166 (Feb. 12, 2010); *Investigation on Commission Motion of the Safety of the Cabett-Wylei Ridge 500 kV Transmission Line*, I.D. 236 (Sept. 18, 1981); *Application of PP&L for Approval to Locate and Construct a 138 kV Transmission Line Between West Allentown and Salisbury Substations*, Docket No. A-00104160 (July 20, 1984); *Application of PP&L for Authorization to Locate and Construct its Hamlin 138 kV Electric Transmission Line*, Docket No. A-00101826 (Apr. 3, 1981); *Larken v. Philadelphia Electric Co.*, 39 Pa. PUC 777 (1961).

2. The Protestants' Concerns Regarding The Design And Safety Features of the BI-Crescent Project Should Be Rejected.

Duquesne Light further notes that only Mr. Gable and Mr. Zona raised concerns regarding the design and safety features of the BI-Crescent Project as described in the Amended Application in their testimony. *See* Duquesne Light St. 3A-R at 16. Protestant Mr. Nave cross-examined Duquesne Light witness Ms. Shyu regarding the typical design of structures at hearing. Tr. 388-390. Ms. Shyu explained that the Project will be designed to meet all applicable engineering standards and will be safely constructed.

Mr. Gable testified regarding concerns about the depth of the foundation for the proposed replacement tower on his property. Tr. 354-355. In addition, he raised issues in his cross examination of Duquesne Light witness Ms. Shyu regarding the proposed structure heights. *See* Tr. 380-387.

With respect to Mr. Gable's concerns regarding the depth of the proposed foundations. Duquesne Light witness Ms. Shyu explained that Duquesne Light uses engineering data with expert geologists to make conclusions on the soil characteristics of the proposed monopole - this includes the characteristics of the rock. Duquesne Light St. 3A-R at 17. By collecting soil borings, which is an industry accepted practice, there is sufficient information to make scientific assessments of the soil in order to design a suitable foundation. Duquesne Light St. 3A-R at 17. Although Mr. Gable asserted that the foundation depths could cause a landslide, Ms. Shyu explained that based on the data collected the foundation of the structure would be socketed to intact rock that has not been exposed to weather conditions, located deep in the earth. Duquesne Light St. 3A-R at 17. Moreover, Ms. Shyu explained that Duquesne Light regularly inspects its facilities, and based on the results of these inspections, the proposed structure that will be located

on Mr. Gable's property will have a foundation that will withstand surface movement that already accounts for his concerns regarding the soil characteristics. Duquesne Light St. 3A-R at 18-19.¹⁰

Regarding Mr. Gable's regarding structure heights, Duquesne Light notes that it appears Mr. Gable was attempting to argue that the proposed structure heights would "double" and be designed for 345 kV operation. *See* Tr. 384-386. However, Duquesne Light witness Ms. Shyu explained that the average height of all structures will be 155 feet as explained in the Amended Application. Tr. 386; *see also* Duquesne Light Exh. 3, Amended Application at 10. In addition, consistent with the representations in the Amended Application, Ms. Shyu unequivocally confirmed that the BI-Crescent Project, as amended, did not involve facilities designed to operate at 345 kV. Tr. 385 ("Q. [MR. GABLE] I am trying to find out, Ms. Shyu, if the pole heights that you put on my property will be adequate to support the 345? A. [MS. SHYU] No that is not correct."); *see also* Tr. 387 ("At this time, we do not plan on upgrading to the 345, and the current design cannot handle 345kV lines."). Mr. Gable's concerns, therefore, are not relevant to the BI-Crescent Project, as amended, and should not be accepted.

Mr. Zona testified that the existing lattice tower structure located on his property should be replaced with a monopole of the same height. Tr. 349. Ms. Shyu explained that the existing structure located on his property was built according to the NESC in effect at the time, and that the NESC has changed and increased its requirements over the years. Duquesne Light St. 3A-R at 20. Due to those changes, all heights and clearances must be increased for Duquesne Light to meet the requirements of newest edition of the NESC. Duquesne Light St. 3A-R at 20. As such, replacing the existing structure with a monopole of the same height would create violations in the

¹⁰ Duquesne Light also provided the results of soil boring data collected as a part of Ms. Shyu's rebuttal testimony. Duquesne Light Exh. MS-3 and MS-4. These exhibits provide detailed information that shows the proposed foundation will be embedded deep into the soil and affixed to rock, providing a stable design. Duquesne Light St. 3A-R at 19.

newest edition of NESC. Duquesne Light St. 3A-R at 20. In addition, Ms. Shyu specifically detailed the applicable clearance requirements. Duquesne Light St. 3A-R at 20.

Mr. Zona further asserted that the existing structure should be replaced by a monopole with horizontally stacked circuits. Tr. 349. Duquesne Light witness Ms. Shyu explained that the new structure uses stacked circuits “to limit the blowout of the line as defined by the NESC as 6 psf.” Duquesne Light St. 3A-R at 20. In addition, she demonstrated that a horizontal configuration would increase blowout. Duquesne Light St. 3A-R at 20-21.

Finally, Mr. Nave cross examined Ms. Shyu regarding conductor spacing and attempted to assert that it was “odd” that “lower voltage requires more spacing from the static line at the very top of the tower.” Tr. 388. Ms. Shyu explained that the reference exhibit was a “typical” design, which changes along the route depending on specific features. Tr. 388. Moreover, Ms. Shyu confirmed that, regardless of the change in spacing, all spacing under the static top line is 14 feet at a minimum to ensure face to face clearance meets the NESC for 138 kV lines. Tr. 389.

3. The Protestants’ Concerns Regarding The Original BI-Crescent Project Are Unfounded And Have Been Addressed By The Amended Application.

Although certain Protestants raised concerns regarding the design and safety features of the BI-Crescent Project, prior to the filing of the Amended Application, these concerns should not be accepted. As an initial matter, Duquesne Light submits any prior objections to the design and safety features of the BI-Crescent Project as originally filed which were not raised by the Protestants with respect to the Amended Application should not be considered. By amending the application (and in particular amending the engineering and design of the project), only the BI-Crescent Project as described in the Amended Application is before the Commission for review and approval. *See, e.g.*, Duquesne Light Exh. 3, Amended Application at 2 (stating “Through this Amended Application, Duquesne Light seeks Commission approval of the siting and construction

of the proposed Amended Project”), and 22 (requesting approval the siting and constructing of transmission lines “as explained above and in the Attachments to this Amended Application”). Moreover, the Company’s Amended Application, which reflects the removal of the original proposal to design one circuit of the double circuit transmission line to 345 kV standards, addresses any design and safety concerns associated with 345 kV design or operation because the BI-Crescent Project no longer contemplates the design of one circuit to 345 kV standards.

4. The Amended Application Adequately Addresses Electric And Magnetic Field Mitigation.

The Commission has found that electric and magnetic fields (also referred to jointly as electromagnetic fields or “EMF”) from transmission lines do not pose a danger to the health and safety of the public. *Application of Pennsylvania Power & Light Company Filed Pursuant to 52 Pa. Code Chapter 57*, 1994 Pa. PUC LEXIS 65, *67 (Order dated Oct. 21, 1994) (“Based on the extensive scientific evidence developed to date, which has been discussed in the preceding section, it is clear that EMF should not be regarded as a health hazard.”). Nevertheless, Duquesne Light has taken EMF mitigation into account by designing the proposed lines to reduce EMFs and to maximize the distance from the centerline to any residences. To reduce EMFs, Duquesne Light has adopted a Magnetic Field Management Program, as a part of its Design and Safety Criteria. Duquesne Light St. 3A at 9-10, Duquesne Light Exh. 3, Attachment 11 at 2-4. Pursuant to its Magnetic Field Management Program, Duquesne Light designed the BI-Crescent Project to mitigate EMFs by: (1) wherever possible, locating the proposed transmission lines through unoccupied parcels and, where the line is located in occupied areas, running it along the edge of the parcel; (2) establishing a wide buffer area around the lines by utilizing a minimum conductor clearance of 23 feet; and (3) using a vertically stacked configuration, as shown in Attachment 4 to the Amended Application, which does not change the EMF emitted by the line at the right-of-way

compared to the existing circuit position at the same right-of-way. Duquesne Light Exh. 3, Attachment 11 at 2-3.

Duquesne Light witness Ms. Shyu also described the additional steps taken by the Company with respect to EMF associated with the BI-Crescent Project. Duquesne Light St. 3A at 10-11. The Company first identified the point(s) in a new transmission line with highest potential for EMF exposure. Duquesne Light St. 3A at 10. Then, it conducted an EMF study on select areas in the Project area to confirm that the lines' EMF levels are under the reference levels of the applicable standards and guidelines of its Magnetic Field Management Program. Duquesne Light St. 3A at 10-11. This study confirmed that the BI-Crescent Project has EMF levels that are under the acceptable of the applicable standards and guidelines of its Magnetic Field Management Program. Duquesne Light St. 3A at 11.

5. Conclusion Regarding Health And Safety

Duquesne has satisfied the criteria set forth in Section 57.76(a)(2) of the Commission's regulations and demonstrated that the Amended BI-Crescent Project will not create an unreasonable risk of danger to the health and safety of the public. 52 Pa. Code § 57.76(a). Therefore, and for the reasons more fully explained above, the ALJ and the Commission should find that BI-Crescent Project will not create an unreasonable risk of danger to the health and safety of the public, pursuant to 52 Pa. Code § 57.76(a)(2).

D. THE BI-CRESCENT PROJECT IS IN COMPLIANCE WITH STATUTES AND REGULATIONS, PROVIDING FOR THE PROTECTION OF NATURAL RESOURCES.

The third requirement under Section 57.76 of the Commission's regulations for approval of the siting and construction of transmission lines is that the project is in compliance with applicable statutes and regulations, providing for the protection of the natural resources of this Commonwealth. Although not an environmental permitting agency, the Commission is required to comply with the directives set forth in Article I, Section 27 of the Pennsylvania Constitution, *i.e.* the Environmental Rights Amendment. *PEDF*, 161 A.3d at 931.

The Environmental Rights Amendment placed Pennsylvania's public natural resources in trust and named the Commonwealth as its trustee, to conserve and maintain those resources for the benefit of all people, including future generations. *See PEDF*, 161 A.3d at 933. In carrying out these obligations, the Commonwealth may subject the individual rights of citizens to clean air, pure water, and to the preservation of natural, scenic, historic, and esthetic values to reasonable regulation. *PEDF*, 161 A.3d at 931; *see also Penelec*, at pp. 12-14.

Sections 57.72(e)(7) and (8) of the Commission's regulations, 52 Pa. Code § 57.72(e)(7) and (8), likewise require the Commission to consider environmental impacts of proposed transmission lines. *Re: Interim Guidelines for the Filing of Electric Transmission Line Siting Applications*, Docket No. M-2009-2141293, 2010 Pa. PUC LEXIS 2069 at *56 (November 5, 2010). The Commission has adopted and consistently applied Interim Siting Guidelines that require, among other things, an applicant for the siting of an electric transmission line to file a matrix or list that shows all expected federal, state, and local government regulatory permits and approvals that may be required for the project, at the time of the application, and the current status

of permit applications that may be required by those agencies. 52 Pa. Code §§ 69.3105, 69.3106.¹¹ The Interim Siting Guidelines and the Commission’s regulations reasonably regulate the individual rights of citizens to clean air, pure water, and to the preservation of natural, scenic, historic, and esthetic values and comply with the Environmental Rights Amendment. *Penelec*, at pp. 12-14.

Consistent with the Commission’s Interim Guidelines, the attachments to Duquesne Light’s Amended Application included information on the regulatory permit requirements and agency coordination regarding cultural and environmental resources. Duquesne Light Exh. 3, Attachment 3, Section 6.0; Duquesne Light St. 2A at 16-17. This information effectively addresses and exceeds all the requirements of the Commission’s siting regulations.

As explained below, Duquesne Light has undertaken a highly detailed and extensive evaluation of the environmental and social impacts of the available alternative routes for the BI-Crescent Project. There is no perfect route and all transmission lines will have some impact to the natural and/or human environment. Duquesne Light selected preferred routes for the BI-Crescent Project that will minimize these impacts when compared to all other feasible alternatives. *See* Section VI.E. *infra*; *see also* Duquesne Light Exh. 3, Attachment 3; Duquesne Light St. 2A at 15-16.

Every major high voltage transmission line project requires many permits and approvals from local, state, and federal agencies. Here, Duquesne Light has committed to obtain all required permits prior to construction of the BI-Crescent Project, and will comply with any and all conditions placed on such permits by those agencies that have appropriate jurisdiction over environmental matters. Duquesne Light Exh. 3, Attachment 3, Section 6.0; Duquesne Light St.

¹¹ The Commission has explained that the purpose of this information is to “inform the Commission, the ALJ and the parties of potential impacts of other needed regulatory approvals,” and that this information “need only be supplied on a best efforts basis.” *Re: Interim Guidelines*, at *55-57.

2A at 16-17. As a general matter, the Commission has found compliance with the applicable environmental statutes and regulations where the applicant agrees to obtain any and all environmental permits necessary prior to construction and to comply with any conditions on those permits during construction.¹²

Therefore, and for the reasons more fully explained above, the ALJ and the Commission should find that Duquesne Light has demonstrated the BI-Crescent Project complies with applicable statutes and regulations providing for the protection of the natural resources of the Commonwealth, pursuant to 52 Pa. Code § 57.76(a)(3) and *PEDF*.

E. THE BI-CRESCENT PROJECT WILL HAVE MINIMAL ADVERSE ENVIRONMENTAL IMPACTS.

The fourth requirement under Section 57.76 of the Commission's regulations for approval of the siting and construction of transmission lines is that the project will have minimum adverse environmental impact, considering the electric power needs of the public, the state of the available technology and the available alternatives. In reaching its determination on whether a proposed route will have minimum adverse environmental impacts, the Commission will consider the impact and the efforts that have been and will be made to minimize the impact, if any, of the proposed line upon the following: (i) land use; (ii) oil and sedimentation; (iii) plant and wildlife habitats; (iv) terrain; (v) hydrology; (vi) landscape; (vii) archeological areas; (viii) geologic areas; (ix)

¹² See, e.g., *Application of Pennsylvania Electric Company For Approval to Locate and Construct the Bedford North-Osterburg East 115 kV HV Transmission Line Project Situated in Bedford and East St. Clair Townships, Bedford County, Pennsylvania*, Docket Nos. A-2011-2247862, et al., 2012 Pa. PUC LEXIS 298 at *61 (Initial Decision February 9, 2012); *Application of Trans-Allegheny Interstate Line Company for the Approval to locate, construct, operate and maintain certain high voltage electric transmission line facilities and to exercise the power of eminent domain to construct and to install the proposed aerial electric transmission line facilities along the proposed route, being a 138 kV transmission line and related facilities collectively, the Osage-Whiteley Line Facilities or Project, in portions of Dunkard Township, Perry Township, and Whiteley Township, Greene County in Southwestern Pennsylvania*, Docket Nos. A-2010-2187540, et al., 2011 Pa. PUC LEXIS 2028 (Recommended Decision March 28, 2011); *Application of PPL Electric Utilities Corporation Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the Pennsylvania Portion of The Proposed Susquehanna-Roseland 500 kV Transmission Line*, Docket Nos. A-2009-2082652, et al., 2010 Pa. PUC LEXIS 434 at *191-201 (February 12, 2010).

historic areas; (x) scenic areas; (xi) wilderness areas; and (xii) scenic rivers. 52 Pa. Code § 57.75(d)(3). Further, the Commission will examine the proposed route for the transmission line consider the availability of reasonable alternative routes in reaching a conclusion as to whether the proposed route will have minimum adverse environmental impacts. 52 Pa. Code §§ 57.75(d)(4), 57.76(a)(4).

The Commonwealth Court recently held that a utility's route for a proposed high voltage transmission line should be approved where the record evidence shows that the utility's route-selection process was reasonable and that the utility properly considered the factors relevant to siting a transmission line:

[I]t is settled law that the designation of the route for a HV line is a matter for determination by [a utility's] management in the first instance, and the utility's conclusion will be upheld unless shown to be wanton or capricious. Thus, where the record establishes that the utility's route selection was reasonable, considering all the factors, its route will be upheld. The mere existence of an alternative route does not invalidate the utility's judgment. This reasoning is equally sound when considering whether a utility has complied with 52 Pa. Code § 57.72(c)(10), as the information required by this section goes towards establishing the reasonableness of the utility's route selection.

Susquehanna-Roseland, at 449-50 (quoting *Trailco*, 995 A.2d 465, 479-80).

As explained below, Duquesne Light has undertaken an extensive evaluation of the environmental and social impacts of the available alternative routes. The routes selected by Duquesne Light will have significantly less overall impacts to the natural and human environment than the other feasible alternative routes.

1. Overview of the Siting Process

The ultimate goal of the BI-Crescent Project Siting Study was to select a suitable route the BI-Crescent double circuit 138 kV transmission line. Furthermore, the Siting Study established alternative routes for evaluation that are environmentally sound,¹³ feasible from an engineering and economic perspective,¹⁴ and compliant with applicable regulatory requirements. Duquesne Light St. 2A at 4-5. To achieve that goal, Duquesne Light retained GAI Consultants, Inc. (“GAI”) to prepare the Siting Study. Duquesne Light St. 2A at 3.

The methodology of the Siting Study was described by Duquesne Light witness Ms. Aimee Kay as follows:

The initial step in the siting process involved the identification of a study area boundary. This was established to include the Project end points (the existing Brunot Island Substation and the existing Crescent Substation), the mid route tie in substations (the existing Montour, Neville and Sewickley Substations), existing Duquesne Light transmission line corridors to allow for opportunities to parallel existing ROWs, and the intervening areas. The northern limits of this study area were defined to avoid the Ohio River. The southern limits of the study area were defined to avoid close proximity to the Pittsburgh International Airport and to avoid Interstate 376. The study area incorporates an approximately 34.1-square-mile area in Allegheny County, PA.

Duquesne Light St. 2A at 5. Throughout this process, GAI used a variety of publicly available information and conducted field reconnaissance to update the data available for any resources in the vicinity of any preliminary routes considered, and also conducted field reconnaissance. Duquesne Light St. 2A at 5-6.

¹³ Environmental soundness includes minimizing environmental impacts while maximizing siting opportunities. Duquesne Light St. No. 2A at 4.

¹⁴ Engineering and economic feasibility includes minimizing engineering constraints, cost, and distance of the route. Duquesne Light St. 2A at 4.

Duquesne Light fully explained each step taken by GAI in defining the study area, identifying constraints and opportunities in the study area, identifying possible alignments to develop preliminary routes, modifying the preliminary routes based on actual field data to select alternative routes, and comparing the alternative routes based on 30 environmental, human/built, and engineering resource criteria that were scored and weighted in accordance with weights established by the Siting Criteria Council (SCC) for the GPU-DQE 500 kV Transmission Line Project. *See* Duquesne Light St. No. 2A; Duquesne Light Exh. 3, Attachment 3. Duquesne Light further demonstrated that its analysis of potential routes involved three public open houses prior to the filing of the original application and an additional public input hearing on October 9, 2019, substantial consultation with governmental and non-governmental agencies, and consultation with regulatory agencies. Duquesne Light St. 2A at 8-9. Finally, the Siting Study also involved review and consideration of local zoning ordinances and comprehensive land use plans to evaluate the impact of the Proposed Route on municipalities. Duquesne Light St. 2A at 9-10; Duquesne Light Exh. 3, Attachment 3, Section 6.2.

2. Selection Of The Proposed Route.

a. Duquesne Light's Analysis Of Alternative Routes Is Reasonable.

Duquesne Light identified three suitable Alternative Routes for the BI-Crescent Project—*i.e.*, the Proposed Route and Alternatives 1 and 2—using the analysis described above. Duquesne Light St. 2A at 10-14; Duquesne Light Exh. 3, Attachment 3, Section 3.4. The routes were then qualitatively and quantitatively evaluated and compared to identify a Proposed Route. Duquesne Light St. 2A at 14-15; Duquesne Light Exh. 3, Attachment 3, Sections 4.0 and 5.0.

Duquesne Light evaluated and compared Proposed Route and Alternatives 1 and 2 against each other using 30 environmental, human/built, and engineering resource criteria that were scored

and weighted in accordance with weights established by the Siting Criteria Council (SCC) for the GPU-DQE 500 kV Transmission Line Project. SCC weights existed for 22 of the 30 resource criteria. The Siting Team assigned weights for the remaining eight resource criteria (Land Trust Protected Area, Cemeteries, Exceptional Value Streams, Landslide Prone Area, Commercial/Industrial Areas, Forest Land Cleared, Non-existing right-of-way (“ROW”), and Length of ROW). The scaled scores for each criterion were then multiplied by its respective weight to obtain the impact scores shown in Section 4 and Appendix A of the Siting Study. These impact scores were summed to obtain an overall impact score for each alternative route. These scores are presented in Section 4.0 of the Siting Study. *See* Duquesne Light St. 2A at 7-8; Duquesne Light Exh. 3, Attachment 3, Section 4.0.

A review of the quantitative analysis performed for the BI-Crescent Project indicated that the Proposed Route would produce significantly fewer overall impacts relative to Alternatives 1 and 2. *See* Duquesne Light St. 2A at 15-16; Duquesne Light Exh. 3, Attachment 3, Section 5.0. The Proposed Route has the lowest/best final impact score of all the alternative routes and is the best overall alternative from an environmental, human/built, cultural, and engineering perspective, for several reasons. The Proposed Route is the shortest route and would require the least new ROW acquisition. Although the Proposed Route crosses the most human/built resources, as it has the most road crossings, crosses the most residential structures, and crosses the most institutional complexes, it will cross these human/built resources within existing ROW and no new long-term impacts are anticipated. The Proposed Route is also the best alternative from an engineering perspective, as it crosses the least steep terrain and landslide-prone areas, and is the farthest from the Pittsburgh International Airport. The Proposed Route further has the least impact to most of the environmental resources including forest land cleared, core RTE habitat, land trust protected

areas, and perennial streams crossed, but has some of the higher impact to other criteria such as wetlands crossed and recreational areas. Moreover, it is the second-best alternative from a cultural resources perspective. Importantly, the other two Alternative Routes would require acquisition of new ROW, which means that the environmental, human/built, cultural, and engineering impact scores attributable to impacts for each of Alternative 1 and Alternative 2 are new impacts on those resources. Duquesne Light St. 2A at 15-16; Duquesne Light Exh. 3, Attachment 3, Section 5.0.

Based on the quantitative assessment and qualitative review of Proposed Route and Alternatives 1 and 2, Duquesne Light selected the Proposed Route for the BI-Crescent. Although the Proposed Route has the lowest impact score of all the alternative routes and is the best overall alternative from an environmental, human/built, cultural, and engineering perspective.

b. The Protestants' Concerns Regarding The Route Selection Process And Siting Study Are Unwarranted.

Despite Duquesne Light's exhaustive Siting Study and route selection process, several Protestants have challenged the Siting Study and the selection of the Proposed Route. Specifically, Protestant Mr. Zona specific criticized the Siting Study and the selection criteria used by Duquesne Light to evaluate the Proposed Routes and Alternative Routes 1 and 2. Tr. 181-184.¹⁵ Mr. Zona, as well as Mrs. Crowe, Mr. Gable, Mrs. Marinkovic and Ms. Wilson¹⁶ also asserted that the Proposed Route had additional impacts upon their properties, or surrounding properties.¹⁷ While these claims were raised prior to the Company's filing of the Amended Application, which included the filing of a Siting Study that was amended in April 2020,¹⁸ Duquesne Light fully

¹⁵ Mr. Zona's criticisms of the Siting Study are addressed in this section.

¹⁶ See footnote 2 *supra*.

¹⁷ The Protestants' additional concerns regarding the impacts of the Proposed Route on specific properties is addressed in Section V.E.4. *infra*.

¹⁸ Duquesne Light Exh. 3, Attachment 3 (cover page indicating the Siting Study was "Completed June 2018, Amended April 2020).

rebutted the Protestants' testimony and demonstrated its Siting Study and selection of the Proposed Route was reasonable.

Mr. Zona criticized the criteria used to evaluate the Proposed Route and Alternative Routes 1 and 2, as well as Duquesne Light's calculation of the impact score of each specific route. He first claimed that the criteria were biased in favor of the Proposed Route. Tr. 181-182; *see also* Exhibit Zona 4. He also asserted that the selection and weighting of the criteria used in the Siting Study and the underlying raw data is "arbitrary." *See* Exhibit Zona 4. In addition, Mr. Zona claimed that the Siting Study is based on "unreasonable assumptions." *See* Exhibit Zona 4. None of these criticisms should be afforded any weight.

As an initial matter, Mr. Zona lacks the requisite expertise to testify regarding environmental impact studies, ecological, socioeconomic, archaeological, land-use planning, and cultural resource studies, facilities siting studies, and interpretation and application of governmental regulations and procedures relating to facilities permitting. On the other hand, Duquesne Light witness Ms. Aimee Kay possesses a Master of Science in Urban and Regional Planning. Duquesne Light St. 2-R at 11. She has been employed by GAI for over nine and a half years, and, furthermore, has over 34 years of experience in the fields noted above. *See* Duquesne Light St. 2-R at 11.

Ms. Kay explained that Mr. Zona's claim that the criteria used in the Siting Study are biased in favor of the Proposed Route should not be accepted. Importantly, she identified the flaw in Mr. Zona's claim as follows:

By way of background, the Siting Criteria Council (*i.e.* the "SCC") consisted of a group of individuals from the general public representing diverse backgrounds and interests. The purpose of the SCC was to assign a **criterion weight** to all individual Resource Criteria because not all of the criteria are equally important as perceived by the public. The SCC's Resource Criteria weights were

used in the calculation of the Overall Impact score because they specifically were developed to eliminate bias by incorporating the Nominal Group Technique (NGT), which is a structured decision-making technique. The resource evaluation criteria used in the Siting Study to evaluate potential routes were evaluated for all three proposed routes. As such, Mr. Zona mistakenly refers to the SCC as “criteria”; there are only SCC Criteria weights.

In addition, the 30 resource criteria used in the Siting Study are based on PAPUC regulations, permitting requirements, government protected resources, resources that could be problematic in the construction or maintenance of a transmission line, and resources that the public may value. The 30 resource criteria used in the evaluation to select the preferred alternative are described in Section 3.2 of Attachment 3 to the BI-Crescent Application.

Duquesne Light St. 2-R at 12 (emphasis in original). She went on to explain that these weights were developed during the evaluation of the GPU-DQE 500 kV Transmission Line siting that included over 500 miles of line and a study area of 20,000 square miles. Duquesne Light St. 2-R at 12. The SCC was formed and asked to aid in the selection of the natural and manmade resource criteria that would be used to evaluate impacts along alternative routes. *See* Duquesne Light St. 2-R at 12-13.

The criteria weights were developed through an iterative and interactive process that involved a diverse group of stakeholders. *See* Duquesne Light St. 2-R at 12-13. The weighting session involved four interactive rounds, each of which involved (a) each member weighing each criteria, (b) each member reviewing the weight they attributed to criteria against the mean for all other members, and (c) an opportunity to express their view on scores. Duquesne Light St. 2-R at 13. After the fourth round, the SCC voted to adopt the mean weights for each criteria; the established weights are now considered an industry standard. Duquesne Light St. 2-R at 13.

Ms. Kay also explained that the Siting Study properly used and incorporated the SCC criteria weights. The SCC weights were used for 22 of the 30 criteria, to which the weights applied, and GAI reviewed an additional eight resource criteria to reflect items of local significant and

regulatory concerns. Duquesne Light St. 2-R at 13-14. The basis for each of these criteria being added were fully addressed by Ms. Kay. Duquesne Light St. 2-R at 15-16.

Mr. Zona's further claim that the SCC criteria should be ignored based on the difference in voltage between this project and the GPU-DQE 500 kV Transmission Line project is also without merit. The SCC weights are based upon the sensitivity and frequency of the resources potentially affected by the construction and operation of the BI-Crescent Project. Duquesne Light St. 2-R at 14. The resources and their sensitivity are not related to the voltage of the Project. Duquesne Light St. 2-R at 14.

Moreover, Mr. Zona's argument that the GAI criteria should be removed is unreasonable. Ms. Kay explained that this argument attempts to ignore impacts to applicable resources and disregard construction hazards. Duquesne Light St. 2-R at 16. Moreover, Ms. Kay explained that the evaluation of additional criteria is to respond to the changing regulatory and ecological science regimes the Company operates within. Duquesne Light St. 2-R at 16. Thus, relevant criteria are added, deleted, and weighted by the experienced professional staff conducting the evaluations. Duquesne Light St. 2-R at 16.

With respect to Mr. Zona's claim that the selection of the SCC and GAI resource criteria are "arbitrary," Ms. Kay demonstrated that these criteria are reasonable and consistent with industry standards. Ms. Kay explained that the SCC weights were developed by a diverse group of stakeholders and "is the closest representation of current societal values we have assembled for the Western Pennsylvania Region." Duquesne Light St. 2-R at 17. Furthermore, the criteria developed by GAI was conducted by experienced industry professionals, based upon and consistent with their experience and in response to the regulatory and ecological regimes they work within. Duquesne Light St. 2-R at 17.

These procedures are consistent with the standard of practice regarding the siting of high voltage transmission lines before the Commission for the past 25 years. Duquesne Light St. 2-R at 17-18. The weighting criteria and the Siting Study are consistent with widespread and accepted industry practices, and enabled Duquesne Light's siting team to evaluate the Proposed Route and the Alternative Routes in an objective manner. Duquesne Light St. 2-R at 18. Mr. Zona did not propose an alternative method for weighing the criteria nor did he propose an alternative weight for any of the criteria used. Duquesne Light St. 2-R at 18.

Mr. Zona's further claim that the "raw data" used to calculate the impacts scores in the Siting Study is "arbitrary" is without merit. The parameters used to quantify the identified resources were identified and calculated using GIS software and publicly available data. Duquesne Light St. 2-R at 19. This method of obtaining raw data is consistent with widespread and accepted practices in the industry and, moreover, Mr. Zona proposed no alternative method of data collection and no alternative value for any of the raw data used in the Siting Study. Duquesne Light St. 2-R at 19-20.

Mr. Zona asserted that the Siting Study makes unreasonable assumptions. Tr. 176-177. He claims that the Application's statement that "Since Proposed Route is proposed to utilize existing ROW no new visual impact is anticipated" is an unreasonable assumption. Tr. 176. Mr. Zona's assertion misses the mark; the replacement of an existing structure with a new structure does not pose a new visual impact just a different visual impact, as the existing structure already creates a visual impact. Duquesne Light St. 2-R at 20. Moreover, Ms. Kay explained that visual impact is a secondary impact that "was accounted for in many of the criteria used in the siting study, including recreational areas, cemeteries and historic sites, scenic areas, residential areas, and institutional areas." Duquesne Light St. 2-R at 20-21.

Finally, Mr. Zona claimed that the Siting Study does not properly tabulate the scores for each route. Tr. 182. However, Ms. Kay explained that his argument is based upon a misunderstanding of how resource categories were converted to a relative scale, then weighted and combined to produce a final impact score for each route. Duquesne Light St. 2-R at 21.

For the reasons explained above, Mr. Zona's specific criticisms of the Siting Study, and the criteria used therein, should not be accepted. Duquesne Light has demonstrated that its Siting Study was reasonable, and completed in accordance with widespread and accepted industry standards.

3. Mitigation Measures.

Duquesne Light strives to avoid and/or minimize the impacts of transmission lines upon property owners and the environment. Efforts were made during the siting process to minimize impacts on existing and future land uses, as well as avoid sensitive natural resources such as wetlands and streams. For example, the siting team worked with land owners to route the project transmission lines, structures, and access roads to minimize impacts to future housing developments and avoid sensitive natural areas. Where potential impacts are unavoidable, Duquesne Light will obtain any necessary permits and comply with the best management practices laid out within during construction. Best management practices may include fencing sensitive resources to protect them during construction, use of timber matting equipment for crossings of streams and wetlands, and utilizing erosion and sedimentation controls. Duquesne Light St. 2A at 16-17; *see also* Duquesne Light Exh. 3, Attachment 3, Section 5.1. Duquesne Light provided a detailed description of its efforts to minimize impacts to land use and land cover, hydrology, scenic and recreational area, natural areas and rare/threatened/endangered species, terrain and landscape, archaeological and architectural/historical resources, and airports in Section 5.1 of the Siting Study. Duquesne Light Exh. 3, Attachment 3, Section 5.1.

Based on its description of planned mitigation efforts in the Siting Study, Duquesne Light has demonstrated it has incorporated appropriate mitigation measures for the impacts associated with the Amended BI-Crescent Project.

4. The Protestants' Property Specific Challenges Should Be Rejected.

As noted above, Mrs. Crowe, Mr. Gable, Ms. Marinkovic, and Mr. Nave also noted property specific concerns regarding the Proposed Route. Duquesne Light fully rebutted each of these concerns and, as explained below, demonstrated that the Proposed Route for the Amended BI-Crescent Project will minimize adverse environmental impacts.

Mrs. Crowe asserted that the Proposed Route would require clearing of “numerous mature trees” at her property located at 1123 Juanita Drive. Tr. 126.¹⁹ Duquesne Light witness Ms. Kay explained that the Siting Study already accounts for forest land cleared and includes this information in the overall score. Duquesne Light St. 2-R at 6. Despite the reduction in woodland areas, the overall score for the Proposed Route remains the lowest after accounting for these effects. Duquesne Light St. 2-R at 6. Moreover, Mrs. Crowe does not propose or advocate for an alternative route and, therefore, the Commission cannot determine what effect on the overall impact score shifting the segment of the line that crosses the Juanita Drive property.

Similarly, Mr. Gable raised three concerns regarding the Proposed Route. Mr. Gable asserted that the EMF from Proposed Route will impact a picnic pavilion located on his property at 304 Konter Road, and cause numerous health concerns. Tr. 140-141.²⁰ Second, Mr. Gable asserts that the Proposed Route will impact residential homes. See Tr. 142-143 (referencing

¹⁹ Duquesne Light notes that Mrs. Crowe testified regarding two properties (1) the property located at 306 Konter Road, which is the property at which Mrs. Adams resides; and (2) the property at 1123 Juanita Drive, which is the property at which Mrs. Crowe resides. Duquesne Light St. 2-R at 5. No transmission facilities are currently located upon or planned to be located upon or cross the property located at 306 Konter Road. Duquesne Light St. 2-R at 5-6.

²⁰ As explained in Section V.C.4. *supra*, the Amended BI-Crescent Project adequately addresses and accounts for Mr. Gable's EMF concerns.

Exhibits Gable 1 through 3). Third, Mr. Gable asserts that under the Pennsylvania Constitution the public is entitled to clean air, and a clean environment and that the Proposed Route will impact these rights.²¹ With regard to his second concern, however, the Siting Study already evaluates impacts to “Residential Areas,” which includes residential homes. Duquesne Light St.2-R at 6. As Mr. Gable’s property includes the existing ROW, impacts from the Proposed Route are expected to be similar to the currently existing impacts of existing transmission facilities located on his property. Duquesne Light St. 2-R at 6.

Mr. Gable further asserted that Duquesne Light should pursue an alternative route “along the river” with an underground transmission line. Tr. 145. However, Mr. Gable provided no basis for this assertion and Duquesne Light witness Ms. Kay explained it would be problematic. This alternative would create considerable conflicts with existing railroad and transportation infrastructure and numerous industrial developments are located along the river in McKees Rocks. Duquesne Light St. 2-R at 7. In addition, the installation of an underground transmission line can cost between five and ten times as much per mile as installing an overhead line, with an associated shorter life expectancy and higher maintenance and repair costs. Duquesne Light St. 2-R at 7. Mr. Gable’s alternative route is not reasonable and should not be accepted.

Mrs. Marinkovic claimed that “the PUC should consider having Duquesne Light take an alternate route, which they have two that are available to them.” Tr. 153. As an initial matter, Duquesne Light notes that no transmission facilities traverse the property owned by Mrs. Marinkovic that is at 205 Purdy Road today, and no facilities are planned to traverse that property as a part of the BI-Crescent Project. See Duquesne Light St. 2-R at 8; Duquesne Light St. 4-R at 9-10. Similarly, neither of the Alternative Routes would locate facilities on Mrs. Marinkovic’s

²¹ This assertion is addressed in Section V.D. *supra*.

property, which is located outside of the study area for this project. Duquesne Light St. 2-R at 8. Moreover, Duquesne Light has demonstrated that the Proposed Route has the lowest impact score of all the alternative routes and is the best overall alternative from an environmental, human/built, cultural, and engineering perspective. *See* Section V.E.2.a. *supra*.

Finally, Mr. Nave testified that he wanted to obtain copies of construction plans and all obtain copies of the studies conducted by Duquesne Light to analyze impacts to wildlife and vegetation. Tr. 358. Duquesne Light notes that it responded to a discovery request and provided construction plans to Mr. Nave and that Mr. Nave received a copy of the Amended Application, which included the Siting Study (Attachment 3) and Duquesne Light's Vegetation Management Plan (Attachment 12). Duquesne Light's assessment of the impacts of the BI-Crescent Project is reasonable, and the Amended Application provides all information required under the Commission's regulations.

5. Conclusion As To Minimum Adverse Environmental Impacts

Duquesne Light has demonstrated that the BI-Crescent Project will have minimum adverse environmental impact, considering the electric power needs of the public, the state of the available technology and the available alternatives. Duquesne Light conducted an exhaustive review of potential routes and ultimately selected the feasible alternative that would produce significantly fewer overall impacts (*i.e.*, Proposed Route) in comparison to other feasible alternatives (Alternatives 1 and 2). Therefore, and for the reasons more fully explained above, the ALJ and the Commission should find that the BI-Crescent Project will have minimum adverse environmental impact, considering the electric power needs of the public, the state of the available technology and the available alternatives, pursuant to 52 Pa. Code § 57.76(a)(4).

F. OTHER ISSUES

As explained above, Duquesne Light has satisfied each of the criteria set forth in Section 57.76(a) of the Commission's regulations that the Commission must find and determine in order to approve an application for the siting and construction of a high voltage transmission line. 52 Pa. Code § 57.76(a). During the course of this proceeding, however, certain of the Protestants have raised issues related to Duquesne Light's ROW acquisition efforts and landowner outreach efforts.²² As explained below, Duquesne Light's ROW acquisition and landowner outreach efforts have been reasonable and Duquesne Light has addressed the concerns raised by these protestants.

1. Duquesne Light's Right-Of-Way Acquisition Efforts Are Reasonable And Consistent With Commission Policy.

Duquesne Light witness Ms. Lesley Gannon addressed Duquesne Light's ROW acquisition efforts in her direct testimony. She explained that Duquesne Light investigated the project routes for property owner information, and then collected physical evidence from the field to determine or confirm property boundaries. Duquesne Light St. 4A at 4-5. Duquesne Light served property owners along the Proposed Route with Attachment 13 to the Amended Application. Duquesne Light St. 4A at 5. The pack of information details how Duquesne Light representatives are to interact with landowners, contains notices of eminent domain power and ROW management practices, and includes a permission for to grant Duquesne Light access to their property. Duquesne Light St. 4A at 5-6. Ms. Gannon further details the public meetings held by Duquesne Light (both before and after the filing of the Amended Application). *See* Duquesne Light St. 4A

²² Duquesne Light notes that these concerns were raised prior to the filing of the Amended Application, and that the protestants raising these concerns subsequently stated at hearing on December 21, 2020, that they had nothing further to add. As such, Duquesne Light references its rebuttal testimony filed prior to the filing of the Amended Application to respond to the other parties' claims.

at 6. Duquesne Light complies with 52 Pa. Code § 57.91 in contacting landowners after they are sent the required informational packs and notice. Duquesne Light St 4A at 7.

However, protestants Mrs. Adams and Mrs. Crowe asserted that the Company had not obtained necessary right-of-way with respect to the property located at 306 Konter Road. *See* Tr. 77-78; 119-120. In addition, Mrs. Marinkovic asserted that Duquesne Light had not obtained necessary rights-of-way with respect to her property located at 205 Purdy Road, specific to the alleged enlargement of a private road. Tr. 149-150. In addition, Mrs. Crowe asserts that the Company had not obtained necessary right-of-way from properties near her residence, located at 1123 Juanita Drive. Tr. 125.

Duquesne Light witness Ms. Gannon rebutted all of these concerns. With respect to the property of Mrs. Adams and Mrs. Crowe located at 306 Konter Road, Ms. Gannon explained that no existing Duquesne Light transmission facilities traverse the property located at 306 Konter Road today and no transmission facilities are planned to traverse this property as a part of the Amended BI-Crescent Project. *See* Duquesne Light St. 4-R at 4-5. As such, the Company does not need and does not intend to acquire any rights-of-way to locate any transmission facilities associated with the Amended BI-Crescent Project on the property located at 306 Konter Road.

Although Mrs. Adams and Mrs. Crowe appear to believe that the Company must obtain an easement to use Konter Road to access a construction road located on the property of Mr. Richard Gable, their neighbor, located at 304 Konter Road, the Company has already obtained an appropriate easement from Mr. Gable. *See* Tr. 140, 144-145; *see also* Exhibit Gable 4. Moreover, Duquesne Light is not required to obtain an easement to access Konter Road it contains sufficient access rights. Ms. Gannon explained:

On November 14, 1914, Alpha Light Company, predecessor-in-interest to Duquesne Light, purchased an easement from Ebenezer

and Susannah Worth and Samuel P. and Mary E. Worth across their undeveloped property in Coraopolis (the "Worth Property"). This easement was documented in an Indenture (the "Worth Agreement"), which is filed of record, and the Worth Property and associated easement are depicted in Duquesne Light Exhibit LG-2. The Worth Property was later subdivided into several parcels and Konter Road was constructed; however, the Worth Agreement is still in the chain of title for all parcels subdivided from the Worth Property and on Konter Road, including 304 Konter Road. The Worth Agreement permits Duquesne Light "to erect, use, operate, maintain, repair, renew and finally remove..." the electric transmission system and "*to enter upon said premises at any time for said purposes*" (emphasis added). Because Konter Road is part of the Worth Property, Duquesne Light has the right to utilize it to access its infrastructure, including repairing and renewing that infrastructure.

Duquesne Light St. 2-R at 6. Furthermore, Ms. Gannon explained that Mrs. Adams and Mrs. Crowe are mistaken about alleged plans to widen Konter Road as a part of this project; although there are ruts and holes in the road that Duquesne Light will need to repair in order to drive construction vehicles on the road, there are no plans to widen Konter Road. Duquesne Light St. 4-R at 6-7.

Mrs. Marinkovic raised similar claims with respect to her property located at 205 Purdy Road. *See* Duquesne Light St. 4-R at 9-10. However, no existing Duquesne Light transmission facilities traverse the property located at 205 Purdy Road today and no transmission facilities are planned to traverse this property as a part of the BI-Crescent Project. Duquesne Light St. 4-R at 9-10. Moreover, there are no plans to widen Konter Road. Duquesne Light St. 4-R at 10-11.

Mrs. Crowe further asserted that Duquesne Light has not obtained easements for the Amended BI-Crescent Project to cross her property located at 1123 Juanita Drive. However, Duquesne Light explained that it already possesses an easement for transmission facilities on this

property. As such, the Company does not need and does not intend to acquire any rights-of-way to from other nearby properties. Duquesne Light St. 4-R at 12-13.²³

Mrs. Adams, Mrs. Crowe and Mrs. Marinkovic each also alleged that Duquesne Light or its agents have trespassed upon their respective properties. *See* Tr. 74-75, 123 (Konter Road property), 129-130 (Juanita Drive property), 153 (Purdy Road property). Duquesne Light first notes that the Commission lacks jurisdiction over real property issues such as trespass and the location of utility facilities pursuant to valid easements.²⁴ Moreover, the Commission has recognized that the assessment of damages resulting from a line's impact or individual land use was properly adjudicated in another forum.²⁵ Nevertheless, Duquesne Light witness Ms. Gannon confirmed that she was unaware of any circumstance in which Duquesne Light's agents or employees trespassed upon the subject parcels and, moreover, in each instance Duquesne Light possessed an existing easement that permitted access to the parcels. *See* Duquesne Light St. 4-R at 8, 10-11, 13-14. Moreover, Duquesne Light witness Mr. Jason Hartle indicated that the Company would thoroughly investigate Mrs. Adams' claims of property damage. Duquesne Light St. 6-R at 8.

²³ Duquesne Light also has the legal right to enter the property located at 1123 Juanita Drive by virtue of its existing easement on this property. By way of further explanation, on November 30, 1914, Southern Heat, Light and Power Company, predecessor-in-interest to Duquesne Light, purchased an easement from R. H. and Mary McKown across their undeveloped property in Robinson Township, Pennsylvania (the "McKown Property"). This easement was documented in an Indenture (the "McKown Agreement") which was filed of record in the Allegheny County Real Estate Office. The McKown Property was later subdivided into many parcels; however, the McKown Agreement is still in the chain of title for all parcels subdivided from the McKown Property and on Konter Road. The McKown Agreement permits Duquesne Light "to erect, use, operate, maintain, repair, renew and finally remove..." the electric transmission system and "to enter upon said premises at any time for said purposes" (emphasis added). *See* Duquesne Light St. 4-R at 14.

²⁴ *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)).

²⁵ *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).

2. Duquesne Light Engaged In Reasonable And Appropriate Landowner Outreach.

During the course of the proceeding, Mrs. Adams, Mrs. Crowe and Mrs. Marinkovic raised specific concerns regarding the Duquesne Light's outreach to landowners regarding the project. Mrs. Adams testified that members of the public were concerned and requested a public input hearing. Tr. 98-102. Mrs. Crowe testified that Pennsylvania State Representative Valerie Gaydos had not been aware of the Project and that members of the public were concerned. Tr. 121-122. Ms. Marinkovic also testified that certain people that attended a public meeting on August 29, 2019, would be affected by the Project and had not received notification from Duquesne Light. Tr. 154.

Duquesne Light witness Mr. Jason Hartle responded to these concerns. First, he described Duquesne Light's initial service of letters to property owners along the planned ROW in February 2017. Duquesne Light St. 6-R at 5. The letters detailed two public meetings to be held in February and March 2017. Duquesne Light St. 6-R at 5. In addition to these letters, Duquesne Light contracted a media consultant to advertise online with Geo-targeted internet advertisements to spread the news of the Project Open House Meetings. Duquesne Light St. 6-R at 5-6. These advertisements stated there was an open house regarding transmission changes in the area and the date and appeared on AccuWeather.com, WPXI.com, TribLive.com, NTD.TV, OnlyinYourState.com, Post-Gazette.com, 247Sports.com, WTAE.com, Forbes.com, and Weather.com and were viewed by over 95,000 people. Duquesne Light St. 6-R at 6. Duquesne Light witness Ms. Gannon further detailed the Company's outreach efforts as noted above.

Furthermore, Duquesne Light witness Mr. Hartle also explained that all owners of properties on which the BI-Crescent Line is or was planned to be located were mailed the notices in Attachment 13 to the Application. Duquesne Light St. 6-R at 7. Mrs. Adams and Mrs.

Marinkovic did not receive the notices included in Attachment 13 to the Application because the BI-Crescent Line does not cross their respective properties (i.e., 306 Konter Road and 205 Purdy Road). For similar reasons, Mrs. Crowe did not receive a notice associated with the 306 Konter Road property. Jennifer and John Crowe were, however, sent a notice with respect to 1123 Juanita Drive because the 1123 Juanita Drive property is traversed by right-of-way associated with the BI-Crescent Project. Duquesne Light St. 6-R at 7. Similarly, any of Mrs. Crowe's or Mrs. Marinkovic's neighbors that are not expected to be traversed by the project would not have been mailed these notices. Duquesne Light St. 6-R at 7-8.

G. THE SCHAEFER CONDEMNATION APPLICATION SHOULD BE APPROVED.

In this proceeding, Duquesne Light is seeking a finding, under 15 Pa.C.S. § 1511, that the acquisition of rights-of-way and easements for the construction, operation, and maintenance of the BI-Crescent Project over the land identified in the Schaefer Condemnation Application is necessary for the service, accommodation, convenience, or safety of the public. Pennsylvania Appellate Courts have interpreted Section 1511 as requiring a condemning utility to show that the proposed transmission line is necessary and that it has not acted wantonly, capriciously, or arbitrarily in selecting the proposed right-of-way. *Department of Environmental Resources v. Pa. PUC*, 335 A.2d 860 (Pa. Cmwlth. 1975), *aff'd.*, 473 Pa. 378, 374 A.2d 693 (1977); *Dickson v. Pennsylvania Service Commission*, 89 Pa. Super. 126 (1926). Further, the selection of the right-of-way is a matter for the public utility in the first instance and, while the route selection must be reasonable, it need not be the "best alternative" in terms of reducing or eliminating inconvenience to particular landowners. *Stone v. Pa. PUC*, 162 A.2d 18 (Pa. Super. 1960).

Duquesne Light initially filed with the Commission one (1) application for a finding and determination that the service to be furnished by Duquesne Light through its proposed exercise of the power of eminent domain to acquire rights-of-way and easements for the construction, operation, and maintenance of the proposed BI-Crescent Project is necessary or proper for the service, accommodation, convenience, or safety of the public. Although Duquesne Light filed an Amended Application with respect to the BI-Crescent Project, it noted that the Schaefer Condemnation Application is interrelated with the consideration of the Amended Application and requested that the proceedings remain consolidated. For the reasons set forth below, Duquesne requests that the ALJ find, and the Commission approve, that the acquisition of the rights-of-way and easements for the aerial crossing of the aforementioned property is necessary and proper for the service, accommodation, convenience, or safety of the public, and grant Duquesne Light's Schaefer Condemnation Application associated with the BI-Crescent Project.

Duquesne Light's proposed exercise of the power of eminent domain to acquire rights-of-way and easements for the construction, operation, and maintenance of the proposed BI-Project over the lands identified in the Schaefer Condemnation Application is necessary for the service, accommodation, convenience, or safety of the public. As explained above, the BI-Crescent Project is necessary to replace aged transmission lines that are approaching the end of their useful lives and are beyond permanent repair. *See* Section V.B. *supra*. Importantly, no party to this proceeding has contested this issue. Therefore, Duquesne Light's evidence regarding the need for the project is undisputed.

As explained above, the BI-Crescent Project includes the construction of approximately 14.5 miles of overhead double-circuit 138 kV transmission lines in the City of Pittsburgh, McKees Rocks Borough, Kennedy Township, Robinson Township, Moon Township, and Crescent

Township, Allegheny County, Pennsylvania. The proposed routes for the BI-Crescent Project were selected after extensive public input and a detailed analysis, which included a comprehensive environmental inventory, identification and analysis of alternative routes, and selection of the preferred route. Factors considered in the siting analysis included functional requirements, environmental impacts, social impacts, public input, cost, and other factors identified in the Commission's siting regulations. *See* Section V.E. *supra*.

Duquesne Light seeks to exercise the power of eminent domain to acquire rights-of-way for the construction, operation, and maintenance of the BI-Crescent Project, specifically the portion of the 138 kV transmission lines that would run approximately 1,079 feet over and across the property identified in the Schaefer Condemnation Application. *See* Duquesne Light St. 1 (Schaefer) at 4. The proposed rights-of-way and easements over the property identified in the Schaefer Condemnation Application does not interfere or require the condemnation of any place of public worship, burying ground, dwelling or its reasonable cartilage. *See* 15 Pa.C.S. § 1511(b).

In addition, Duquesne Light did not act wantonly, capriciously, or arbitrarily in selecting the proposed right-of-way. *Department of Environmental Resources v. Pa. PUC*, 335 A.2d 860 (Pa. Cmwlth. 1975), *aff'd.*, 473 Pa. 378, 374 A.2d 693 (1977); *Dickson v. Pennsylvania Service Commission*, 89 Pa. Super. 126 (1926). Duquesne Light conducted a comprehensive Siting Study that analyzed three feasible routes for the BI-Crescent Project. Based upon that analysis, Duquesne Light determined that the Proposed Route will have significantly less overall impacts to the natural and human environment than the other feasible alternative routes. *See* Section V.E. *supra*.

Duquesne Light further detailed its efforts to ensure the potential owners of the Schaefer property received notice of the Schaefer Condemnation Application. Duquesne Light St. 1-R (Schaefer) at 16-17. Through its review of intestacy law and estates of record, Duquesne Light

served the heirs to the estate of George N. Schaefer who it believed were those who could claim an interest in the Schaefer property. Duquesne Light St. 1-R (Schaefer) at 17. In addition, Duquesne Light published a notice of the Schaefer Condemnation Application in a newspaper of general circulation in the area where the property is located and filed a proof of publication on April 30, 2019. Duquesne Light St. 1-R (Schaefer) at 18; *see also* Duquesne Light Exh. LG-5 (Schaefer). Importantly, none of the potential property owners have argued that the BI-Crescent Project is not necessary or proper for the service, accommodation, convenience or safety of the public. Nor have these property owners argued that Duquesne Light has failed to satisfy the Commission's requirements set forth in Chapter 57.76 of its regulations, with respect to the siting of HV transmission lines. Indeed, none of these potential property owners have submitted any evidence in this proceeding.

Duquesne Light must be able to route the BI-Crescent Project over and across the above-mentioned property in order to site, construct, and operate that transmission lines at the selected routes. The service to be provided by Duquesne Light through the proposed transmission lines and related facilities is necessary or proper for the service, accommodation, convenience or safety of the public for the reasons set forth above. *See* Section V.B. *supra*. Accordingly, Duquesne Light's proposed exercise of the power of eminent domain to acquire rights-of-way and easements for the proposed BI-Crescent Project over the land identified in the Schaefer Condemnation Application is necessary for the service, accommodation, convenience, or safety of the public and, therefore, should be approved.

VI. CONCLUSION

WHEREFORE, Duquesne Light Company respectfully requests that Administrative Law Judge Mary D. Long and the Pennsylvania Public Utility Commission:

- (1) approve the Amended 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;
- (2) approve the one (1) application under 15 Pa.C.S. §1511(c) seeking findings and determination that the service to be furnished by the Company through its proposed exercise of the power of eminent domain to acquire rights-of-way and easements over a certain portion of the lands of George N. Schaefer in Moon Township, Allegheny County, Pennsylvania for the siting and construction of transmission lines associated with the proposed Amended BI-Crescent Project is necessary or proper for the service, accommodation, convenience or safety of the public; and
- (3) grant such other approvals as are necessary or appropriate under all of the circumstances.

Respectfully Submitted,



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Date: March 18, 2021

APPENDIX A
PROPOSED FINDINGS OF FACT

Duquesne Light Company (“Duquesne Light” or the “Company”) proposes the following findings of fact:

1. 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. Duquesne Light is a “public utility” and an “electric distribution company” as defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 102, 2803.

2. Duquesne Light has a statutory obligation to provide safe and reliable service to its customers. *See* 66 Pa. C.S. § 1501.

3. Duquesne Light implements an asset management process to ensure prudent repair and replacement of assets to maintain the reliability of the Duquesne Light system by proactively preventing equipment failures. In 2012, Duquesne Light contracted an independent structural engineering consultant to perform a below grade inspection to determine grillage foundation member adequacy on this particular line. Duquesne Light Exh. 3, Attachment 2 at 2.

4. The transmission system planning process, administered by PJM,¹ assures that transmission and distribution systems can supply electricity to all customer loads reliably and economically. In order to ensure reliable transmission service, PJM prepares an annual Regional Transmission Expansion Plan (“RTEP”). The North American Electric Reliability Corporation (“NERC”), PJM, and transmission owner reliability criteria are used by PJM and the transmission owners to analyze the system and determine if specific transmission upgrade

¹ PJM is a Regional Transmission Organization approved by the Federal Energy Regulatory Commission to ensure the reliable and efficient operation of the electric transmission system under its functional control, and coordinate the transmission of electricity in all or parts of thirteen states, including Pennsylvania, and the District of Columbia. Duquesne Light St. 1A at 3-4.

projects are needed to ensure long-term reliable electric service to customers. The reliable and economical operation of transmission and distribution systems requires planning guidelines for system expansion and reinforcement. Duquesne Light St. 1A at 3-4; Duquesne Light Exh. No. 3, Attachment 2 at 2-5.

5. Duquesne Light implements PJM's reliability and planning mandates in part through the Planning Criteria. Using the Planning Criteria, Duquesne Light's transmission system is planned so that it can be operated at all projected load levels and during normal scheduled outages. The system is also planned to withstand specific unscheduled contingencies without exceeding the equipment capability, causing system instability or cascade tripping, exceeding voltage tolerances, or causing large-scale, long term or frequent interruptions to customers. Duquesne Light St. 1A at 4-5; Duquesne Light Exh. No. 3, Attachment 2 at 2-5.

6. The planning process begins with the development of a computer model of the future system. Once the system model is complete, comprehensive power flow simulations and contingency analyses are performed to determine the ability of the system to comply with the Duquesne Light transmission planning and reliability criteria set forth in Planning Criteria. All conditions where the system is not in conformance with the Planning Criteria are identified, and system reinforcement alternatives are added to bring the system into compliance. Also identified are estimated costs and lead times to implement the reinforcements under consideration. Computer simulations of the system with the identified reinforcement alternatives are completed to identify the best overall reinforcement that will meet the needs of the area in a reliable and economical manner. Finally, all reinforcements are reviewed with stakeholders at either PJM's Transmission Expansion Advisory Committee ("TEAC") or Sub-Regional Transmission Expansion Plan ("SRRTEP") meetings. Duquesne Light Exh. No. 3, Attachment 2 at 4-5.

7. The BI-Crescent Project was developed consistent with this process, and was reviewed by PJM stakeholders and included in PJM's RTEP as projects s0320 and s0320.1. Duquesne Light Exh. 3, Attachment 2 at 7.

8. The BI-Crescent Project addresses and replaces aged transmission infrastructure that is reaching the end of its useful life and cannot be permanently repaired. Duquesne Light Exh. 3, Amended Application at 8.

9. The structures associated with the Project are some of the oldest in-service steel lattice towers in Duquesne Light's system and were originally constructed in 1914. Duquesne Light St. 1A at 5; Duquesne Light Exh. 3, Attachment 2 at 5-6.

10. The structural evaluations and inspections of the subject facilities were completed by an independent engineering firm with experience in transmission tower design. Duquesne Light St. 1A at 5.

11. The transmission corridor associated with the Project extends from the Brunot Island Substation to the Crescent Substation and provides a transmission source to three (3) distribution substations including Sewickley, Montour, and Neville Substations. Duquesne Light St. 1A at 5.

12. As between the Sewickley, Montour, and Neville Substations distribution substations, 24,000, 35,000 and 5,500 customers are respectively provided electrical service. *See* Duquesne Light St. 1A at 5-6.

13. The transmission corridor associated with the Project allows for a significant flow of load current from the western portion of the system to the City of Pittsburgh as well as its eastern suburbs. Duquesne Light St. 1A at 6.

14. The BI-Crescent Project will resolve the identified asset health issues and ensure that reliable electric service is continued to be provided to approximately 75,000 Duquesne Light customers. Duquesne Light Exh. 3, Attachment 2 at 6-7.

15. The old existing steel lattice towers will be replaced with new monopoles with concrete foundations. Duquesne Light Exh. 3, Attachment 2 at 7.

16. The facilities will be designed to withstand potential landslides and as such will support reliable electric service of the Bulk Electric System. Duquesne Light Exh. 3, Attachment 2 at 7.

17. Certain of the facilities that are the subject of the Project have been impacted by landslides as recently as the Spring of 2018. *See* Duquesne Light Exh. 3, Amended Application at 3, n.1.

18. Duquesne Light witness Ms. Shyu responded to claims regarding landslides in the area of the proposed facilities in or around January 2020 and explained that the proposed facilities would be designed to withstand surface movement. Duquesne Light St. 3A-R at 18-19.

19. The double circuit 138 kV transmission lines associated with the Amended BI-Crescent Project have been designed to meet or surpass all requirements specified by the National Electric Safety Code (“NESC”). Duquesne Light St. 3A at 6-9; Duquesne Light Exh. 3, Attachment 11.

20. Duquesne Light designs all of its transmission lines for “Grade B construction,” which has more stringent design standards than the NESC, including the BI-Crescent Project. Duquesne Light Exh. 3, Attachment 11 at 1-2.

21. Duquesne Light also surpasses NESC standards for clearance requirements and structure overload or multiplying factors. Duquesne Light Exh. 3, Attachment 11 at 2. For the

BI-Crescent Project, Duquesne Light's design loading conditions for structures, wires, and clearances exceed NESC standards. Duquesne Light St. 3A at 9.

22. Duquesne Light has also developed work procedures and tooling to allow work to be performed in a safe manner on energized facilities. Personnel are also furnished with appropriate protective equipment for the performance of construction or maintenance activities in a safe manner. Duquesne Light St. No. 3A at 9.

23. Only protestants Mr. Gable and Mr. Zona raised concerns regarding the design and safety features of the BI-Crescent Project as described in the Amended Application in their testimony. *See* Duquesne Light St. 3A-R at 16.

24. Duquesne Light explained that the Project will be designed to meet all applicable engineering standards and will be safely constructed. Tr. 388-390.

25. Duquesne Light uses engineering data with expert geologists to make conclusions on the soil characteristics of the proposed monopole - this includes the characteristics of the rock. Duquesne Light St. 3A-R at 17.

26. By collecting soil borings, which is an industry accepted practice, there is sufficient information to make scientific assessments of the soil in order to design a suitable foundation. Duquesne Light St. 3A-R at 17.

27. Based on the data collected the foundation of the structure proposed for Mr. Gable's property would be socketed to intact rock that has not been exposed to weather conditions, located deep in the earth. Duquesne Light St. 3A-R at 17.

28. Duquesne Light regularly inspects its facilities, and based on the results of these inspections, the proposed structure that will be located on Mr. Gable's property will have a

foundation that will withstand surface movement that already accounts for his concerns regarding the soil characteristics. Duquesne Light St. 3A-R at 18-19.

29. Duquesne Light also provided the results of soil boring data collected as a part of Ms. Shyu's rebuttal testimony. Duquesne Light Exh. MS-3 and MS-4.

30. Duquesne Light Exhibits MS-3 and MS-4 provide detailed information that shows the proposed foundation will be embedded deep into the soil and affixed to rock, providing a stable design. Duquesne Light St. 3A-R at 19.

31. Duquesne Light explained that the average height of all structures will be 155 feet as explained in the Amended Application. Tr. 386; *see also* Duquesne Light Exh. 3, Amended Application at 10.

32. The BI-Crescent Project, as amended, does not involve facilities designed to operate at 345 kV. Tr. 385 ("Q. [MR. GABLE] I am trying to find out, Ms. Shyu, if the pole heights that you put on my property will be adequate to support the 345? A. [MS. SHYU] No that is not correct."); *see also* Tr. 387 ("At this time, we do not plan on upgrading to the 345, and the current design cannot handle 345kV lines.").

33. The existing structure located on Mr. Zona's property was build according to the NESC in effect at the time, and that the NESC has changed and increased its requirements over the years. Duquesne Light St. 3A-R at 20.

34. Due to those changes, all heights and clearances must be increased for Duquesne Light to meet the requirements of newest edition of the NESC. Duquesne Light St. 3A-R at 20.

35. Replacing the existing structure on Mr. Zona's property with a monopole of the same height would create violations in the newest edition of NESC. Duquesne Light St. 3A-R at 20.

36. Duquesne Light's witness detailed the applicable clearance requirements. Duquesne Light St. 3A-R at 20.

37. Duquesne Light also explained that the new structure uses stacked circuits "to limit the blowout of the line as defined by the NESC as 6 psf." Duquesne Light St. 3A-R at 20.

38. In addition, Duquesne Light demonstrated that a horizontal configuration would increase blowout. Duquesne Light St. 3A-R at 20-21.

39. To reduce EMFs, Duquesne Light has adopted a Magnetic Field Management Program, as a part of its Design and Safety Criteria. Duquesne Light St. 3A at 9-10, Duquesne Light Exh. 3, Attachment 11 at 2-4.

40. Pursuant to its Magnetic Field Management Program, Duquesne Light designed the BI-Crescent Project to mitigate EMFs by: (1) wherever possible, locating the proposed transmission lines through unoccupied parcels and, where the line is located in occupied areas, running it along the edge of the parcel; (2) establishing a wide buffer area around the lines by utilizing a minimum conductor clearance of 23 feet; and (3) using a vertically stacked configuration, as shown in Attachment 4 to the Amended Application, which does not change the EMF emitted by the line at the right-of-way compared to the existing circuit position at the same right-of-way. Duquesne Light Exh. 3, Attachment 11 at 2-3.

41. Duquesne Like took additional steps with respect to EMF associated with the BI-Crescent Project. Duquesne Light St. 3A at 10-11.

42. The Company first identified the point(s) in a new transmission line with highest potential for EMF exposure. Duquesne Light St. 3A at 10.

43. Then, it conducted an EMF study on select areas in the Project area to confirm that the lines' EMF levels are under the reference levels of the applicable standards and guidelines of its Magnetic Field Management Program. Duquesne Light St. 3A at 10-11.

44. This study confirmed that the BI-Crescent Project has EMF levels that are under the acceptable of the applicable standards and guidelines of its Magnetic Field Management Program. Duquesne Light St. 3A at 11.

45. Duquesne Light has undertaken a highly detailed and extensive evaluation of the environmental and social impacts of the available alternative routes for the BI-Crescent Project. There is no perfect route and all transmission lines will have some impact to the natural and/or human environment. Duquesne Light selected preferred routes for the BI-Crescent Project that will minimize these impacts when compared to all other feasible alternatives. *See* Section VI.E. *infra*; *see also* Duquesne Light Exh. 3, Attachment 3; Duquesne Light St. 2A at 15-16.

46. Duquesne Light has committed to obtain all required permits prior to construction of the BI-Crescent Project, and will comply with any and all conditions placed on such permits by those agencies that have appropriate jurisdiction over environmental matters. Duquesne Light Exh. 3, Attachment 3, Section 6.0; Duquesne Light St. 2A at 16-17.

47. Duquesne Light retained GAI Consultants, Inc. ("GAI") to prepare the Siting Study. Duquesne Light St. 2A at 3.

48. The methodology of the Siting Study was described by Duquesne Light witness Ms. Aimee Kay as follows:

The initial step in the siting process involved the identification of a study area boundary. This was established to include the Project end points (the existing Brunot Island Substation and the existing Crescent Substation), the mid route tie in substations (the existing Montour, Neville and Sewickley Substations), existing Duquesne Light transmission line corridors to allow for opportunities to

parallel existing ROWs, and the intervening areas. The northern limits of this study area were defined to avoid the Ohio River. The southern limits of the study area were defined to avoid close proximity to the Pittsburgh International Airport and to avoid Interstate 376. The study area incorporates an approximately 34.1-square-mile area in Allegheny County, PA.

Duquesne Light St. 2A at 5.

49. GAI used a variety of publicly available information and conducted field reconnaissance to update the data available for any resources in the vicinity of any preliminary routes considered, and also conducted field reconnaissance. Duquesne Light St. 2A at 5-6.

50. Duquesne Light fully explained each step taken by GAI in defining the study area, identifying constraints and opportunities in the study area, identifying possible alignments to develop preliminary routes, modifying the preliminary routes based on actual field data to select alternative routes, and comparing the alternative routes based on 30 environmental, human/built, and engineering resource criteria that were scored and weighted in accordance with weights established by the Siting Criteria Council (SCC) for the GPU-DQE 500 kV Transmission Line Project. *See* Duquesne Light St. No. 2A; Duquesne Light Exh. 3, Attachment 3.

51. Duquesne Light further demonstrated that its analysis of potential routes involved three public open houses prior to the filing of the original application and an additional public input hearing on October 9, 2019, substantial consultation with governmental and non-governmental agencies, and consultation with regulatory agencies. Duquesne Light St. 2A at 8-9.

52. The Siting Study also involved review and consideration of local zoning ordinances and comprehensive land use plans to evaluate the impact of the Proposed Route on municipalities. Duquesne Light St. 2A at 9-10; Duquesne Light Exh. 3, Attachment 3, Section 6.2.

53. Duquesne Light identified three suitable Alternative Routes for the BI-Crescent Project—*i.e.*, the Proposed Route and Alternatives 1 and 2—using the analysis described above. Duquesne Light St. 2A at 10-14; Duquesne Light Exh. 3, Attachment 3, Section 3.4.

54. The routes were then qualitatively and quantitatively evaluated and compared to identify the Proposed Route. Duquesne Light St. 2A at 14-15; Duquesne Light Exh. 3, Attachment 3, Sections 4.0 and 5.0.

55. Duquesne Light evaluated and compared Proposed Route and Alternatives 1 and 2 against each other using 30 environmental, human/built, and engineering resource criteria that were scored and weighted in accordance with weights established by the Siting Criteria Council (SCC) for the GPU-DQE 500 kV Transmission Line Project. SCC weights existed for 22 of the 30 resource criteria. The Siting Team assigned weights for the remaining eight resource criteria (Land Trust Protected Area, Cemeteries, Exceptional Value Streams, Landslide Prone Area, Commercial/Industrial Areas, Forest Land Cleared, Non-existing right-of-way (“ROW”), and Length of ROW). The scaled scores for each criterion were then multiplied by its respective weight to obtain the impact scores shown in Section 4 and Appendix A of the Siting Study. These impact scores were summed to obtain an overall impact score for each alternative route. These scores are presented in Section 4.0 of the Siting Study. *See* Duquesne Light St. 2A at 7-8; Duquesne Light Exh. 3, Attachment 3, Section 4.0.

56. A review of the quantitative analysis performed for the BI-Crescent Project indicated that the Proposed Route would produce significantly fewer overall impacts relative to Alternatives 1 and 2. *See* Duquesne Light St. 2A at 15-16; Duquesne Light Exh. 3, Attachment 3, Section 5.0.

57. The Proposed Route has the lowest/best final impact score of all the alternative routes and is the best overall alternative from an environmental, human/built, cultural, and engineering perspective, for several reasons. The Proposed Route is the shortest route and would require the least new ROW acquisition. Although the Proposed Route crosses the most human/built resources, as it has the most road crossings, crosses the most residential structures, and crosses the most institutional complexes, it will cross these human/built resources within existing ROW and no new long-term impacts are anticipated. The Proposed Route is also the best alternative from an engineering perspective, as it crosses the least steep terrain and landslide-prone areas, and is the farthest from the Pittsburgh International Airport. The Proposed Route further has the least impact to most of the environmental resources including forest land cleared, core RTE habitat, land trust protected areas, and perennial streams crossed, but has some of the higher impact to other criteria such as wetlands crossed and recreational areas. Moreover, it is the second-best alternative from a cultural resources perspective. Importantly, the other two Alternative Routes would require acquisition of new ROW, which means that the environmental, human/built, cultural, and engineering impact scores attributable to impacts for each of Alternative 1 and Alternative 2 are new impacts on those resources. Duquesne Light St. 2A at 15-16; Duquesne Light Exh. 3, Attachment 3, Section 5.0.

58. Duquesne Light witness Ms. Aimee Kay possesses a Master of Science in Urban and Regional Planning. Duquesne Light St. 2-R at 11. She has been employed by GAI for over nine and a half years, and, furthermore, has over 34 years of experience in the fields noted above. *See* Duquesne Light St. 2-R at 11.

59. Duquesne Light witness Ms. Kay responded to Mr. Zona's claim that the criteria used in the Siting Study are biased in favor of the Proposed Route should not be accepted as follows:

By way of background, the Siting Criteria Council (*i.e.* the "SCC") consisted of a group of individuals from the general public representing diverse backgrounds and interests. The purpose of the SCC was to assign a **criterion weight** to all individual Resource Criteria because not all of the criteria are equally important as perceived by the public. The SCC's Resource Criteria weights were used in the calculation of the Overall Impact score because they specifically were developed to eliminate bias by incorporating the Nominal Group Technique (NGT), which is a structured decision-making technique. The resource evaluation criteria used in the Siting Study to evaluate potential routes were evaluated for all three proposed routes. As such, Mr. Zona mistakenly refers to the SCC as "criteria"; there are only SCC Criteria **weights**.

In addition, the 30 resource criteria used in the Siting Study are based on PAPUC regulations, permitting requirements, government protected resources, resources that could be problematic in the construction or maintenance of a transmission line, and resources that the public may value. The 30 resource criteria used in the evaluation to select the preferred alternative are described in Section 3.2 of Attachment 3 to the BI-Crescent Application.

Duquesne Light St. 2-R at 12 (emphasis in original).

60. The SCC weights were developed during the evaluation of the GPU-DQE 500 kV Transmission Line siting that included over 500 miles of line and a study area of 20,000 square miles. Duquesne Light St. 2-R at 12.

61. The SCC was formed and asked to aid in the selection of the natural and manmade resource criteria that would be used to evaluate impacts along alternative routes. *See* Duquesne Light St. 2-R at 12-13.

62. The criteria weights were developed through an iterative and interactive process that involved a diverse group of stakeholders. *See* Duquesne Light St. 2-R at 12-13.

63. The weighting session involved four interactive rounds, each of which involved (a) each member weighing each criteria, (b) each member reviewing the weight they attributed to criteria against the mean for all other members, and (c) an opportunity to express their view on scores. Duquesne Light St. 2-R at 13.

64. After the fourth round, the SCC voted to adopt the mean weights for each criteria; the established weights are now considered an industry standard. Duquesne Light St. 2-R at 13.

65. The SCC weights were used for 22 of the 30 criteria, to which the weights applied, and GAI reviewed an additional eight resource criteria to reflect items of local significant and regulatory concerns. Duquesne Light St. 2-R at 13-14.

66. The basis for each of these criteria being added were fully addressed by Ms. Kay. Duquesne Light St. 2-R at 15-16.

67. The SCC weights are based upon the sensitivity and frequency of the resources potentially affected by the construction and operation of the BI-Crescent Project. Duquesne Light St. 2-R at 14.

68. The resources and their sensitivity are not related to the voltage of the Project. Duquesne Light St. 2-R at 14.

69. Ms. Kay explained that Mr. Zona's argument to remove the GAI criteria attempts to ignore impacts to applicable resources and disregard construction hazards. Duquesne Light St. 2-R at 16.

70. Ms. Kay explained that the evaluation of additional criteria is to respond to the changing regulatory and ecological science regimes the Company operates within. Duquesne Light St. 2-R at 16.

71. Relevant criteria are added, deleted, and weighted by the experienced professional staff conducting the evaluations. Duquesne Light St. 2-R at 16.

72. The SCC weights were developed by a diverse group of stakeholders and “is the closest representation of current societal values we have assembled for the Western Pennsylvania Region.” Duquesne Light St. 2-R at 17.

73. The criteria developed by GAI was conducted by experienced industry professionals, based upon and consistent with their experience and in response to the regulatory and ecological regimes they work within. Duquesne Light St. 2-R at 17.

74. The procedures used to evaluate the resource criteria are consistent with the standard of practice regarding the siting of high voltage transmission lines before the Commission for the past 25 years. Duquesne Light St. 2-R at 17-18.

75. The weighting criteria and the Siting Study are consistent with widespread and accepted industry practices, and enabled Duquesne Light’s siting team to evaluate the Proposed Route and the Alternative Routes in an objective manner. Duquesne Light St. 2-R at 18.

76. Mr. Zona did not propose an alternative method for weighing the criteria nor did he propose an alternative weight for any of the criteria used. Duquesne Light St. 2-R at 18.

77. The parameters used to quantify the identified resources were identified and calculated using GIS software and publicly available data. Duquesne Light St. 2-R at 19.

78. This method of obtaining raw data is consistent with widespread and accepted practices in the industry and Mr. Zona proposed no alternative method of data collection and no alternative value for any of the raw data used in the Siting Study. Duquesne Light St. 2-R at 19-20.

79. The replacement of an existing structure with a new structure does not pose a new visual impact just a different visual impact, as the existing structure already creates a visual impact. Duquesne Light St. 2-R at 20.

80. Visual impact is a secondary impact that “was accounted for in many of the criteria used in the siting study, including recreational areas, cemeteries and historic sites, scenic areas, residential areas, and institutional areas.” Duquesne Light St. 2-R at 20-21.

81. Mr. Zona’s argument that the Siting Study does not properly tabulate the scores for each route is based upon a misunderstanding of how resource categories were converted to a relative scale, then weighted and combined to produce a final impact score for each route. Duquesne Light St. 2-R at 21.

82. Duquesne Light strives to avoid and/or minimize the impacts of transmission lines upon property owners and the environment. Efforts were made during the siting process to minimize impacts on existing and future land uses, as well as avoid sensitive natural resources such as wetlands and streams. For example, the siting team worked with land owners to route the project transmission lines, structures, and access roads to minimize impacts to future housing developments and avoid sensitive natural areas. Where potential impacts are unavoidable, Duquesne Light will obtain any necessary permits and comply with the best management practices laid out within during construction. Best management practices may include fencing sensitive resources to protect them during construction, use of timber matting equipment for crossings of streams and wetlands, and utilizing erosion and sedimentation controls. Duquesne Light St. 2A at 16-17; *see also* Duquesne Light Exh. 3, Attachment 3, Section 5.1.

83. Duquesne Light provided a detailed description of its efforts to minimize impacts to land use and land cover, hydrology, scenic and recreational area, natural areas and

rare/threatened/endangered species, terrain and landscape, archaeological and architectural/historical resources, and airports in Section 5.1 of the Siting Study. Duquesne Light Exh. 3, Attachment 3, Section 5.1.

84. Mrs. Crowe, Mr. Gable, Ms. Marinkovic, and Mr. Nave noted property specific concerns regarding the Proposed Route

85. The Siting Study already accounts for forest land cleared and includes this information in the overall score. Duquesne Light St. 2-R at 6.

86. Despite the reduction in woodland areas, the overall score for the Proposed Route remains the lowest after accounting for these effects. Duquesne Light St. 2-R at 6.

87. The Siting Study already evaluates impacts to “Residential Areas,” which includes residential homes. Duquesne Light St.2-R at 6.

88. Mr. Gable’s property includes the existing ROW. So, impacts from the Proposed Route are expected to be similar to the currently existing impacts of existing transmission facilities located on his property. Duquesne Light St. 2-R at 6.

89. Mr. Gable provided no basis for that Duquesne Light should pursue an alternative route “along the river” with an underground transmission line. Tr. 145.

90. This alternative would create considerable conflicts with existing railroad and transportation infrastructure and numerous industrial developments are located along the river in McKees Rocks. Duquesne Light St. 2-R at 7.

91. In addition, the installation of an underground transmission line can cost between five and ten times as much per mile as installing an overhead line, with an associated shorter life expectancy and higher maintenance and repair costs. Duquesne Light St. 2-R at 7.

92. No transmission facilities traverse the property owned by Mrs. Marinkovic that is at 205 Purdy Road today, and no facilities are planned to traverse that property as a part of the BI-Crescent Project. *See* Duquesne Light St. 2-R at 8; Duquesne Light St. 4-R at 9-10.

93. Neither of the Alternative Routes would locate facilities on Mrs. Marinkovic's property, which is located outside of the study area for this project. Duquesne Light St. 2-R at 8.

94. Duquesne Light responded to a discovery request and provided construction plans to Mr. Nave and that Mr. Nave received a copy of the Amended Application, which included the Siting Study (Attachment 3) and Duquesne Light's Vegetation Management Plan (Attachment 12).

95. Duquesne Light's assessment of the impacts of the BI-Crescent Project is reasonable, and the Amended Application provides all information required under the Commission's regulations. *See generally* Duquesne Light Exh. 3.

96. Duquesne Light investigated the project routes for property owner information, and then collected physical evidence from the field to determine or confirm property boundaries. Duquesne Light St. 4A at 4-5.

97. Duquesne Light served property owners along the Proposed Route with Attachment 13 to the Amended Application. Duquesne Light St. 4A at 5.

98. The pack of information details how Duquesne Light representatives are to interact with landowners, contains notices of eminent domain power and ROW management practices, and includes a permission for to grant Duquesne Light access to their property. Duquesne Light St. 4A at 5-6.

99. Duquesne Light also held public meetings before and after the filing of the Amended Application. *See* Duquesne Light St. 4A at 6.

100. Duquesne Light complies with 52 Pa. Code § 57.91 in contacting landowners after they are sent the required informational packs and notice. Duquesne Light St 4A at 7.

101. Protestants Mrs. Adams, Mrs. Crowe and Mrs. Marinkovic raised concerns regarding Duquesne Light's ROW acquisition efforts.

102. With respect to the property of Mrs. Adams and Mrs. Crowe located at 306 Konter Road, Ms. Gannon explained that no existing Duquesne Light transmission facilities traverse the property located at 306 Konter Road today and no transmission facilities are planned to traverse this property as a part of the Amended BI-Crescent Project. *See* Duquesne Light St. 4-R at 4-5.

103. The Company has already obtained an appropriate easement from Mr. Gable. *See* Tr. 140, 144-145; *see also* Exhibit Gable 4.

104. Duquesne Light is not required to obtain an easement to access Konter Road it contains sufficient access rights. Ms. Gannon explained:

On November 14, 1914, Alpha Light Company, predecessor-in-interest to Duquesne Light, purchased an easement from Ebenezer and Susannah Worth and Samuel P. and Mary E. Worth across their undeveloped property in Coraopolis (the "Worth Property"). This easement was documented in an Indenture (the "Worth Agreement"), which is filed of record, and the Worth Property and associated easement are depicted in Duquesne Light Exhibit LG-2. The Worth Property was later subdivided into several parcels and Konter Road was constructed; however, the Worth Agreement is still in the chain of title for all parcels subdivided from the Worth Property and on Konter Road, including 304 Konter Road. The Worth Agreement permits Duquesne Light "to erect, use, operate, maintain, repair, renew and finally remove..." the electric transmission system and "*to enter upon said premises at any time for said purposes*" (emphasis added). Because Konter Road is part of the Worth Property, Duquesne Light has the right to utilize it to access its infrastructure, including repairing and renewing that infrastructure.

Duquesne Light St. 2-R at 6.

105. Mrs. Adams and Mrs. Crowe are mistaken about alleged plans to widen Konter Road as a part of this project; although there are ruts and holes in the road that Duquesne Light will need to repair in order to drive construction vehicles on the road, there are no plans to widen Konter Road. Duquesne Light St. 4-R at 6-7.

106. No existing Duquesne Light transmission facilities traverse Mrs. Marinkovic's property located at 205 Purdy Road today and no transmission facilities are planned to traverse this property as a part of the BI-Crescent Project. Duquesne Light St. 4-R at 9-10.

107. There are no plans to widen Konter Road. Duquesne Light St. 4-R at 10-11.

108. Duquesne Light explained that it already possesses an easement for transmission facilities on Mrs. Crowe's property at 1123 Juanita Drive. Duquesne Light St. 4-R at 12-13.

109. Duquesne Light witness Ms. Gannon is unaware of any circumstance in which Duquesne Light's agents or employees trespassed upon the subject parcels and, moreover, in each instance Duquesne Light possessed an existing easement that permitted access to the parcels. *See* Duquesne Light St. 4-R at 8, 10-11, 13-14.

110. Duquesne Light witness Mr. Jason Hartle indicated that the Company would thoroughly investigate Mrs. Adams' claims of property damage. Duquesne Light St. 6-R at 8.

111. Protestants Mrs. Adams, Mrs. Crowe and Mrs. Marinkovic raised concerns regarding Duquesne Light's landowner outreach efforts.

112. Duquesne Light initially served letters to property owners along the planned ROW in February 2017. Duquesne Light St. 6-R at 5.

113. The letters detailed two public meetings to be held in February and March 2017. Duquesne Light St. 6-R at 5.

114. In addition to these letters, Duquesne Light contracted a media consultant to advertise online with Geo-targeted internet advertisements to spread the news of the Project Open House Meetings. Duquesne Light St. 6-R at 5-6.

115. These advertisements stated there was an open house regarding transmission changes in the area and the date and appeared on AccuWeather.com, WPXI.com, TribLive.com, NTD.TV, OnlyinYourState.com, Post-Gazette.com, 247Sports.com, WTAE.com, Forbes.com, and Weather.com and were viewed by over 95,000 people. Duquesne Light St. 6-R at 6.

116. All owners of properties on which the BI-Crescent Line is or was planned to be located were mailed the notices in Attachment 13 to the Application. Duquesne Light St. 6-R at 7.

117. Mrs. Adams and Mrs. Marinkovic did not receive the notices included in Attachment 13 to the Application because the BI-Crescent Line does not cross their respective properties (i.e., 306 Konter Road and 205 Purdy Road).

118. For similar reasons, Mrs. Crowe did not receive a notice associated with the 306 Konter Road property. Jennifer and John Crowe were, however, sent a notice with respect to 1123 Juanita Drive because the 1123 Juanita Drive property is traversed by right-of-way associated with the BI-Crescent Project. Duquesne Light St. 6-R at 7.

119. Similarly, any of Mrs. Crowe's or Mrs. Marinkovic's neighbors that are not expected to be traversed by the project would not have been mailed these notices. Duquesne Light St. 6-R at 7-8.

120. Duquesne Light seeks to exercise the power of eminent domain to acquire rights-of-way for the construction, operation, and maintenance of the BI-Crescent Project, specifically the portion of the 138 kV transmission lines that would run approximately 1,079 feet over and

across the property identified in the Schaefer Condemnation Application. *See* Duquesne Light St. 1 (Schaefer) at 4.

121. Duquesne Light detailed its efforts to ensure the potential owners of the Schaefer property received notice of the Schaefer Condemnation Application. Duquesne Light St. 1-R (Schaefer) at 16-17.

122. Through its review of intestacy law and estates of record, Duquesne Light served the heirs to the estate of George N. Schaefer who it believed were those who could claim an interest in the Schaefer property. Duquesne Light St. 1-R (Schaefer) at 17.

123. In addition, Duquesne Light published a notice of the Schaefer Condemnation Application in a newspaper of general circulation in the area where the property is located and filed a proof of publication on April 30, 2019. Duquesne Light St. 1-R (Schaefer) at 18; *see also* Duquesne Light Exh. LG-5 (Schaefer).

124. None of the potential property owners have argued that the BI-Crescent Project is not necessary or proper for the service, accommodation, convenience or safety of the public.

125. None of the potential property owners have argued that Duquesne Light has failed to satisfy the Commission's requirements set forth in Chapter 57.76 of its regulations, with respect to the siting of HV transmission lines. Indeed, none of these potential property owners have submitted any evidence in this proceeding.

APPENDIX B
PROPOSED CONCLUSIONS OF LAW

Duquesne Light Company (“Duquesne Light” or the “Company”) proposes the following conclusions of law:

1. Duquesne Light, as the applicant seeking Commission approval of the Amended Application to reconstruct an existing high voltage transmission line and one (1) eminent domain application for the remaining rights-of-way needed for the Amended Project, has the burden of proof. 66 Pa.C.S. § 332(a).

2. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

3. Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704).

4. If the applicant sets forth a prima facie case, then the burden shifts to the opponent. *McDonald v. Pa. Railroad Co.*, 348 Pa. 558, 36 A.2d 492 (Pa. 1940).

5. Once a prima facie case has been established, if contrary evidence is not presented, there is no requirement that the applicant produce additional evidence in order to sustain its burden of proof. *District of Columbia’s Appeal*, 343 Pa. 65, 21 A.2d 883 (Pa. 1941); *Application of Pennsylvania Power & Light Co.*, Docket Nos. A-110500F0196, et al.; 1994 Pa. PUC LEXIS 65 (Oct. 21 1994).

6. Pursuant to Section 1501 of the Public Utility Code, an electric distribution company has a statutory obligation to provide safe, adequate, and reliable electrical service to its customers. 66 Pa.C.S. § 1501.

7. The Commission's regulations provide that an electric distribution company may not construct high voltage ("HV") transmission lines, i.e., electrical lines with an operating voltage of 100 kV or higher, without prior Commission approval. 52 Pa. Code § 57.71.

8. The Commission's transmission line siting regulations set forth the following: (1) the procedures for applying for approval of an HV line -- 52 Pa. Code § 57.72; (2) the procedures for hearings on HV line applications -- 52 Pa. Code § 57.75; and (3) what the [Commission] will consider when deciding whether to approve or deny an HV line application -- 52 Pa. Code § 57.76(a). These regulations, and 52 Pa. Code § 57.76 in particular, represent a codification of the review required by article I, section 27 of the Pennsylvania Constitution. *Re Proposed Electric Regulation*, 1976 Pa. PUC LEXIS 114, 49 Pa. P.U.C. 709, 712 (March 2, 1976) (stating that the "review required by article I, section 27 is being incorporated into our siting regulations"). *Energy Conservation Council of Pennsylvania v. Pa. PUC*, 995 A.2d 465, 477-78 (Pa. Cmwlth. 2010) (hereinafter "Trailco").

9. In order to grant an application for the construction and siting of a HV transmission line, the Commission must find and determine the following as to the proposed 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 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 the available technology and the available alternatives.

52 Pa. Code § 57.76(a).

10. The Public Utility Code does not define need; however, Pennsylvania courts have recognized that there is a need for reliable regional electric service and transmission systems. *Stone v. Pa. PUC*, 162 A.2d 18, 19-221 (Pa. Super. 1960); *Dunk v. Pa. PUC*, 232 A.2d 231, 234-35 (Pa. Super. 1967).

11. The General Assembly has recognized the importance of ensuring the reliability of electric transmission systems, and the provision of sufficient electrical power at affordable rates. 66 Pa. C.S. §§ 2802(12), (20), and 2803.

12. An electric utility can demonstrate that the transmission line project is needed where the project resolves violations of the utility's internally developed planning and reliability criteria. See *Hess v. Pa. Pub. Util. Comm'n*, 107 A.3d 246, 262-263 (Pa. Cmwlth. 2014); *Application of PPL Electric Utilities Corporation filed Pursuant to 52 Pa. Code Chapter 47, Subchapter G, for Approval of the Siting and Construction of the North Lancaster Honey Brook # 1 & # 2 138/69 kV Transmission Lines in Lancaster County, Pennsylvania*, Docket Nos. A-2014-2430565 et al., 2015 Pa. PUC LEXIS 77, at *49 (Order dated Feb. 27, 2015).

13. Duquesne Light has met its burden to demonstrate that the proposed BI-Crescent Project is necessary for the service, accommodation, convenience, or safety of the public.

14. Transmission lines that meet or exceed the National Electric Safety Code ("NESC") requirements do not create an unreasonable risk of danger to the health and safety of the public. *Application of PPL Electric Utilities Corporation Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the Pennsylvania Portion of The Proposed Susquehanna-Roseland 500 kV Transmission Line*, Docket Nos. A-

2009-2082652, et al., 2010 Pa. PUC LEXIS 434 at *166 (Feb. 12, 2010); *Application of PP&L for Approval to Locate and Construct a 138 kV Transmission Line Between West Allentown and Salisbury Substations*, Docket No. A-00104160 (July 20, 1984); *Application of PP&L for Authorization to Locate and Construct its Hamlin 138 kV Electric Transmission Line*, Docket No. A-00101826 (April 3, 1981); *Larken v. Philadelphia Electric Co.*, 39 Pa. PUC 777 (1961).

15. Duquesne Light has met its burden to demonstrate that the proposed BI-Crescent Project will not create an unreasonable risk of danger to the health and safety of the public.

16. Article I, Section 27 of the Pennsylvania Constitution, i.e. the Environmental Rights Amendment, placed Pennsylvania's public natural resources in trust and named the Commonwealth as its trustee, to conserve and maintain those resources for the benefit of all people, including future generations. *Pa. Environmental Defense Foundation v. Com. Of Pa.*, 161 A.3d 911 (Pa. 2017) ("*PEDF*").

17. In carrying out these obligations, the Commonwealth, and its agencies, may subject the individual rights of citizens to clean air, pure water, and to the preservation of natural, scenic, historic, and esthetic values to reasonable regulation. *PEDF*, 161 A.3d at 931; see also *Application of Pennsylvania Electric Company Seeking Approval to Locate Construct, Operate and Maintain a High-Voltage Transmission Line Referred to as the Bedford North-Central City West 115 kV HV Transmission Line Project*, Docket Nos. A-2016-2565296 et al., at pp. 12-14 (Order entered March 8, 2018) ("*Penelec*").

18. The Commission's siting Regulations are in accord with the Environmental Rights Amendment by requiring that the environmental impact of the proposed transmission siting route be minimized. *Penelec*, at p. 13-14; see also 52 Pa. Code §§ 69.3105, 69.3106.

19. The Commission is required, under 57 Pa. Code §§ 57.72(e)(7) and (8), to consider environmental impacts of proposed transmission lines. *Re: Interim Guidelines for the Filing of Electric Transmission Line Siting Applications*, Docket No. M-2009-2141293, 2010 Pa. PUC LEXIS 2069 at *56 (Nov. 5, 2010).

20. The Commission has adopted Interim Siting Guidelines that require, among other things, an applicant for the siting of an electric transmission line to file a matrix or list that shows all expected federal, state, and local government regulatory permits and approvals that may be required for the project, at the time of the application, and the current status of permit applications that may be required by those agencies. 52 Pa. Code §§ 69.3105, 69.3106.

21. Duquesne Light's filing effectively addresses and, in most cases, exceeds all the requirements of the Commission's siting regulations.

22. The Commission has generally found compliance with the applicable environmental statutes and regulations where the applicant agrees to obtain any and all environmental permits necessary prior to construction and to comply with any conditions on those permits during construction. *See, e.g., Application of Pennsylvania Electric Company For Approval to Locate and Construct the Bedford North-Osterburg East 115 kV HV Transmission Line Project Situated in Bedford and East St. Clair Townships, Bedford County, Pennsylvania*, Docket Nos. A-2011-2247862, et al., 2012 Pa. PUC LEXIS 298 at *61 (Initial Decision February 9, 2012); *Application of Trans-Allegheny Interstate Line Company for the Approval to locate, construct, operate and maintain certain high voltage electric transmission line facilities and to exercise the power of eminent domain to construct and to install the proposed aerial electric transmission line facilities along the proposed route, being a 138 kV transmission line and related facilities collectively, the Osage-Whiteley Line Facilities or Project, in portions of*

Dunkard Township, Perry Township, and Whiteley Township, Greene County in Southwestern Pennsylvania, Docket Nos. A-2010-2187540, et al., 2011 Pa. PUC LEXIS 2028 (Recommended Decision March 28, 2011); *Application of PPL Electric Utilities Corporation Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the Pennsylvania Portion of The Proposed Susquehanna-Roseland 500 kV Transmission Line*, Docket Nos. A-2009-2082652, et al., 2010 Pa. PUC LEXIS 434 at *191-201 (February 12, 2010).

23. Duquesne Light is not required to complete the required environmental studies and obtain all required permits before the Commission may approve a project or before Duquesne Light may begin construction on other portions of the project. *Energy Conservation Council of Pennsylvania v. Pa. PUC*, 25 A.3d 440, 452 (Pa. Cmwlth. 2011) (hereinafter “*Susquehanna-Roseland*”).

24. Duquesne Light will obtain all required permits for construction of the BI-Crescent Project, and will comply with any and all conditions placed on such permits by those agencies that have appropriate jurisdiction over environmental matters.

25. Duquesne Light has met its burden to demonstrate that the BI-Crescent Project, as amended, is in compliance with applicable statutes and regulations, providing for the protection of the natural resources of this Commonwealth.

26. A utility’s route for a proposed transmission line should be approved where the record evidence shows that the utility’s route-selection process was reasonable and that the utility properly considered the factors relevant to siting a transmission line:

[I]t is settled law that the designation of the route for a HV line is a matter for determination by [a utility's] management in the first instance, and the utility's conclusion will be upheld unless shown to be wanton or capricious. Thus, where the record establishes that

the utility's route selection was reasonable, considering all the factors, its route will be upheld. The mere existence of an alternative route does not invalidate the utility's judgment. This reasoning is equally sound when considering whether a utility has complied with 52 Pa. Code § 57.72(c)(10), as the information required by this section goes towards establishing the reasonableness of the utility's route selection.

Susquehanna-Roseland, at 449-50 (quoting *Trailco*, 995 A.2d 465, 479-80).

27. The route selected by the applicant must demonstrate reasonable efforts to minimize adverse environmental impacts when compared to the available alternative routes, but the utility need not consider all possibilities. *Susquehanna-Roseland*, at 448-49.

28. Duquesne Light has met its burden to demonstrate that its route-selection process was reasonable.

29. Duquesne Light has met its burden to demonstrate that the route selected for the proposed BI-Crescent Project will have a minimum adverse environmental impact, considering the electric power needs of the public, the state of the available technology and the available alternatives.

30. Duquesne Light has met its burden to demonstrate that it will implement appropriate measures to minimize adverse environmental impacts of the routes selected for the proposed BI-Crescent Project.

31. An applicant is not required to choose a route that has no adverse impacts. *Susquehanna-Roseland*, at 448-49.

32. On an application for condemnation, the Commission must determine whether the service—the transmission or distribution of electricity to or for the public that will be provided to the public if the subject property is condemned—is necessary or proper for the service, accommodation, convenience, or safety of the public. 15 Pa.C.S. § 1511(c).

33. The Commission's only role under 15 Pa.C.S. § 1511 is to consider if the project is necessary or proper for the benefit of the public, and that the Commission is expressly barred from considering the power of the utility to condemn. *SEPTA v. Pa. PUC*, 991 A.2d 1021, 1023 (Pa. Cmwlth. 2010).

34. Pennsylvania Appellate Courts have interpreted Section 1511 as requiring a condemning utility to show that the proposed transmission line is necessary or proper and that it has not acted wantonly, capriciously, or arbitrarily in selecting the proposed right-of-way. *Department of Environmental Resources v. Pa. PUC*, 335 A.2d 860 (Pa. Cmwlth. 1975), *aff'd.*, 473 Pa. 378, 374 A.2d 693 (1977); *Dickson v. Public Service Commission*, 89 Pa. Super. 126 (Pa. Super. 1926). The selection of the right-of-way is a matter for the public utility in the first instance and, while the route selection must be reasonable, it need not be the "best alternative" in terms of reducing or eliminating inconvenience to particular landowners. *Stone v. Pa. PUC*, 162 A.2d 18 (Pa. Super. 1960).

35. Duquesne Light has met its burden to demonstrate that the service to be furnished by Duquesne Light through its proposed exercise of the power of eminent domain to acquire rights-of-way and easements across the Schaefer Property for the construction, operation, and maintenance of the proposed BI-Crescent Project is necessary or proper for the service, accommodation, convenience, or safety of the public.

APPENDIX C
PROPOSED ORDERING PARAGRAPHS

Duquesne Light Company (“Duquesne Light” or the “Company”) proposes the following ordering paragraphs:

1. The Amended 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, filed on August 10, 2020, Docket No. A-2019-3008589 is approved.

2. The 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 BI-Crescent Project is Necessary or Proper for the Service, Accommodation, Convenience or Safety of the Public, at Docket No. A-2019-3008652, is approved.

3. The proceedings at Docket Nos. A-2019-3008589, and A-2019-3008652 be marked closed.

CERTIFICATE OF SERVICE

(A-2019-3008589 & 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).

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Date: March 18, 2021



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