

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
HARRISBURG, PA. 17105-3265

KJR

Public Meeting held September 5, 1996

Commissioners Present:

John M. Quain, Chairman
Lisa Crutchfield, Vice Chairman
John Hanger, Statement attached
David W. Rolka, Statement attached
Robert K. Bloom

Application of Pennsylvania Power
& Light Company

Docket No.
A-00110500F0224
A-00110500F0229
A-00110500F0230
A-00110500F0231
~~A-00110500F0232~~

OPINION AND ORDER

BY THE COMMISSION:

Before us for consideration are the Initial Decision ("I.D.") of Administrative Law Judge ("ALJ") Michael C. Schnierle issued April 30, 1996, the Exceptions of Pennsylvania Power and Light Company ("PP&L) and the Reply to Exceptions filed by Frank A. Renner, Jr. ("Renner").

History of the Proceeding

1. On February 6, 1995, Pennsylvania Power & Light Company ("PP&L" or "Applicant") filed an application (the "Certification Application") requesting this Commission to approve construction of a Lehighton 138/69 kV transmission line to be located in Franklin Township, Mahoning Township and Lehighton Borough, Carbon County, Pennsylvania.

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2. Notice was provided to all property owners within the proposed right-of-way and to government officials and agencies. Newspaper notices were published with proofs of publication filed with this Commission on March 2, 1995.

3. A protest was filed against the Certification Application on February 27, 1995 by Dan R. and Cheryl Kunkle. The protest was later served on PP&L at the direction of the presiding officer. PP&L timely responded to the protest on June 29, 1995.

4. On April 18, 1995, PP&L filed two applications ("Condemnation Applications") for the exercise of the power of eminent domain to obtain rights-of-way over the properties of Marion and Sandra Walker and Frank A. Renner, Jr.¹

5. PP&L filed direct testimony and exhibits of three witnesses on July 28, 1995.

6. A telephonic prehearing conference was held July 31, 1995 at which PP&L, the Borough of Lehighton, Mr. Renner and Mr. Kunkle appeared.

7. Following the prehearing conference of July 31, 1995, ALJ Schnierle issued a prehearing order consolidating the Certification Application with the Condemnation Applications.

8. The ALJ conducted a tour of the proposed transmission line route on September 18, 1995. The tour was attended by Mr. Renner and his counsel, counsel for the Borough

¹ PP&L originally filed four Condemnation Applications. Two of the Condemnation Applications were resolved by agreement: A-00110500F0229 and A-00110500F0231. The ALJ recognized withdrawal of those two applications in the Initial Decision filed in this matter.

of Lehighton, counsel for PP&L, employees of PP&L, and Cheryl and Dan Kunkle.

9. On September 21, 1995, Mr. Renner filed his direct written testimony and that of Dan R. Kunkle.

10. Evidentiary hearings were held in Harrisburg, Pennsylvania, on November 14 and 15, 1995. A transcript of 349 pages was compiled and 52 exhibits were admitted into evidence in addition to the 14 prefiled statements of testimony.

11. On April 30, 1996, the Initial Decision of ALJ Schnierle was issued which denied the Certification Application and the Condemnation Applications.

12. On May 20, 1996, PP&L filed Exceptions to the ALJ's Initial Decision and, on May 30, 1996, Renner filed a Reply to Exceptions.

Discussion

The Initial Decision

In his Initial Decision, ALJ Schnierle made 27 Findings of Fact at pages 5 through 14 of the Initial Decision. We hereby adopt those Findings of Fact as our own and incorporate them into this Opinion and Order by reference.

The ALJ discussed the considerations surrounding the exercise of eminent domain powers by utilities generally. I.D. at 14. Prior to exercising that power outside the limits of any street, highway, water or other public way or place for the purpose of erecting poles or running wires for aerial electric, telephone or telegraph facilities, a utility is required to obtain the approval of this Commission. A utility may proceed

only if we find that the service to be furnished through the exercise of eminent domain power is necessary or proper for the service, accommodation, convenience or safety of the public. 15 Pa. C.S. §1511. In addition, when the proposed line is a high voltage transmission line (greater than 100,000 volts), our regulations require that a utility establish the need for the line, in addition to other considerations. 52 Pa. Code §§57.1, 57.76.

The ALJ then discussed a utility's burden of proof. He noted that the burden in this type of case requires a utility to establish a fact by a preponderance of the evidence. 66 Pa. C.S. §332(a); Se-Ling Hosiery, Inc. v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950). A preponderance of the evidence means that one party presented evidence that is more convincing, by even the smallest degree, than that presented by the other party. Further, the ALJ noted that our decisions must be supported by substantial evidence. Substantial evidence has been described as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace or a suspicion of the existence of the fact to be established. Norfolk & Western R. Co. v. Pennsylvania Public Utility Commission, 489 Pa. 109, 413 A.2d 1037 (1980); Murphy v. Department of Public Welfare, 85 Pa. Commonwealth Ct. 23, 480 A.2d 382 (1984). I.D. at 15.

Citing to our case of Re West Penn Power Co., 54 Pa. PUC 319 (1980), the ALJ also discussed the burden of a utility in a line siting proceeding. The ALJ determined that an applicant (PP&L here) must show that the proposed line is necessary from an engineering perspective. The relative cost of an applicant's proposal and other alternatives is a factor in that determination. Id. I.D. at 15, 16.

In his discussion relating to engineering need for the proposed line, the ALJ determined that PP&L had failed to prove

such a need and failed to show that the proposal was less expensive than the alternatives. I.D. at 16. The ALJ found that based upon the record before him, PP&L failed to show that there would be any use of the line by customers other than Lehighton Borough. I.D. at 16. The ALJ pointed to the record which established that PP&L could meet the needs of the area involved by reinforcing the existing 12 kV system. The testimony indicated that the only reason for PP&L's proposal for the new line was Lehighton Borough's insistence on receiving 69 kV power. The ALJ found that prior to Lehighton Borough's insistence on the new 138/69 kV line, PP&L itself determined that reinforcement of the existing 12 kV line was the best alternative to serve the needs of the Borough and the surrounding area. I.D. at 16. PP&L had initiated work on the reinforcement project before the Certification Application was filed.

The ALJ dismissed PP&L's arguments that the new line would improve reliability. The ALJ again noted that throughout the record in this case, PP&L witnesses have admitted that PP&L would not have proposed the new line but for the Borough's insistence on receiving 69 kV power. The ALJ noted that the record established that PP&L considered a reinforced 12 kV system to be sufficiently reliable. I.D. at 16, 17.

Continuing with his discussion of engineering need, the ALJ concluded that the new line was not needed to meet future growth. The record established that PP&L had projected a 1.5% annual growth rate for Lehighton Borough and the surrounding area for the next five years. The ALJ found that the record established that there is no vacant area within the Borough available for significant population growth or the addition of substantial industrial users. The only anticipated growth will come from increased usage by the current population. The ALJ again pointed to the record evidence which indicated that PP&L had maintained that 12 kV power was adequate to meet demand but for Lehighton Borough's insistence on 69 kV power. I.D. at 17.

The ALJ then moved to a discussion of the relative costs of the new line as opposed to the alternative of reinforcing the existing 12 kV system. The ALJ found that PP&L had failed to establish that the new system was less expensive than reinforcement of the existing system. Of great concern to the ALJ was the apparent inaccuracy of PP&L's initial cost figures presented in the Application.

In his Initial Decision, the ALJ discussed PP&L's cost evidence and concluded that PP&L's original cost comparison "was deliberately designed to show the 69 kV option in an unjustifiably favorable light." I.D. at 18. The ALJ reviewed the record which indicated that internal PP&L documents produced in 1994 indicated that the cost of the 12 kV reinforcement and the 69 kV line were approximately the same. Despite the apparent similarity in cost as related in PP&L's own documents, the Application filed by PP&L described the 12 kV reinforcement as significantly higher in cost. That figure was corrected during the proceeding only after extensive discovery by Renner (which included a Motion to Compel after PP&L indicated it would not supplement discovery). The ALJ noted that the correction was made just days before PP&L's first witness was scheduled for cross examination, when the cost error would have been revealed in any event. I.D. at 17, 18.

Finally, the ALJ expressed his concern that the 12 kV line reinforcement cost was presented as a total figure without any testimony regarding the amount of work concluded to date. Accordingly, the ALJ determined that the final figure for the 12 kV reinforcement was actually less than that shown by PP&L because no accounting for work completed was provided. Although PP&L's main case (after the belated correction) indicated that the two projects were approximately the same cost, the ALJ concluded that the 12 kV reinforcement project cost was still overstated because PP&L failed to take into account work performed to date. The ALJ found that the cost of the project

should have been estimated as of the date of the Application, thereby adjusting the total project cost to account for work performed. Based upon all of the foregoing, the ALJ determined that the cost for pursuing reinforcement of the 12 kV line was actually less than the proposed 138/69 kV line. I.D. at 18, 19.

The ALJ reached the following Conclusions of Law:

1. The Commission has jurisdiction over the subject matter of, and the parties to, this proceeding by virtue of 15 Pa. C.S. §1511(c) and 66 Pa. C.S. §1501.

2. An applicant seeking permission to construct a transmission line must show that the proposed line is necessary from an engineering perspective. Re West Penn Power Co., 54 Pa. PUC 319, 327 (1980). The relative cost of the applicant's proposal and other alternatives is a factor in that determination. West Penn, 54 Pa. PUC at 326.

3. PP&L has failed to establish that the proposed line is necessary from an engineering perspective, and has failed to establish, by credible evidence, that the proposed line is less than the alternative answer to Lehighton's need for additional power, namely, reinforcement of the existing 12 kV system.

4. PP&L's Certification Application and remaining Condemnation Applications should be denied.

I.D. at 21, 22.

The ALJ's Initial Decision contained the following ordering paragraphs:

1. That the Applications of Pennsylvania Power and Light Company at Docket Nos. A-110500F0230 and A-110500F0230 and A-110500F0232 are denied.

2. That the Applications of Pennsylvania

Power and Light Company at Docket Nos.
A-110500F0229 and A-110500F0231 are
withdrawn.

I.D. at 22.

The Exceptions and Replies

On May 20, 1996, PP&L filed 11 Exceptions to the ALJ's Initial Decision in this matter. Renner filed a Reply to Exceptions on May 30, 1996. PP&L separated its Exceptions into need issues, cost issues, competition and customer preference, and line route. PP&L asserts that the ALJ's finding that engineering need was the standard in this case ignores Commission precedent and the statutory framework which governs these types of cases. PP&L argues that the ALJ erred in determining that the project is not needed, that the project will not increase reliability and that the project is not needed to address future load growth. Regarding the cost issue, PP&L states that the Initial Decision erroneously concluded that the cost figures were deliberately misleading. Error is also assigned to the ALJ's determinations that the reinforcement alternative will be less costly than the new construction. It is further argued that the ALJ ignored evidence which indicated that the new line was superior to reinforcement. PP&L argues that the ALJ erred in concluding that customer choice cannot support a finding of need and concluding that concerns driven by potential competition may not be appropriate factors in project consideration. Lastly, PP&L questions the ALJ's findings regarding scenic views and recreational uses.

Renner, in his Replies, responded by arguing that the Initial Decision was correct in all respects. Renner asserts that the only reason for the proposed 138/69 kV line construction is Lehighton Borough's insistence on 69 kV power. There is no engineering need or cost justification for the proposed project.

Renner argues that the ALJ was correct in his findings that PP&L itself promoted reinforcement over construction of the new line until Lehighon Borough threatened to move to a competitor.

Analysis

PP&L's first Exception argues that the ALJ erred in requiring that PP&L demonstrate that the proposed 69 kV line is needed from an engineering perspective. PP&L asserts that this standard is inconsistent with prior Commission precedent and statutory authority. PP&L claims that the proper standard is whether the project is necessary for the accommodation, convenience and safety of the public, citing Section 1501 of the Public Utility Code, 66 Pa.C.S. §1501, and Re: Application of Pennsylvania Power & Light Company, Docket No. A-00110500F0197 (Order entered November 1, 1994) ("Ridge Road"). Renner responds that the ALJ used the correct standard as set forth in Re West Penn Power Company, 54 Pa. PUC 319 (1980).

We will deny this Exception. First, and most important, PP&L overstates its argument here. The thrust of PP&L's argument is that the ALJ considered engineering need to the exclusion of all other factors. That is not correct. The ALJ discussed engineering need as one which encompassed engineering need, cost factors, reliability, future need and the relative merits of reasonable alternatives. I.D. pp. 15-19. The ALJ clearly treated the term engineering need as more encompassing than is claimed by PP&L.

The ALJ cited to our previous case of West Penn Power for the proposition that engineering need must be shown. West Penn discussed this issue as follows:

We will issue an order granting such certificates [authorizing the use of eminent domain powers] only if we find the grant is necessary or proper for the service,

accommodation, convenience, or safety of the public (§1103(a) of the Public Utility Code). It is well-settled that to make such a showing with regard to eminent domain cases the applicant must show the proposed line is necessary from an engineering prospective [sic]; if this is not done, we are under no duty to issue a certificate.

54 Pa. PUC at 327. (Emphasis in original).

PP&L attempts to distinguish the West Penn case and directs our attention to the cases of Re: Application of Pennsylvania Power & Light Company, A-00110500F0197 (Order entered November 1, 1994) ("Ridge Road"); and Stone v. Pennsylvania Public Utility Commission, 192 Pa. Superior Ct. 573, 162 A.2d 18 (1960). West Penn is said to be inapposite because of the size and extent of the project under consideration in that case. Ridge Road and Stone are said to support a grant of the instant application because each of those matters considered and discussed with approval factors other than engineering need as was discussed in the Initial Decision here. We disagree.

As we stated above, the ALJ discussed engineering need in this case as encompassing several different factors. The authorities cited by PP&L are of little help to it here. Those decisions discussed economic and efficiency benefits while also finding that there was an actual engineering need for the project under consideration. Stone involved a project which was necessary to join a bulk 220 kV transmission line of Philadelphia Electric Company ("PECO") with that being built by Baltimore Gas & Electric Company ("BG&E"). The Superior Court found that there was a need for integration of the bulk power transmission systems of PECO and BG&E. In its discussion, the Superior Court stated:

The public necessity and propriety of the service here involved are fully demonstrated by Philadelphia's [PECO] uncontroverted evidence. One of the principal

considerations of public convenience and necessity is the need for integration of the bulk power transmission systems of Philadelphia and Baltimore [BG&E]. Notwithstanding appellant's unsupported assertion to the contrary, it clearly appears that the interconnection will enable both systems to obtain greater economies of operation. Furthermore, each system will be able to meet, adequately and safely, its varying and growing load demands, and to maintain constant voltage, frequency stability, and reliability of service. Another principal element of necessity is that there are no existing facilities to provide for the transmission of the initial block of power from the proposed Peach Bottom Generating Station to distribution centers.

192 Pa. Superior Ct. at 573, 162 A.2d at 21. Here, PP&L had determined that reinforcement of the existing 12 kV line would be sufficient to provide necessary service. The ALJ's determination on this point is hardly inconsistent with Stone. The ALJ determined that the very factors which the Superior Court considered in Stone were not present here.

The next case PP&L refers us to is Ridge Road. Similar to Stone, our decision in Ridge Road first determined that there was a need for the proposed line to relieve a heavily loaded substation and provide for projected future load growth in a rapidly developing area of Bucks County. Contrary to PP&L's position, Ridge Road does not stand for the proposition that factors other than engineering need can support an application. Once the engineering need was established, like Stone, a consideration of factors such as lower rates was made.

Our regulations at 52 Pa. Code §§57.75(e) and 57.76(a) are not helpful to PP&L on this issue. Each of those sections clearly indicates that need for the proposed line is a primary factor in these cases. For the foregoing reasons, we deny this Exception.

PP&L argues in its second Exception that the ALJ erred in finding that PP&L failed to prove that the proposed 69 kV line was needed from an engineering perspective. PP&L argues that there is no question that some form of improvement is required for the system serving Lehighon Borough. Once that question is answered affirmatively, PP&L asserts that the issue becomes which alternative under consideration is the better one: reinforcement of the existing system or construction of the proposed line. PP&L asserts that the ALJ ignored undisputed evidence which showed that the proposed line was superior to reinforcement of the existing 12 kV service because it will provide substantial added benefits to all customers which include added load transfer capability, a future 138/69 kV supply source for a potential PP&L substation to serve customers outside the Borough of Lehighon, significant improvement in the reliability of the Borough's power supply and the opportunity to receive added rate reductions.

Renner replied to Exception No. 2 arguing that the purported need is simply makeweight and ignores that PP&L itself had determined that the proposed 138/69 kV line was not needed. Renner asserts that this Exception ignores the evidence produced in this proceeding which clearly indicates that the only incentive for the proposed project is Lehighon Borough's insistence on 69 kV power and its threat to move off PP&L's system. The only need for the proposed line, according to Renner, is PP&L's desire to avoid loss of the Borough as a customer. Renner argues that this does not meet the standard required for approval of the project. Renner asserts that completion of the project in progress, reinforcement of the 12 kV line, eliminates any need for the proposed line. Since reinforcement avoids all land use and environmental issues, as well as being less expensive when the completed work is factored in, reinforcement is the best alternative. Based upon the foregoing, Renner argues that there is no need for the proposed line.

In this case, the ALJ found that the alternative to the proposed 138/69 kV line, reinforcement of the existing 12 kV line, was considered by PP&L itself to be an appropriate solution. PP&L's statement that once it is shown that some improvement is needed, we look to the relative merits of the alternatives is not precisely correct. The issue before us is whether the exercise of eminent domain powers is necessary. Here, the record in this matter leads to the inescapable conclusion that there is simply no need to approve the exercise of eminent domain in this case. Reinforcement of the existing 12 kV line will serve the purpose. Statement of Frank A. Renner Jr. No. 2 at 4-5; Exhibit R-19, Requests for Admissions 48, 50, Exhibit 9; Exhibit 21, Admissions 48, 50; Tr. 96-101, 112, 298-300, 321, 323-25; Exhibits R-28, 40, 41, 54. The ALJ clearly placed great weight on the internal documents of PP&L generated prior to the filing of the Certification Application and statements of PP&L personnel regarding reinforcement of the 12 kV line. We agree with the Initial Decision on this point and will deny this Exception.

PP&L's third Exception argues that the ALJ erred in finding that the proposed project would serve only Lehighton Borough. PP&L asserts that while the proposed line will initially provide service to the Borough, the line will also be available to provide service to customers outside of the Borough by providing a future 138/69 kV supply source on the west side of the Lehigh River to address the "slow but steady growth north of the Borough." PP&L Exceptions at 18. PP&L argues that there is no record evidence to support the ALJ's conclusion that the proposed line will be dedicated exclusively to the Borough of Lehighton.

Renner argues that PP&L's Exception completely misses the thrust of this issue. That is, the ALJ found that the present purpose of the line was to provide service to Lehighton Borough. Any proposed future use was speculative at best and, in

any event, could not serve to establish need for the project. Renner asserts that this Exception completely ignores the evidence which established that PP&L projected slow load growth for the area and had repeatedly told Lehighon Borough that reinforcement of the 12 kV line was sufficient to provide service and that 69 kV power was not needed. There is no evidence of record that PP&L determined that there was any need for the proposed line other than the demands made by Lehighon Borough. Accordingly, Renner asserts that the ALJ's decision correctly decided this issue.

We will deny PP&L's third Exception. PP&L's Exception on this issue does not assert that construction of the 138/69 kV line will serve customers other than Lehighon Borough. This Exception argues that the new line would be available to serve other customers. PP&L misstates the ALJ's conclusion here by arguing that there is no evidence to support the ALJ's apparent determination that the proposed line will be dedicated to serve Lehighon Borough exclusively. The ALJ's determination was that PP&L failed to produce evidence which would show that the line would serve other customers, finding that PP&L's evidence on this point was speculative. The burden of proof is on PP&L in this case, not the ALJ. PP&L's Exception asserts that the record indicates that there will be slow but steady load growth. Our review of the record indicates that PP&L's own projections indicated a growth rate of 1.5% per year without any significant load growth for the foreseeable future. Tr. 84, 333-334.

PP&L's fourth Exception asserts error in the ALJ's finding that the proposed line will not increase reliability. PP&L argues that the ALJ ignored evidence which established that the existing supply had experienced thirteen interruptions during a two year period and that the proposed line would prevent the problems which caused those interruptions. PP&L argues that the ALJ's finding that the reinforcement alternative is sufficient to address reliability problems ignores the fact that the proposed

line is the superior alternative because it addresses basic operating concerns as well as reliability.

Renner again responds that this argument is makeweight. Renner suggests that reliability only became a factor in this case after PP&L's cost justification was shown to be false. Renner also argues that the evidence does not show that the proposed line will be in any way more reliable than reinforcement of the existing 12 kV system. Renner argues that the asserted reliability issue is speculative and that plans for the reinforcement project eliminate much of the claimed reliability concerns by underground routing.

The ALJ dismissed this claim. He noted that PP&L itself considered that reinforcement of the existing 12 kV line was sufficiently reliable to provide service. It was only after Lehighton Borough demanded the new line that PP&L determined that reliability may be a factor. Our review of the record in this case leads us to conclude that the evidence regarding reliability is not sufficient to establish that construction of the new line will be significantly more reliable than the alternative of reinforcing the existing 12 kV line. Finding of Fact No. 21 is dispositive of this issue. We will deny this Exception.

PP&L's fifth Exception cites error in the ALJ's determination that the proposed project will not be needed to meet future load growth. PP&L notes that while it does not expect dramatic load growth, it does anticipate the need for reinforcement in the future.

Renner responded to this Exception by noting that there was absolutely nothing in the record which indicated that PP&L anticipated any growth which could not be served by reinforcing the existing system. Renner reiterated that the evidence showed that PP&L itself had continually advised the Borough of Lehighton that a new 69 kV line was not needed; that reinforcement of the

existing system was sufficient. In its Reply, Renner argues that the PP&L evidence on load growth indicates only slight growth well within the capacity of a reinforced 12 kV line.

We discussed the evidence relating to future load growth in our ruling on PP&L Exception No. three, above. There is simply no evidence upon which to base a finding that future load growth will require the proposed 138/69 kV line. We agree with the ALJ that the evidence on this issue is speculative, at best. PP&L continually maintained that reinforcement of the existing 12 kV line would be sufficient to support future growth until Lehighton Borough demanded the proposed project. We will deny this Exception.

PP&L's Exceptions six and seven cite error in the ALJ's findings regarding PP&L's cost figures for reinforcement of the 12 kV line. PP&L vigorously excepts to the ALJ's conclusion that PP&L deliberately provided misleading cost figures for the two alternative projects in order to place the new 138/69 kV line in a more favorable light. PP&L maintains that the figures used in its Application were an honest mistake. PP&L argues that the project was actually a complicated combination of several different projects. Depending on the particular combination used, different cost factors would be more, less or not even included in the total cost figure. The error in the cost estimate used in the Application was a result of the process of combining several different cost factors from several different project configurations. PP&L corrected the error as soon as it was discovered during its preparation for the hearings. PP&L asserts that there is simply no evidence of record which would indicate that the error was anything other than a simple mistake in the compilation of cost factors for the project.

Renner argues that PP&L simply refuses to discuss the evidence which clearly points to the fact that the cost figures were deliberately misrepresented. Renner asserts that throughout

the early stages of the proceeding, PP&L claimed that the cost of reinforcement was significantly higher than construction of the new 69 kV line. PP&L consistently claimed that cost was a primary factor in proposing the new construction over reinforcement. Despite this, Renner asserts that his discovery efforts uncovered internal PP&L documents which showed that prior to this proceeding, PP&L considered the two projects to be about the same cost. Renner points to a document prepared in late October of 1994 in which PP&L's main witness concluded that there was only a slight difference in cost between the two alternatives. Yet this same witness, in prepared testimony, repeatedly asserted that the reinforcement option was significantly higher until Renner's discovery uncovered the discrepancy.

Renner argues that after producing documents which revealed the cost discrepancy, PP&L filed rebuttal testimony in which its chief witness revised his testimony and no longer indicated that the reinforcement project was significantly higher than the proposed construction. Upon receipt of the rebuttal testimony, Renner requested that prior discovery responses on that issue be supplemented. PP&L indicated that it had no intention of supplementing its prior responses and only did so 5 days in advance of cross-examination in response to a Motion to Compel filed by Renner. Its supplemental responses increased the stated estimate of the costs to construct the new 138/69 kV line.

Renner argues that these facts provide a solid basis upon which the ALJ could have concluded that PP&L intentionally misrepresented the cost figures of the two projects. Renner asserts that PP&L produced no evidence whatsoever which would have explained why its initial erroneous cost estimates were continually maintained before the Commission despite the clear difference in its own internal documents. Renner suggests that the only inference to be drawn is that of intentional misrepresentation.

We will grant PP&L's sixth Exception. The issue of whether PP&L deliberately misrepresented cost figures in its Certification Application in order to make the proposed 138/69 kV line appear less costly than reinforcement is a difficult one. It is very possible for one to infer from this record that such was the case. In addition, Renner has forcefully and effectively argued this point. However, we agree with PP&L that a likely explanation for the change in cost estimates resulted from the project actually being a combination of fairly complex alternatives. While we would expect that a utility of PP&L's size and expertise should be able to develop cost studies without such errors, errors do occur.

This issue is not an integral one to our determination of this case. The explanation offered by PP&L is a plausible one, supported by record evidence. We find that Renner has not, by a preponderance of the evidence, shown that PP&L deliberately misstated the cost figures of the alternative projects in order to mislead us in this action. Accordingly, we will grant this Exception.²

PP&L's seventh Exception asserts that the ALJ improperly concluded that the reinforcement alternative will be less expensive than the proposed construction. PP&L claims that the ALJ erred in considering the amount of work performed to date on the reinforcement project. PP&L asserts that the two projects must be compared from a total cost perspective. Even if the cost of work performed to date on the reinforcement project is considered, PP&L asserts that the evidence is unclear on just what work has been completed and what would have to be repeated

² Parenthetically, we point out that PP&L invited this issue upon itself by failing to supplement discovery without being confronted with a Motion to Compel. Cooperation, despite the litigated posture of this proceeding, may have gone a long way to eliminating this issue. In the best light for PP&L, the sequence of events presents a very disturbing appearance.

if the reinforcement project was pursued at this time. PP&L claims that it offered to obtain additional information on this issue, but neither the ALJ nor the parties requested it. PP&L suggests that nothing supports the ALJ's conclusion that \$561,000 had been spent on the reinforcement project to date. PP&L asserts that the record shows that as little as \$134,000 may have been spent. If that figure is used, the reinforcement project is still more expensive by \$41,000 than the proposed 69 kV line.

Renner asserts that PP&L constructs a false issue in this Exception by misstating what the ALJ determined. Renner argues that the ALJ merely concluded that PP&L had completed some work on the reinforcement project, although its witness could not provide precise figures. Accordingly, Renner argues, PP&L was found to have failed to sustain its burden of proof to show that the proposed line was more cost effective than reinforcing the existing line. Renner also argues that the ALJ was correct in determining that PP&L must account for work completed in establishing cost figures. The issue is not, as suggested by PP&L, what the total cost of the two projects would be, but what the cost of each project would be from the time of the Certification Application. Because PP&L failed to address the cost of work completed, it presented insufficient evidence upon which to find that the new line was the more cost effective alternative. Accordingly, Renner argues that the ALJ determination was correct on this point.

We agree with the ALJ and deny this Exception. Comparison of the total cost of both the 138/69 kV line and reinforcement of the existing 12 kV line is a crucial factor in this case. However, since PP&L had already initiated work on the reinforcement project, cost figures for work already performed for that project should have been provided. PP&L is incorrect that such evidence is irrelevant. To the extent that work on the reinforcement project has been completed, that would reduce the projected cost of the reinforcement project as of the date of the

Certification Application.

We note that PP&L has again misstated the ALJ's determination. The ALJ found that PP&L failed to prove that the new line would be more cost effective than reinforcement of the 12 kV line. PP&L has misstated the basic issue by taking the position that other parties had the burden of proving what the cost of work performed had been. PP&L had the burden of proving by a preponderance of the evidence that construction of the new 138/69 kV line was the least cost alternative when compared to reinforcement of the 12 kV line. The ALJ found that PP&L failed to do so, in part, because it failed to introduce evidence on the cost of work completed on the reinforcement project. We agree and will deny this Exception.

PP&L's eighth Exception argues that the ALJ erred in focusing on cost and failed to consider the evidence which indicated that the proposed line was the superior alternative. PP&L argues that the ALJ focused on the mistake in cost estimates. PP&L asserts that the evidence shows the two projects to be approximately equal in cost or that the new construction is slightly less in cost than reinforcement. That being the case, PP&L then argues that the new construction is the superior alternative because it will add load transfer capability, provide a future source of 138/69 kV power to serve customers other than Lehighton Borough and there are significant reliability improvements.

Renner replies that the Initial Decision did consider PP&L's arguments on this point and rejected them. He argues that this Exception is actually a restatement of PP&L's first five Exceptions. Renner argues that PP&L's eighth Exception ignores the overwhelming evidence which dictated a contrary result.

In its Exceptions, PP&L suggests three reasons why the 138/69 kV line is a superior alternative to reinforcement of the

existing line. Each of these reasons have been addressed in our discussion above. The fact that added transfer capability and added service may result from the proposed project becomes relevant only if there is shown to be a need for such service. We have concluded that PP&L has failed to show such a need on this record. We already discussed the reliability evidence and agree that the evidence has not established that reliability is a true factor here, noting PP&L's own position before the Certification Application that reinforcement was an appropriate step. We find that the record, when taken as whole, does not establish that the 138/69 kV proposal is a superior alternative to reinforcement of the existing 12 kV line such that exercise of eminent domain powers are necessary at this time. We will deny this Exception.

In PP&L's ninth and tenth Exceptions, it argues that the ALJ has erroneously determined that competitive factors are inappropriate factors for consideration in this case. PP&L argues that it is well established that customer choice is a highly relevant factor in determining whether a proposed project is needed. PP&L cites to Waltman v. Pennsylvania Public Utility Commission, 142 Pa. Commonwealth Ct. 44, 596 A.2d 1221 (1991), for the proposition that customer support was sufficient to establish a public need for proposed service. PP&L also refers us to three other cases which have found that customer preference can establish need for service. PP&L also cites error in the ALJ's discussion of the risks attendant upon granting an application for a certificate in this case based solely on competitive factors. PP&L asserts that there is simply no basis for the concerns raised by the ALJ. Renner responded to these two Exceptions stating that the ALJ was correct in his determination. Renner cautions that if this Certificate Application were granted solely on the basis of customer choice in a competitive environment, it would become precedent in future cases and the risks discussed by the ALJ would arise.

The ALJ discussed the issue of competitive forces and customer choice in dicta at pages 20 and 21 of his Initial Decision. The ALJ stated: "Upon review of the briefs, and upon further reflection, I conclude that it is not necessary to decide this issue here." I.D. at 20. We agree with that assessment. Our ruling on Exceptions 1 through 8 render any discussion of competitive factors unnecessary and we will not adopt that portion of the Initial Decision at pages 20 and 21. For this reason only, we deny PP&L's 9th and 10th Exceptions.

PP&L's final Exception claims error in that the ALJ refused to consider line siting issues in this case. Renner responds by stating that the ALJ correctly decided this and the Exception ignores substantial supporting evidence. In this case, as discussed in the Initial Decision and in our discussion of PP&L's first eight Exceptions above, PP&L has failed to prove, by a preponderance of the evidence, that there is a need for the 138/69 kV line in the first instance. The Initial Decision and our Opinion and Order here are based upon the evidence regarding engineering need, including needed service, projected load growth, reliability, alternatives which may not require exercise of eminent domain and cost factors involved in the alternatives. Having determined that these factors weigh against the granting of this Certificate Application, discussion of the actual line siting is unnecessary. We will deny this Exception.

Conclusion

Upon review of the pleadings, the record evidence in this proceeding, the briefs of the parties, the Initial Decision, the Exceptions and the Reply thereto, we conclude that the Initial Decision should be adopted as modified herein and the Certification Application and Condemnation Applications should be denied for the reasons discussed; **Therefore,**

IT IS ORDERED:

1. That the Initial Decision of Administrative Law Judge Michael C. Schnierle issued on April 30, 1996 in this proceeding is hereby adopted as modified herein.

2. That Exceptions numbered one through five and seven through eleven filed by Pennsylvania Power & Light Company in this proceeding be, and hereby are denied.

3. That Exception number six filed by Pennsylvania Power & Light Company in this proceeding be, and hereby is, granted.

4. That the Application filed at A-00110500F0224 on February 6, 1995 by Pennsylvania Power & Light Company requesting approval of construction of a Lehigh 138/69 kV transmission line to be located in Franklin Township, Mahoning Township and Lehigh Borough, Carbon County, Pennsylvania be, and hereby is, denied.


5. That the Application for the exercise of eminent domain powers over the properties of Marion and Sandra Walker filed by Pennsylvania Power & Light Company on April 18, 1995 at A-00110500F0232, be, and hereby is, denied.

6. That the Application for the exercise of eminent domain powers over the property of Frank A. Renner, Jr. filed by Pennsylvania Power & Light Company on April 18, 1995 at A-00110500F0230 be, and hereby is, denied.

7. That the Applications for the exercise of eminent domain powers filed at Docket Numbers A-00110500F0231 and A-00110500F0229 be, and hereby are, marked withdrawn.

8. That the Dockets in these proceedings are closed.

BY THE COMMISSION


John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: September 5, 1996

ORDER ENTERED: SEP 9 1996

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania

APPLICATIONS OF PENNSYLVANIA
POWER AND LIGHT COMPANY

PUBLIC MEETING-
SEPTEMBER 5, 1996
AUG-96-OSA-153*
DOCKET NO. A-00110500F0224

STATEMENT OF COMMISSIONER JOHN HANGER

The record in this case indicates that PP&L originally determined that reinforcement of the existing 12 kV power line was the most appropriate way to provide reliable, least cost power to the Lehigh area and began construction. PP&L later filed the instant Application to condemn land and construct a new 138/69 kV line instead.

The ALJ concluded that construction of a new line is not necessary and that reinforcement of the existing line will meet all reliability and service needs in a more cost effective manner. There is no reason to disturb those findings, which are well-documented in the record of this case.

It is important to note that this decision does not prevent Lehigh Borough, which apparently preferred construction of the new line, from meeting its service needs. The record indicates that reinforcement of the existing line will meet all reliability needs of the area, including those of Lehigh Borough.

September 4, 1996

DATED

John Hanger

JOHN HANGER, COMMISSIONER

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265**

**APPLICATIONS OF PENNSYLVANIA
POWER & LIGHT COMPANY**

**PUBLIC MEETING- SEPTEMBER 5, 1996
AUG-96-OSA-153*
DOCKET NO. A-110500F0224, ETC.**

STATEMENT OF COMMISSIONER DAVID W. ROLKA

I will vote to accept the draft Opinion and Order for this case. However, I want to point out that the analytical standards may be changing. There may be new and evolving definitions of "need". For example, "need" for the line may be defined by the word necessity. Necessity equates to reliability and dictates that predetermined technical requirements must be met in order to, so to speak, keep the lights on. PP&L clearly demonstrated that something had to be done to keep the lights on in the Borough of Lehigh. Alternatively, need can also be expressed in terms of a customer's request for a particular kind of delivery service. The Borough of Lehigh "needs" 69kv service if it is to take advantage of a significantly lower price of electricity. The ALJ's Opinion and Order clearly give a higher level of importance to "need" as equal to necessity over "need" as a reflection of a customer requirement. In part, his decision was based on a rejection of the later definition of need. I cannot agree.

I am not sure that I want to second guess the Borough as it seeks to minimize its electricity costs. Would we find no "need" if an industrial customer required 69kv service in order to stay in business? Should we say that the savings of \$123,000 which the 69kv line would bring to the Borough does not amount to "need"? Neither our regulations nor the statute specify that the only way need can be demonstrated is through a direct link to reliability. Also, open access transmission, as required under the Federal Energy Policy Act, may be significantly distorted if we only grant transmission siting applications when they preserve reliability.

Need is a relative term and we should not attempt to foster a paternalistic approach which requires that each customer's request be screened to insure that it is deserving.

I also want to make it plain that I expect more siting applications which focus on controversy over the specific definition of need. The ALJ's decision and filings by the Protestant assert that PP&L's application is motivated purely by self interest, i.e., by the desire to retain a customer which might be lost to competition. At present, this is a relatively remote risk. However, if electric industry restructuring carries through to completion we will have to face an important policy issue related to siting. This concern focuses on vertically integrated utilities which retain the responsibility for siting new transmission lines while also having unregulated generation. I suspect that continued

utility ownership of transmission, and the rights utilities enjoy related to siting, will invite gaming of siting requests. We will have to exercise vigilance to insure that siting applications are not driven by a utility's efforts to establish market power. We will also have to insure that utilities do not delay the filing of siting applications where upgrades or new lines are needed to relieve congestion so as to expand purchase options for customers. If we adhere to a rigid definition of need as only defined in terms of reliability, then we may find that we have distorted the competitive generation market.

Sept. 5, 1996
DATED


DAVID W. ROLKA, COMMISSIONER