

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

KJR

APPLICATION OF PENNSYLVANIA POWER AND LIGHT COMPANY	:	Docket No. A-110500F0224
APPLICATION OF PENNSYLVANIA POWER AND LIGHT COMPANY	:	Docket No. A-110500F0229
APPLICATION OF PENNSYLVANIA POWER AND LIGHT COMPANY	:	Docket No. A-110500F0230
APPLICATION OF PENNSYLVANIA POWER AND LIGHT COMPANY	:	Docket No. A-110500F0231
APPLICATION OF PENNSYLVANIA POWER AND LIGHT COMPANY	:	Docket No. <del>A-110500F0232</del>

**DOCKETED**  
MAY 15 1996

INITIAL DECISION

Before  
Michael C. Schnierle  
Administrative Law Judge

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History of the Proceedings

On February 6, 1995, Pennsylvania Power & Light Company (PP&L) filed an application ("Certification Application") requesting the Pennsylvania Public Utility 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. PP&L provided notice of the filing of the application to all property owners within the proposed right-of-way and to appropriate government officials and agencies as required by the Commission's regulations at 52 Pa. Code §57.74. Newspaper notices of the filing of the Certification Application were published, and proofs of publication were filed with the Commission on March 2, 1995.

A letter protesting the Certification Application was filed by Dan R. and Cheryl Kunkle on February 27, 1995. On June 3, 1995, at the direction of Administrative Law Judge (ALJ) Richard Lovenwirth, Mr. Kunkle served a copy of this letter on PP&L. PP&L filed a timely answer to the Kunkles' protest on June 29, 1995.

Twelve separate parcels of property are within the proposed right-of-way for the project. PP&L has successfully obtained rights-of-way from all but two of the affected property owners. PP&L filed two applications ("Condemnation Applications") on April 18, 1995, 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.<sup>1</sup> With these Condemnation Applications, PP&L requests that the Commission find that the service to be provided by PP&L through its proposed exercise of the power of eminent domain is necessary or proper for the service, accommodation, convenience or safety of the public.

On April 26, 1995, this case was assigned to ALJ Richard Lovenwirth. Also on that day, the parties were informed by letter that a prehearing conference would be held on July 31, 1995 in Scranton.

On May 25, 1995, this case was reassigned to me and the

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<sup>1</sup> PP&L originally filed four Condemnation Applications to obtain rights-of-way over the properties of Joseph and Elizabeth Zaprazny, Paul and Maria D'Orazio, the Walkers and Mr. Renner. PP&L later reached agreement with the Zapraznys and the D'Orazios for rights-of-way over their respective properties, and therefore withdrew these two Condemnation Applications, Docket Nos. A-110500F0231 and A-110500F0229. See Tr. 24. Because these dockets are still open, I will recognize these withdrawals in this decision.

parties were notified that the prehearing conference would be held in Harrisburg. By letter dated June 5, 1995, the parties were informed that the conference would be conducted telephonically. On June 6, 1995, I issued my first prehearing order.

On May 26, 1995, PP&L filed corrected proofs of publication of the Certification Application. On June 17, 1995, notice of the Certification Application was published in the Pennsylvania Bulletin (25 Pa. Bull. 2471).

On July 28, 1995, PP&L filed its direct case consisting of the prepared written testimony and exhibits of Joseph P. Langan, Gary P. Billman and Richard E. Cary.

The prehearing conference was held on July 31, 1995. PP&L, the Borough of Lehigh, and Mr. Renner were represented at the conference. Mr. Kunkle represented himself. After the conference, I issued my second prehearing order consolidating the Certification Application with the Condemnation Applications, and establishing a litigation schedule. On August 2, 1995, PP&L filed proofs of publication of notice of the prehearing conference.

At a telephone conference call on August 23, 1995, PP&L and Mr. Renner requested certain modifications to the schedule to which all parties agreed. By a third prehearing order dated August 28, 1995, I approved those modifications.

On September 18, 1995, I conducted a tour of the proposed transmission line route. This tour was attended by several individuals, including Mr. Renner and his counsel, counsel for the Borough of Lehigh, counsel for PP&L, employees of PP&L, and

Cheryl and Dan Kunkle.

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

On October 20, 1995, both PP&L and the Borough of Lehighton filed rebuttal testimony. PP&L submitted the rebuttal testimony of Joseph P. Langan, Gary P. Billman, Richard E. Cary, Richard Mellon, William R. Taylor, Jr., James F. Villaume and Vincent F. Gillotti. The Borough filed the written testimony of Carol Clay and Robert White.

In accordance with the amended procedural schedule, Mr. Renner's surrebuttal testimony was due November 3, 1995. He did not file any surrebuttal testimony.

On November 3, 1995, Mr. Renner filed a motion to compel discovery. The issues raised by this motion were resolved at a telephone conference held on November 6, 1995.

Evidentiary hearings were held on November 14 and 15, 1995 in Harrisburg, Pennsylvania. There, the direct cases of PP&L and Mr. Renner, and the rebuttal cases of PP&L and the Borough were cross-examined. The hearings resulted in a transcript of 349 pages. Besides the 14 prefiled statements of testimony, 52 exhibits were admitted into evidence. On December 15, 1995, PP&L filed its initial brief pursuant to the established schedule. On January 10, 1996, Mr. Renner requested a four day extension of the deadline for his brief, due to the blizzard experienced by Pennsylvania at that time. The deadline for Mr. Renner's brief was extended, and the deadline for PP&L's reply brief was extended by

a like amount. On January 16, 1996, Mr. Renner filed his brief.

By letter dated January 15, 1996, Robert Correll, who owns property near the proposed line, requested that the record be reopened to accept his testimony in opposition to it. PP&L filed a letter-answer opposing this request, and Mr. Renner filed a letter supporting it. By order dated January 30, 1996, I denied this request.

On February 5, 1996, PP&L filed its reply brief.

On February 7, 1996, Mr. Renner filed a 13 page letter requesting permission to address "new arguments" made by PP&L in its reply brief. The letter also addressed the "new arguments" at some length. On or about February 9, 1996, PP&L filed a motion to strike this letter. On or about February 15, 1996, Mr. Renner filed an "opposition" to PP&L's motion. By order dated February 28, 1996, I denied this request.

#### Findings of Fact

1. Figure 1 of Exhibit A to PP&L Exhibit 1 is a functional one-line diagram of the existing electrical supply system for the Jamestown, Borough of Lehigh, Weissport and Ashfield areas. Two separate 12 kV lines, the Ashfield 4-2 and the Weissport 75-1 12 kV lines, currently supply the Borough of Lehigh. These two lines supply 45% and 55% of the Borough load, 4.0 MVA and 5.0 MVA, respectively. (PP&L St. 1, p. 5).

2. The Ashfield 4-2 12 kV line also supplies residential and commercial customers in the Ashfield area, Mahoning and East Penn Townships. The Weissport 75-1 12 kV line also

supplies residential and commercial customers in Mahoning, Franklin and Parryville Townships. These two lines additionally provide a tie between the Ashfield and Weissport 69-12 kV Substations. (PP&L St. 1, pp. 5-6).

3. Figure 2 of Exhibit A to PP&L Exhibit 1 shows historical actual peak loads, projected peak loads and appropriate ratings for the affected distribution facilities in the project area. Figure 2 only presents winter ratings and loads because the loads on these facilities are winter peaking. These peak line loads reflect all known proposed major load changes and estimated general load growth. Summer loads on these facilities are substantially lower and thus were not a determining factor in PP&L's analysis. (PP&L St. 1, p. 6).

4. The Weissport, Ashfield and Lehighton Borough areas are continuing to experience residential, commercial and industrial load growth. As a result of these load additions, the projected 1996-1997 winter peak load on the Weissport 75-1, 2/0 copper conductor, is 8.0 MVA, and the projected load on the Weissport 75-2, 336.4 KCMIL aluminum conductor, is 9.6 MVA. The Weissport 75-1 line load therefore will equal the maximum normal load carrying capability of its 2/0 copper conductor (8.0 MVA) and the Weissport 75-2 line load will approach the maximum normal load carrying capability of its 336.4 KCMIL aluminum conductor (10.0 MVA). (PP&L St. 1, pp. 6-7).

5. The Gaden-Huetten Memorial Hospital located in the Borough of Lehighton is normally supplied from the portion of the

Lehighton Borough system connected to the Weissport 75-1 12 kV line and requires emergency back-up supply from the Ashfield 4-2 12 kV line. (PP&L St. 1, p. 7).

6. The total projected 1996-97 winter emergency loading on the Ashfield 4-2 line (including all 9.0 MVA from the Borough of Lehighton) is 12 MVA, which exceeds the maximum emergency load carrying capacity of this 2/0 copper conductor (9.5 MVA). (PP&L St. 1, p. 7).

7. The total projected 1996-1997 winter peak load at the Ashfield 69-12 kV Substation is 22.2 MVA, which is approaching the two-hour emergency rating of 1-10 MVA transformer (22.4 MVA) at this Type "B" substation. (PP&L St. 1, p. 7).

8. A Type "B" substation must be able to supply the substation's peak load during an emergency outage of one transformer. (PP&L St. 1, p. 7).

9. The loading on the Siegfried-Hauto #1 and #4 lines which supply the Ashfield Substation is approaching the emergency rating of the conductor for the outage of one of the circuits. (PP&L St. 1, p. 7).

10. PP&L has proposed to address the load problems described in Findings 1 through 9 by constructing the following facilities by November 1996:

- A double circuit 138/69 kV Lehighton transmission line (double circuit 69 kV and 12 kV initial operation);
- A new Borough of Lehighton 69-12 kV substation (Borough owned);
- A new 12 kV line connection from the Weissport 69-

12 kV Substation to the Lehighton 138/69 kV Tap;  
and

- The addition of a second 138/69 kV circuit on the Weissport 138 kV Tap from Weissport Substation to the second angle structure beyond the proposed Lehighton Tap point.

(PP&L St. 1, p. 8).

11. Construction of 138/69 kV Lehighton transmission line requires prior Commission approval, and is the subject of the Certification Application and the Condemnation Applications.

12. Before filing this application, PP&L had budgeted reinforcements to the existing 12 kV service to Lehighton Borough to provide load relief and to increase the reliability of the existing 12 kV system. (Tr. 83-84). If reinforced as PP&L had previously budgeted, the existing 12 kV supply would be sufficiently reliable that PP&L would be able to provide service to Lehighton Borough. If this application is not approved by the Commission, PP&L will complete the reinforcements of the existing 12 kV supply previously budgeted and commenced by PP&L. (Tr. 110-111).

13. Since at least 1990, PP&L and Lehighton Borough have discussed a proposed 69 kV line to the Borough, before entering a power supply agreement in March 1994. (Tr. 94-95; 298-99; 323-24; Exhibit R-28). PP&L's position in those meetings, at least before 1993, was that PP&L would provide 69 kV power only if the Borough paid for a new transmission line because it was not necessary to provide the Borough with satisfactory service. (Tr. 96-101, 298-300, 321, 323-25; Exhibits R-28, 40, 41, 54).

14. In the Fall of 1993, Lehigh Borough solicited offers for service from utilities other than PP&L. Lehigh Borough joined certain other Pennsylvania municipalities which also operate utilities in engaging Willard G. Kresge of the Quad Three Group, Inc. to represent it in negotiations with bulk electric suppliers. (Tr. 310-311; Exhibit R-26). With Kresge's assistance, in November 1993 Lehigh Borough manager John Hanosek solicited offers for service from several potential suppliers. (Tr. 311-313; Exhibit R-67). Lehigh was able to solicit offers from utilities other than PP&L in 1993 because the Energy Policy Act of 1992 had amended federal statutes to require utilities such as PP&L to make their transmission systems available for wheeling of power by other utilities. (Tr. 316-317). As a result of these solicitations, Lehigh received several offers to supply 12 kV power at rates less than PP&L's rates. (Tr. 312-318; Exhibits R-69, 70 and 71).

15. Kresge used the offers Lehigh received from competing utilities in his negotiations with PP&L. On the basis of these offers and similar competing offers received by other municipalities, Kresge demanded that PP&L reduce its existing rates by at least 20%. (Tr. 318-319; Exhibit R-72). After Lehigh disclosed in its negotiations with PP&L that it had received offers from other utilities, PP&L offered to pay for construction of a new 69 kV line, provided that Lehigh retain PP&L as a supplier for ten years. Persuading PP&L to take over that cost was part of Lehigh's negotiating stance. (Tr. 321-322, 328-329).

16. On March 28, 1994, PP&L and Lehigh entered a

Power Supply Agreement, providing that PP&L will install a 69 kV line to Lehighton Borough at no additional cost to Lehighton, but that if Lehighton receives electricity from a supplier other than PP&L during years six through ten of the Agreement, PP&L will charge Lehighton a sliding scale percentage representing the unamortized balance of the cost of constructing the 69 kV line. (Exhibit R-17; Tr. 102).

17. At two public meetings held to discuss the proposed power line, PP&L employees acknowledged that PP&L would not be proceeding with the proposed line except for Lehighton's request for it. (Renner St. 2 at 4-5; Exh. R-19, Requests for Admissions 48, 50, Exh. 9; Exh. R-21, Admissions 48, 50). If PP&L had not entered into the agreement with Lehighton, "[t]he transmission project would most likely have proceeded with the 12 kV reinforcements as needed." (Tr. 201).

18. When it filed the Certification Application here, PP&L estimated the cost of the proposed project (i.e., the transmission line) to be \$1,115,000, and the cost to reinforce the existing 12 kV system to be \$1,800,000. (Exh. A to PP&L Exh. 1). On the first day of hearing, PP&L amended those figures. Specifically, the cost of the proposed project was revised upward from \$1,115,000 to \$1,812,850. PP&L also revised the cost to reinforce the existing 12 kV system from \$1,800,000 to \$1,988,300. (Tr. 28, 34-35). The revisions were made to show a true comparison of all the costs associated with each project. (Tr. 29, 110). Three internal PP&L documents generated in 1994 show that PP&L had

concluded that the alternatives at issue (construction of the 69 kV line and reinforcement of the 12 kV system) cost about the same. (Exh. R-2; Tr. 39-41, 45-47 202; Exh. R-1; Exhs. R-19 and R-21, Requests for Admissions 19 and 20; Exh. R-5).

19. In preparing the revised estimate of \$1,988,300, PP&L added a cost of \$77,500 to add a second 69 kV circuit. A PP&L witness testified that it was a common practice for PP&L to add such a second circuit to give PP&L greater flexibility in performing maintenance, and that PP&L would have done so either if a new 69 kV line to Lehighton were built or if the existing 12 kV service were merely reinforced. That witness admitted that the second 69 kV circuit was not listed in either the 1992-1993 budget estimate for the 12 kV reinforcement or the in 1994-1995 budget estimate for the 12 kV reinforcement, or in PP&L's project letter describing the work to be done. (Tr. 60-63).

20. PP&L's revised estimate of \$1,988,300 to reinforce the existing 12 kV supply is an estimate of the total cost, if work were starting from scratch. This estimate does not account for work performed on that project to date. (Tr. 66-67). Although PP&L's witness could not provide precise figures, it appears that PP&L has already completed work on the reinforcement project in some amount between \$134,000 and \$561,000. (Tr. 66-75; Exhs. R-2, R-47, R-56, R-64, R-66).

21. PP&L claims that a major reason for building the 69 kV line is to provide Lehighton with a more reliable supply by avoiding outages. A PP&L witness and a Lehighton witness each

testified that 69 kV lines are more reliable than 12 kV lines because 12 kV lines usually "run along the road" where they may be hit by vehicles, and are they are more susceptible to damage from tree limbs, storms, ice and animals which can crawl onto the lines or transformers. Neither witness identified any other respect in which 69 kV service is more reliable than 12 kV service (Tr. 108-109; 325-328). Major outages as a result of the 12 kV lines being damaged in this way do happen on occasion, but they do not happen regularly. (Tr. 325-326). Lehighton has had two major outages within the last four years where Lehighton had a problem within the Borough itself. A new 69 kV line would not affect such outages, as Lehighton plans to keep the existing 12 kV supply within the Borough. (Tr. 326, 331). 69 kV supply is too high a voltage to operate within a municipality. It must be used only in an unpopulated area. (Tr. 331-332). Converting Lehighton to 69 kV supply would not offer Lehighton any increased reliability with respect to the 11 momentary events on the East Palmerton-Wagners transmission line during 1992 through 1994 described in PP&L Statement 1-R at 2. (Tr. 88-89; Exhibit R-49). PP&L considers the 12 kV system to be sufficiently reliable. (Tr. 110-111). If PP&L were to complete the 12 kV reinforcement project in lieu of the proposed transmission line, at least a portion of the 12 kV line would be installed underground. (Tr. 55-56). Any reliability improvements associated with the 69 kV line would be minimal.

22. PP&L projects a 1.5% annual growth rate in electric usage in Lehighton Borough and the surrounding communities during

the next five years. PP&L does not expect dramatic growth in either Lehigh or the surrounding area "for the foreseeable future." (Tr. 84). There is no large plot of privately owned, undeveloped land within the Borough of Lehigh that would be available for a significant increase in population growth. Virtually all land within the Borough is fully developed now. Any future growth in electricity usage will come only from increased electricity demand by users who are already there. (Tr. 333-334).

23. The only PP&L customer to be served by the proposed 69 kV line is Lehigh Borough. (Tr. 90).

24. Two PP&L internal memos prepared before these applications were filed express concern that a major issue in this case would be the fact that townships adjoining Lehigh Borough would bear the impact of the proposed transmission line while the benefits would flow to one customer--Lehigh Borough. (Tr. 202-208; Exh. R-1, pp. 5-6; Exh. R-3, pp. 2).

25. The expected savings to the Borough that would result from conversion to 69 kV power would be about \$123,000 per year. (Tr. 301). Considering that the Borough had 5,914 residents during the 1990 census, of which 2,995 are customers of the Borough's electric service (Tr. 300-301), the annual savings per resident would be \$20.80, or \$41.07 per electric customer.

26. The proposed high-power line, which will exceed 100 feet in height, may significantly harm the views of nearby residents such as Dan and Cheryl Kunkle. Construction of the proposed high-power line may restrict the ability of Renner and his

neighbors to use his property for recreational purposes, such as running or walking. Construction of the proposed high-power line will cause the substantial loss of the area's unspoiled aesthetic beauty. The high-power line would create a gash in the forest, and the poles and high-power lines themselves are an eyesore. (Renner St. 2, pp. 1-2).

27. Had it not been for Lehighton's request for 69 kV supply, PP&L would simply have completed the 12 kV reinforcement project. (Tr. 112).

#### Discussion

Public utilities are empowered to exercise the right of eminent domain for certain purposes and under certain circumstances. 15 Pa.C.S. §1511(a). Prior to exercising that power to condemn property 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, the utility is required to obtain the approval of the Commission. The utility must file an application. The Commission must provide notice and opportunity for hearing on the application. The utility may proceed only if the Commission finds that the service to be furnished by the utility through the exercise of the power of eminent domain is necessary or proper for the service, accommodation, convenience or safety of the public. 15 Pa.C.S. §1511(c). Additionally, where the proposed line is a high voltage transmission line (one with a design voltage greater than 100,000 volts), the Commission's regulations require the

utility to establish, among other things, the need for the line.  
52 Pa. Code §§57.1, 57.76.

Obviously, because PP&L is the applicant here, it bears the burden of proof. 66 Pa. C.S. §332(a). In Se-Ling Hosiery, Inc. v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950), the Pennsylvania Supreme Court stated that the term "burden of proof" means a duty to establish a fact by a preponderance of the evidence. The term "preponderance of the evidence" means that one party has presented evidence that is more convincing, by even the smallest degree, than the evidence presented by the other party. In addition to determining whether PP&L has satisfied its burden of proof, care must be exercised to ensure that the Commission's decision is supported by substantial evidence. "Substantial evidence" has been defined by various Pennsylvania courts as being 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 a fact sought to be established. Norfolk & Western R. Co. v. Pennsylvania Public Utility Com., 489 Pa. 109, 413 A.2d 1037 (1980); Murphy v. Dept. of Public Welfare, 85 Pa. Commonwealth Ct. 23, 480 A.2d 382 (1984). I conclude that PP&L has not established by credible evidence the need for the proposed power line.

In his brief, Mr. Renner correctly argues that an applicant in a case like this 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. I conclude that 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 expensive than the alternative answer to Lehigh's need for additional power, namely, reinforcement of the existing 12 kV system.

PP&L implies in its brief that the proposed line would serve areas beyond the Borough of Lehigh. (PP&L Initial Brief at 9-10). I reject this claim because PP&L's witnesses at hearing testified that the only customer to be served would be the Borough of Lehigh (Tr. 90), and because PP&L witnesses and employees have admitted, time and again both during these hearings and earlier, that PP&L would not have proposed this line but for Lehigh's insistence on receiving 69 kV power. The record evidence overwhelmingly establishes that PP&L could meet the present and reasonably foreseeable needs of the area by simply reinforcing the existing 12 kV system. (Renner St. 2 at 4-5; Exh. R-19, Requests for Admissions 48, 50, Exh. 9; Exh. R-21, Admissions 48, 50; Tr. 96-101, 112, 298-300, 321, 323-25; Exhibits R-28, 40, 41, 54).

PP&L also argues that the 69 kV line should be built because 69 kV power is more reliable than 12 kV power. I reject this as a reason to build the line because PP&L witnesses and employees have admitted, time and again both during these hearings and earlier, that PP&L would not have proposed this line but for

Lehigh's insistence on receiving 69 kV power. (Renner St. 2 at 4-5; Exh. R-19, Requests for Admissions 48, 50, Exh. 9; Exh. R-21, Admissions 48, 50; Tr. 96-101, 112, 298-300, 321, 323-25; Exhibits R-28, 40, 41, 54). The record evidence establishes that even PP&L considers the 12 kV system to be sufficiently reliable. (Tr. 110-111).

There is no credible evidence that the 69 kV system is needed to provide for future growth. PP&L itself projects a 1.5% annual growth rate in electric usage in Lehigh Borough and the surrounding communities during the next five years. PP&L does not expect dramatic growth in either Lehigh or the surrounding area "for the foreseeable future." (Tr. 84). There is no large plot of privately owned, undeveloped land within the Borough of Lehigh that would be available for a significant increase in population growth. Virtually all land within the Borough is fully developed now. Any future growth in electricity usage will come only from increased electricity demand by users who are already there. (Tr. 333-334). Again, PP&L witnesses and employees have admitted, time and again both during these hearings and earlier, that PP&L would not have proposed this line but for Lehigh's insistence on receiving 69 kV power. (Renner St. 2 at 4-5; Exh. R-19, Requests for Admissions 48, 50, Exh. 9; Exh. R-21, Admissions 48, 50; Tr. 96-101, 112, 298-300, 321, 323-25; Exhibits R-28, 40, 41, 54).

PP&L has certainly not shown by credible evidence that the cost of the proposed line is less than the alternative of simply reinforcing the existing 12 kV system. By its own

admission, the figures contained in its application were not an accurate depiction of the comparative costs of the two alternatives. (Tr. 29, 110). Although PP&L has attempted to portray this discrepancy as an innocent mistake, I do not believe that explanation. First, PP&L offered its "corrections" only after extensive discovery by the Protestant, and only at the last possible minute before cross examination of its first witness, when the discrepancy would have been brought to light anyway.

Second, no fewer than three internal PP&L documents generated in 1994 show that PP&L had concluded that the alternatives at issue (construction of the 69 kV line and reinforcement of the 12 kV system) cost about the same. (Exh. R-2; Tr. 39-41, 45-47 202; Exh. R-1; Exhs. R-19 and R-21, Requests for Admissions 19 and 20; Exh. R-5). Nevertheless, when it filed this application on February 5, 1995, PP&L portrayed the 12 kV reinforcement option as having "significantly higher cost" than the 69 kV option, and supplied figures (now conceded to be an inaccurate comparison) to support that specious claim. (PP&L Exh. 1, p. A-7). Accordingly, I conclude that the original cost comparison contained in the Certification Application was deliberately designed to show the 69 kV option in an unjustifiably favorable light.

Finally, PP&L's revised estimate of \$1,988,300 to reinforce the existing 12 kV supply is an estimate of the total cost, if work were starting from scratch. This estimate does not account for work performed on that project to date. (Tr. 66-67).

Although PP&L's witness, Mr. Langan, could not provide precise figures, it appears that PP&L has already completed work on the reinforcement project in some amount between \$134,000 and \$561,000. (Tr. 66-75; Exhs. R-2, R-47, R-56, R-64, R-66). PP&L argues that the Commission should compare the total costs associated with the two options, thereby overlooking the fact that PP&L has already spent a considerable amount to reinforce the 12 kV line (e.g., PP&L Reply Brief at 33-34). I disagree. The cost effectiveness of each of the two options must be judged at the time that the application is filed. If, as it appears, the reinforcement option would now require the expenditure of only an additional \$1,427,300 (\$1,988,300-\$561,000), then it is significantly more cost effective to complete the 12 kV reinforcement than it is to build the 69 kV line from scratch (\$1,812,850). Considering the manner in which PP&L misrepresented the original cost estimates of the 12 KV and 69 kV options, I infer from Mr. Langan's inability to provide clear information on the amount of work that has been performed on the 12 kV reinforcement that the \$561,000 figure is, at least, "in the ballpark." In summary, I conclude that PP&L has not shown by credible evidence that construction of the proposed line is more cost effective than simply reinforcing the existing 12 kV system.

Because I conclude that the proposed line is unnecessary from an engineering standpoint, and that PP&L has not shown by credible evidence that the proposed line is the most cost effective solution to Lehighton's need for additional power, I need not address the balance of the parties' arguments. I will however,

briefly address two arguments that appear to raise issues of first impression.

During the hearing, I remarked to the parties that it appeared that an important issue in this case was to what extent the exercise of power of eminent domain should be allowed where the purpose of the line is to respond to rate competition. (Tr. 218-219). Mr. Renner argues that PP&L's desire to respond to competitive pressure and Lehighton's desire for lower rates do not amount to evidence that the line is needed. (Renner Brief at 16-18). PP&L argues that the Commission should consider PP&L's ability to meet wholesale competition in deciding whether there is need for the line. (PP&L Initial Brief at 30-31). Upon review of the briefs, and upon further reflection, I conclude that it is not necessary to decide this issue here. A proposed transmission line whose sole or overriding purpose is to respond to competitive pressures, like PP&L's proposal here, is unlikely to meet the standard that it be necessary from an engineering perspective, as set forth in Re West Penn Power Co., 54 Pa. PUC 319, 327 (1980). Certainly, this proposed line does not meet that standard. Bearing in mind the looming specter of retail electric competition, acceptance of PP&L's argument that competitive considerations should support a decision to construct a transmission line would seem unwise. While such a ruling might be attractive here where the customer is a borough that resells electricity to its residents, acceptance of PP&L's argument could lead, in a retail competition environment, to the undeveloped natural areas of the Commonwealth

being crisscrossed by transmission lines built for no other reason than to compete for the business of large industrial customers. Despoliation of the Commonwealth's scenic views and wilderness areas for by the construction of redundant power lines hardly seems to be in the public interest.

A second argument which requires comment is PP&L's claim that if no condemnation were involved here, PP&L's Certification Application would have been handily approved. (PP&L Reply Brief at 16). By this argument, PP&L implies that disapproval of its application would require a different standard than would be applied if its application were unprotested. This argument misses the point. Had PP&L's Certification Application been unprotested, the Commission undoubtedly would have relied on the representations contained in it, including, among others, the alleged purpose of the line and the inaccurate cost comparison of the 69 kV and 12 kV options. The Commission simply does not have sufficient staff to, in effect, audit all of the information provided by utilities in such applications. On the other hand, PP&L should not be heard to complain that Mr. Renner, by vigorously litigating his case, has disclosed the inaccuracies in PP&L's claims.

For the foregoing reasons, I conclude that PP&L's Certification Application and remaining Condemnation Applications should be denied.

#### 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 expensive 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.

Order

THEREFORE, IT IS ORDERED:

1. That the Applications of Pennsylvania Power and Light Company at Docket Nos. A-110500F0224, 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.

Date: April 24, 1996

Michael C. Schnierle  
Michael C. Schnierle  
Administrative Law Judge