

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re: 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 proposed South :
Lebanon-Berks 230 KV transmission line in :
Spring Township, Berks County and East :
Cocalico Township, Lancaster County, :
Pennsylvania and the Berks-South Reading 230 KV :
Line rearrangement in Brecknock Township, :
Berks County, Pennsylvania :

ORIGINAL

A-110500F0385

DOCKETED
FEB 12 2007

ORDER GRANTING REQUEST FOR LEAVE TO WITHDRAW PETITION TO
INTERVENE AND REASSIGNING APPLICATION

HISTORY OF THE PROCEEDING

On November 9, 2006, PPL Electric Utilities Corporation, (PPL) filed an application, pursuant to 52 Pa. Code Chapter 57, Subchapter G, requesting that the Commission approve the siting and construction of the proposed South Lebanon-Berks 230 KV transmission line in Spring Township, Berks County and East Cocalico Township, Lancaster County and the Berks-South Reading 230 KV transmission line rearrangement in Brecknock Township, Berks County. PPL served copies of this application on all involved governmental agencies and municipalities as required by 52 Pa. Code §57.74. PPL also served a notice of the application and relevant maps on all affected property owners as required by 52 Pa. Code §57.74.

By notice dated November 28, 2006, the Commission scheduled a prehearing conference in this case for January 23, 2007 at 10:00 a.m. in Hearing Room #1 of the Keystone Commonwealth Building in Harrisburg and assigned me to preside. I issued a prehearing conference order on December 4, 2006 directing the parties to, *inter alia*, prepare and distribute prehearing memoranda.

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

On January 12, 2007, the Pennsylvania Game Commission (PGC) filed a petition to intervene and a prehearing conference memorandum. On January 17, 2007, Spring Township and PPL filed prehearing conference memoranda.

On January 18, 2007 I received an e-mail notice from counsel for the Pennsylvania Department of Transportation (DOT) stating that it would not be participating in this proceeding. Counsel for DOT served this e-mail notice on counsel for PPL, PGC and Spring Township.

On January 23, 2007, prior to the prehearing conference, I received an e-mail notice from counsel for Spring Township stating that the Spring Township Board of Supervisors had directed him to withdraw his appearance and Spring Township's intervention in this matter. Counsel for Spring Township requested that he be excused from the prehearing conference and stated that he would confirm Spring Township's withdrawal by mail. I forwarded this e-mail to counsel for PPL and PGC. By letter dated January 23, 2007 counsel for Spring Township stated that Spring Township would withdraw from the proceeding and requested that I issue an order "dropping the Township as a party to this case".

I conducted the prehearing conference in this case on January 23, 2007 at 10:00 a.m. in Harrisburg. Present were counsel for PPL and PGC.

At the prehearing conference, counsel for PGC stated that PGC had filed a petition to intervene because it believed that PPL intended to exercise its power of eminent domain in order to widen its right of way across State Game Land 274 in Spring Township. Counsel for PPL responded that it did not intend to exert its power of eminent domain but, as set forth in paragraph 36 of its application, would, where widening the right of way was not possible, use the existing right of way width and reduce the distance between the support structures in order to ensure proper clearances. Upon this representation by counsel for PPL, counsel for PGC stated that the PGC did not have any objections to PPL's application and asked to withdraw its

petition to intervene. Counsel for PPL requested that I refer the matter the Commission's Bureau of Fixed Utility Services for disposition as an unopposed application. I requested that PGC file a written request for leave to withdraw its petition to intervene. As of the date of this order, PGC has not filed a written request for leave to withdraw its petition to intervene.

DISCUSSION

The Commission's Rules of Practice and Procedure at 52 Pa. Code §5.94 permit parties to withdraw pleadings in a contested proceeding. The provision at 52 Pa. Code §5.94(a) allows withdrawal of pleadings by a petition for leave to withdraw the pleading. The petition is granted only by permission of the presiding officer or the Commission. The presiding officer or Commission must consider the petition, any objection thereto and the public interest in determining whether to permit withdrawal of the pleading.

In this case, PGC has failed to file a written request for leave to withdraw its petition to intervene, pursuant to 52 Pa. Code §5.94(a). The Commission's regulation at 52 Pa. Code §5.41 states that petitions for relief filed with the Commission must be in writing. While PGC did orally request to withdraw its petition to intervene, the Commission's Rules of Practice and Procedure do not provide for oral petitions.

However, the Commission's regulation at 52 Pa. Code §5.103(b) provides that motions made during a hearing may be stated orally upon the record. The provision at 52 Pa. Code §5.103(d)(2) states that a presiding officer should act upon a motion made during a hearing which, if granted, would dispose of a party's rights prior to taking further testimony if the presiding officer concludes that the action is warranted. PGC did not make its oral request for leave to withdraw its petition to intervene during a hearing but rather during a prehearing conference. In addition, the Commission's Rule of Practice and Procedure at 52 Pa. Code §5.94(a) only allows withdrawal of pleadings by a written petition for leave to withdraw the pleading.

However, the provision at 52 Pa. Code §1.2(a) states that the subpart consisting of Chapters 1, 3 and 5 shall be liberally construed to secure a just, speedy and inexpensive determination of every action or proceeding. Furthermore, it allows the presiding officer to disregard an error or defect of procedure which does not affect the substantive rights of the parties. Finally, the provisions at 52 Pa. Code §1.2(c) authorizes the presiding officer to waive any requirement of the subpart when necessary or appropriate if the waiver does not adversely affect a substantive right of a party. Based on these provisions, it is appropriate to grant the PGC's oral request for leave to withdraw the petition to intervene and refer this matter to the Commission's Bureau of Fixed Utility Services as requested by PPL.

Waiving the requirement at 52 Pa. Code §5.94(a) of a written petition for leave to withdraw the pleading will not adversely affect a substantive right of a party. PPL served copies of this application on all involved governmental agencies and municipalities as required by 52 Pa. Code §57.74. PPL also served a notice of the application and relevant maps on all affected property owners as required by 52 Pa. Code §57.74. These entities all have received notice of the prehearing conference and had an opportunity to be heard as required to provide due process. Schneider v. Pa. P.U.C., 479 A.2d 10 (Pa. Cmwlth. 1984). No entities other than PGC and Spring Township indicated any opposition to PPL's application either by appearing at the prehearing conference or by filing a petition to intervene or other document.

Waiving the requirement at 52 Pa. Code §5.94(a) for a written petition will secure a just, speedy and inexpensive determination of this proceeding. Once the requirement at 52 Pa. Code §5.94(a) is waived and PGC's oral request for leave to withdraw its petition to intervene is granted, PPL's application can be referred to the Commission's Bureau of Fixed Utility Services to be processed as an unopposed application. Treating PPL's application as unopposed will dispense with the need for hearings and briefs, saving PPL costs in time and money.

Failing to waive the requirement for a written petition will only punish PPL for PGC's lack of diligence in not promptly filing a written petition by delaying the unopposed application. This would be unjust to PPL. For all of the above reasons, I will waive the requirement at 52 Pa. Code §5.94(a) for a written petition for leave to withdraw the petition to intervene and grant PGC's oral request made at the January 23, 2007 prehearing conference to withdraw its petition to intervene.

Spring Township filed a written statement dated January 23, 2007 that it is withdrawing from the proceeding. Since Spring Township never filed a petition to intervene but only a prehearing memorandum, there is no need for it to file a written request to withdraw a pleading since a prehearing memorandum is not a pleading as defined by 52 Pa. Code §1.8. I will treat Spring Township's written statement as a notice that it will not be participating in this proceeding.

Since PPL's application is now unopposed, it is appropriate to reassign this matter to the Bureau of Fixed Utility Services. I will therefore reassign this matter.

ORDER


THEREFORE,

IT IS ORDERED:

1. That the oral request of the Pennsylvania Game Commission for leave to withdraw its petition to intervene filed in this proceeding is granted.

2. That the Pennsylvania Public Utility Commission's Secretary's Bureau reassign the application filed by PPL Electric Utilities Corporation requesting that the Commission approve the siting and construction of the proposed South Lebanon-Berks 230 KV transmission line in Spring Township, Berks County and East Cocalico Township, Lancaster County and the Berks-South Reading 230 KV transmission line rearrangement in Brecknock Township, Berks County from the Pennsylvania Public Utility Commission's Office of Administrative Law Judge to the Pennsylvania Public Utility Commission's Bureau of Fixed Utility Services for appropriate action.

Date: February 6, 2007


David A. Salapa
Administrative Law Judge

A-110500F0385 APPLICATION OF PPL ELECTRIC UTILITIES CORPORATION

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