COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

ISSUED: January 5, 2007

A-110150F0031
C-20065987
C-20066500

REGINA M SESTAK ESQUIRE
DUQUESNE LIGHT COMPANY
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PITTSBURGH PA 15219

Amended Application of Duquesne Light Company for the Siting and Construction of a 138 kV Transmission Line in Hampton, McCandless and Ross Townships, Allegheny County.

Mark R. Janosko, et al
v.
Duquesne Light Company

Raymond Jacobs
v.
Duquesne Light Company

DOCUMENT FOLDER

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Fred R. Nene. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within **twenty (20) days** of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within **ten (10) days** of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within **twenty (20) days**, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,

James J. McNulty
Secretary

Encls.
Certified Mail
Receipt Requested
MH

See attached list for additional parties of record.

A-110150F0031 Amended Application of Duquesne Light Company for the Siting and Construction of a 138 kV Transmission Line in Hampton, McCandless and Ross Townships, Allegheny County

C-20065987 Mark R. Janosko v. Duquesne Light Company

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Amended Application of Duquesne Light Company For the Siting and Construction of a 138 kV Transmission Line in Hampton, McCandless and Ross Townships, Allegheny County	:	A-110150F0031
Mark R. Janosko, et al. Complainant	:	C-20065987
v.	:	
Duquesne Light Company Respondent	:	
and	:	
Raymond Jacobs Complainant	:	C-20066500
v.	:	
Duquesne Light Company Respondent	:	

INITIAL DECISION

Before
Fred R. Nene
Administrative Law Judge

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I. HISTORY OF THE PROCEEDING

On March 4, 2005 Duquesne Light Company ("Applicant") filed an application with the Commission for the siting and construction of a 4.1 mile 138 kV Transmission Line in Hampton and McCandless Townships, Allegheny County. Copies of the application or notice of the filing were served in accordance with provisions of the Commission Regulations (52 Pa. Code §57.4(b) and (c)). Copies of the application were made available for public examination in accordance with 52 Pa. Code §57.74(d) by placing the same at two public libraries in the area of the proposed line.

Beginning in June 2005 the Commission began to receive and docket protests to the Application. Some of these protests were denominated as formal protests, some were not. Those designated as formal complaints (Mark R. Janosko v. Duquesne Light Company, No. C-20065987 and Raymond Jacobs v. Duquesne Light Company, No. C-20066500) were assigned docket numbers. Duquesne Light filed answers to those complaints which were assigned docket numbers.

On September 7, 2005 the Commission scheduled an initial prehearing conference to be held before the undersigned Administrative Law Judge on October 4, 2005. By notice dated September 14, 2005 the Commission cancelled the prehearing conference due to an anticipated filing of an Amended Application by Duquesne Light.

On October 6, 2005, Duquesne Light filed an Amended Application for the Siting and Construction of a 138 kV Transmission Line in Hampton, McCandless and Ross Townships, Allegheny County at Docket No. A-110150F0031. Notice of this Amended Application were served in accordance with the above cited regulations and copies of the Amended Application were made available for public examination at the Hampton Community Library and at the Northland Public Library.

On March 23, 2006, a prehearing conference was held before the undersigned. Only the Applicant attended. A further prehearing conference was scheduled and held on

April 6, 2006. In addition to counsel for the Applicant, those in attendance included representatives of McCandless and Ross Townships, Bruce Krist, Dave Milkey, Mark Janosko, Gordon Higgens, Terry and Dolores Nypaver, Arthur Gazdik and Oleg Lapets. It was also noted that a protest had been filed by one Pawel Kalinski.

By Prehearing Order dated April 18, 2006 I directed that the individual Protestants and the named Complainants be designated as formal protestants to the Application. The order also established the schedule for public input hearing and for evidentiary hearings on the Application. Duquesne Light was directed to publish notice of the hearings in compliance with the Commission's regulations.

Duquesne Light published the required notices in a timely fashion and, on June 16, 2006 served copies of its direct expert testimony on the designated participants.

Public Input Hearings were held at the Ross Township Municipal Building on June 27, 2006 at 1:00 p.m. and 7:00 p.m., and on June 28, 2006 at 7:00 p.m. A total of 30 residents testified against construction and/or siting of the proposed transmission line.

Evidentiary hearings were held in Pittsburgh on July 11, 12, and 13, 2006. Ms. Barbara Zaun and Mr. James Moorehead who had earlier testified at the public input hearings and who had also filed formal protests in the matter, appeared at the evidentiary hearings and participated in those hearings along with the other previously designated formal protestants. No Commission Bureau other than the Office of Administrative Law Judge participated in this proceeding.

The record consists of an 812-page transcript of the proceeding, three sets of photographs, maps and charts introduced by witnesses at the public input hearings, 33 statements and exhibits sponsored by the Applicant, and 13 exhibits introduced by the Protestants.

Both the Applicant and the Protestants (Mr. Janosko, Mr. Kalinski, Mr. Krist, Mr. Lapets, Mr. Nypaver, Ms. Nypaver, and Ms. Zaun acting together) filed a main brief and a reply brief.

By Order dated October 18, 2006, in order to clarify the docket status of the cases, I directed that the Amended Application (A-110150F0031), the Complaint of Mark R. Janosko (C-20065987) and the Complaint of Raymond Jacobs (C-20066500) be consolidated for purposes of resolution.

The record closed on October 27, 2006 following completion of the transcript.

For the reasons stated in the discussion following the findings of fact, I am compelled to conclude that the Applicant has satisfied the criteria established by the Commission for the granting of authority to site and construct this high voltage transmission line.

II. FINDINGS OF FACT

1. The Applicant Duquesne Light Company (Duquesne Light or DLC) is a Pennsylvania Public Utility.

2. Duquesne Light provides electric utility service to its customers through a system that includes transmission lines operating at 345 kilovolts (kV), 138 kV, and 69 kV; subtransmission lines operating at 23 kV and 11.5 kV; bulk supply substations; and distribution substations. DLC Statement No. 1, pp. 2-3; Ex. HZ-1.

3. Duquesne Light is phasing out its older 4 kV distribution system because it has become obsolete and spare parts are not available, requiring some spare parts to be fabricated at high cost. DLC Statement No. 1, p. 2.

4. Duquesne Light is replacing its 4 kV substations with newer 13-2/23 kV substations. DLC Statement No. 1, pp. 2-3.

5. Wildwood Substation is a 4 kV substation built in 1938. Due to an increase in population, the Wildwood Substation is currently overloaded. DLC Statement No. 1, pp. 1-4, Notes of Testimony (N.T.) 273, 695-697.

6. Additional electrical capacity in the area of the Wildwood Substation (McCandless and Hampton Twps.) is supplied by two bulk substations known as North Substation and Pine Creek Substation, resulting in compromised reliability due to the length of the distribution circuits emanating from these bulk supply substations. DLC Statement No. 1, pp. 3-4, 6-7; Ex. RH-2, pp. 1-4.

7. North Substation and Pine Creek Substation are presently at or over their operating capacity and can no longer supply current and anticipated electrical loads in the Wildwood Substation area. DLC Statement No. 1, pp. 4-5; Ex. HZ-2, pp. 1-5; N.T. 273.

8. Running substations beyond their operating ratings will accelerate loss of life of the equipment and cause premature failure. DLC Statement No. 1, p. 5; N.T. 274.

9. Duquesne Light intends to alleviate the overload on the Wildwood, North, and Pine Creek Substations by replacing the 4 kV Wildwood Substation with a newer higher voltage substation at the same location. Doing so will improve service to Hampton, McCandless, Ross and Shaler Townships. DLC Statement No. 1, pp. 4, 6-7; Ex. RH-2; pp. 1-9.

10. Duquesne Light intends to reconfigure the distribution circuits in the area of the Wildwood Substation following its conversion to 23 kV, which will reduce the load on the Pine Creek and North Substations and reduce the lengths of their distribution circuits. DLC Statement No. 1, pp. 5-7.

11. The new substation will require a power supply by means of a 138 kV line connecting it to Duquesne Light's high-voltage transmission system. DLC Statement No. 1, p. 5; N.T. 275.

12. GAI Consultants, Inc. ("GAI") is a consulting firm that has sited transmission lines for utilities throughout the eastern part of the United States, including Pennsylvania, and in other nations. N.T. 291-292.

13. Duquesne Light contracted with GAI to conduct a line route study and environmental assessment on a variety of alternative line routes between Wildwood Substation and Duquesne Light's 138 kV transmission circuits Z-55, Z-56, Z-20 and Z-21. DLC Statement No. 5, p. 1, 5; N.T. 307.

14. A GAI team consisting of ecologists, planners, cultural resource specialists, engineers and transmission system planners sited seven alternative routes, identified as Routes A, B, C, D, D/C, E, and E-1. DLC Statement No. 5, p. 5; Ex. RH-2, pp. viii-xi, 1-3; N.T. 291, 300, 363, 435.

15. Route A is 4.2 miles long and follows Wildwood Road eastward for approximately 7,480 feet to Pennsylvania Route 8 and then continues southward along Route 8 for approximately 13,000 feet to Pine Creek where it crosses east over Route 8. The route continues for 700 feet on new private property right of way (ROW) to the Anvil Products plant, then turns to the southeast for 1,000 feet along an existing sub-transmission line and terminates at a tap of circuit Z-56 at existing Tower #670. Route A would generally be constructed on public ROW. Ex. RH-2, pp. ix, 1-6, 2-3, 2-4.

16. Route B is 3.1 miles long and follows an existing 23 kV line toward the south for approximately 12,500 feet. At Duncan Avenue, the route continues to the southwest for approximately 3,900 feet following distribution lines along residential streets and taps circuit Z-56 at existing Tower #660. The northern section of Route B would be constructed on the existing 23 kV ROW between Wildwood Substation and Duncan Avenue. The southern section would be constructed on new private property and public ROW. Ex. RH-2, pp. ix, 1-6, 2-4, 2-5.

17. Route C is 4.5 miles long and exits Wildwood Substation to the south crossing Wildwood Road and proceeds on new ROW for approximately 400 feet over private

property before it drops down to the CSX Railroad ROW in the Pine Creek Valley. This route parallels the railroad (in the railroad ROW) for approximately 23,130 feet; a 600-foot section at Mount Royal Boulevard is on new private property ROW. As this route approaches the north circuit (Z-56) of the Cheswick-North line, it proceeds west over existing transmission line ROW for a distance of approximately 400 feet to a tap of circuit Z-56 at existing tower #669.
Ex. RH-2, pp. ix, 1-6, 1-7, 2-5, 2-6.

18. Route D is 3.2 miles long and exits Wildwood Substation toward the west along the south side of the substation access road for approximately 400 feet before turning southward. The route follows an existing 23 kV line along the eastern boundary of North Park for approximately 5,200 feet with an additional 600 feet on new private property ROW to Hemlock Drive. It continues southward for approximately 3,100 feet following existing distribution lines to the end of Laurel Lane; this segment includes a 600-foot section of new private property ROW over the Wildwood Golf Club. This route then proceeds approximately 6,000 feet on new private property ROW before crossing Ferguson Road. The route then follows existing distribution lines for 350 feet. After crossing Linwood Drive, it then proceeds 900 feet over new public ROW, on a paper street behind houses along Coventry Drive, turning east for 300 feet on new private property ROW to a tap of circuit Z-56 at existing tower #656.
Ex. RH-2, p. x; Ex. RH-3, pp. 1-7, 2-6, 2-7.

19. Route D/C is a combination of Route D and Route C, following Route D in the approximate northern half and Route C in the approximate southern half of its alignment. This 4.1-mile long route exits Wildwood Substation toward the west along the south side of the substation access road for approximately 400 feet before turning southward. This route follows an existing 23 kV line along the eastern boundary of North Park for approximately 5,200 feet with an additional 600 feet on new private property ROW to Hemlock Drive. It continues southward for approximately 3,100 feet following existing distribution lines to the end of Laurel Lane; this segment includes a 600-foot section of new private property ROW over the Wildwood Golf Club. Past the south end of Laurel Lane, the route leaves the distribution line ROW, and proceeds on new private property ROW approximately 1,700 feet to connect with Route C along the CSX Railroad line. The route parallels the railroad for approximately 10,100 feet, including

a 600-foot section at Mount Royal Boulevard on new ROW. As the route approaches the Cheswick-North line, it proceeds west approximately 400 feet over transmission line ROW to a tap of circuit Z-56 at existing tower #669. Ex. RH-2, pp. x-xi, 1-7, 1-8, 2-7, 2-8, 2-9.

20. Route E is 4.8 miles long and exits Wildwood Substation toward the west along the south side of the substation access road for approximately 400 feet on existing ROW. The route follows an existing 23 kV line along the eastern boundary of North Park for approximately 3,900 feet. The route turns southwest for approximately 1,900 feet following the existing 23 kV line across North Park and Hemlock Drive. The route turns westward following along the southern boundary of North Park for approximately 1,600 feet, where it enters McCandless Township. The route continues for another 1,000 feet to Peebles Road. The route then follows Peebles Road to the southwest for 2,400 feet, and turns southward following the existing 23 kV line along existing ROW for 1600 feet. It then generally follows Ringeisen Road and Duncan Avenue for 2,000 feet to the major intersection of Thomson Run Road, Duncan Avenue and Ferguson Road. The route continues along the 23kV line southward following Thomson Run Road for 5,100 feet where it enters Ross Township. The route continues to follow Thomson Run Road for another 5,400, then turns east for 200 feet on Duquesne Light property to a tap of its Crescent-North 138 kV circuit Z-20 at existing Tower #647-1, inside the North Substation. Other than the last 200 feet on Duquesne Light property, the route is primarily on ROW owned by Duquesne Light. DLC Statement No. 5, pp. 8-9; Ex. RH-2, pp. xi, 1-8, 2-9, 2-10.

21. Route E-1 is 4.1 miles long and follows Route E to the major intersection of Thomson Run Road, Duncan Avenue and Ferguson Road. Route E-1 then diverges from Route E, turning southeast and following an existing 23 kV distribution line along Ferguson Road for approximately 3,200 feet where it enters back into Hampton Township, then continues to follow Ferguson Road for another 2,300 feet. The route then turns southward for 350 feet along an existing 23 kV distribution line on Linwood Road and then follows a paper street behind houses along Coventry Drive on new construction on public ROW for 900 feet. It then turns east on new construction across a proposed 85-foot private property ROW for 300 feet to a tap of circuit Z-56 at existing tower #656. Ex. RH-2, pp. xii, 1-8, 1-9, 2-10, 2-11.

22. For each of the alternative routes, GAI surveyed the immediate construction ROW, the area adjacent to the proposed ROW, and a four-mile wide corridor, including the area two miles on either side of the centerline of the ROW, for potential impacts by means of field reconnaissance, recent aerial photographs, topographic maps, literature review, and contacts with federal, state and local government agencies. Ex. RH-2, p. 1-3.

23. GAI used 23 resource criteria based upon Commission regulations and traditional environmental assessment criteria to evaluate the seven alternative routes; these criteria were accorded weights established by the Siting Criteria Council for the GPU-DLC 500 kV Transmission line Project; GAI did not consider the relative costs of the alternatives. DLC Statement No. 5, pp. 6-7; Ex. RH-2, pp. xii, 1-3, 3-1, 3-2 through 3-11; Ex. RH-3, p. 3; N.T. 293-298, 308-9, 314-317, 336-337; 624, 630.

24. Based upon these 23 weighted criteria, GAI ranked the seven alternatives in the following order: E, E-1, A, C, B, D/C, and D, and determined that Route E is the most suitable alternative. DLC Statement No. 5, p. 7; Ex. RH-3, p. 4.

25. GAI identified Routes E, E-1, C and A as environmentally acceptable and suitable as licensable alternative routes. Ex. RH-3, p. 4; N.T. 303, 704.

26. GAI conducted a further evaluation of the alternative routes that considered the number of dwelling units within 100 feet of centerline and ranked the seven alternative routes in the following order: E, A, E-1, C, D/C, B, and D. DLC Statement No. 5, pp. 7-8; Ex. RH-3, pp. 5-6; N.T. 300-303, 327, 351.

27. Duquesne Light chose between the available alternatives based upon GAI's environmental impact study, constructability, reliability, and health and safety; comparative cost was not a factor. N.T. 433-435, 458, 662-663, 703-711, 714, 716-744.

28. "Constructability" includes being allowed to construct under agreements, ROWs, etc., and field conditions that impact the feasibility of building the line. N.T. 665-667, 719-720.

29. ROWs owned by Duquesne Light are preferable to road ROW, since construction and vegetation management are limited to the width of the road ROW. N.T. 667-668, 705-706.

30. Health issues include electromagnetic fields (EMF) concerns; safety issues include the safety of workers and the public during the construction of the line and after the line is in place. N.T. 668-676, 718-722.

31. Reliability of the proposed line is critical because it will be the only source of supply to the upgraded Wildwood Substation. N.T. 275-277, 282, 451.

32. Duquesne Light did not select Route A as the preferred route because of constructability and reliability concerns. N.T. 458.

33. Constructing the line on Route A would create problems with traffic control along Route 8, which could not be completely shut down during installation of hundreds of poles, and with being able to maintain service to customers while the line would be being built. N.T. 665-669, 719.

34. Route A is located primarily on road ROW along Wildwood Road and Route 8, where Duquesne Light would not have the right to install steel poles, nor the right to trim vegetation or install anchors beyond the road ROW without acquiring additional private property ROW. N.T. 458-459, 475-476.

35. In road ROW, a public utility has, at most, a defeasible privilege to occupy the road and could therefore be required to relocate facilities at its own expense. N.T. 525.

36. Duquesne Light did not select Route C as the preferred route. Following the Public Input Hearings, at the request of the undersigned presiding officer, Duquesne Light studied Route C further. N.T. 443, 477, 481.

37. Duquesne Light witnesses testified that Route C is not a suitable alternative for the following reasons: (i) Route C would necessitate having to place facilities along or in a trout stream in a flood-prone area on a railroad ROW, with no right to trim adjacent vegetation; (ii) vertical hillsides that may need to be supported and on which there are trees that could fall onto the line, causing damage to equipment and service interruptions; (iii) problems with access to portions of Route C that would require Duquesne Light to repair or rebuild bridges; and (iv) additional specific problem areas such as a box culvert, curves in the route, and a portion of the line that would have to be built in Pine Creek, necessitating approvals from the Department of Environmental Resources (DER). N.T. 443-4, 518, 523, 530, 638-652, 700-703, 710; Ex. PC-11 through PC-15.

38. Reliability problems arising from placing a transmission line in a railroad ROW owned by CSX include: (i) CSX's reluctance to permit parallel occupancies; (ii) CSX's unwillingness to grant permanent rights and willingness to grant only a license revocable on 30 days; (iii) the fact that no immediately available alternative route exists to relocate a high-voltage transmission line from the railroad ROW, which runs between privately owned property, and Commission approval would be required if the line is to be relocated more than 500 feet of the centerline of the Commission-approved route; (iv) CSX's requirement that facilities be placed at the edge of the railroad ROW with not less than 25 feet clearance to the nearest track rail; (v) concerns about whether or not the railroad ROW grants CSX the right to permit Duquesne Light to install transmission facilities; and (vi) the Commission's lack of authority to require CSX to modify its requirements because, with limited exceptions, railroads fall within the jurisdiction of federal rather than state government. N.T. 518-524, 526, 527-530, 537.

39. Duquesne Light initially selected alternative E-1 as the preferred route. DLC Statement No. 6, p. 3; N.T. 435.

40. Duquesne Light subsequently determined that Route E was superior to Route E-1 because the final 1.3 miles of Route E-1 would be located on road ROW by permit, which has inherently more reliability problems because a permit confers only a defeasible privilege, which may require Duquesne Light to have to relocate the facilities at its own cost, and because of vegetation management restrictions. DLC Statement No. 6, pp. 2-3; N.T. 436, 478, 525, 747-748.

41. Duquesne Light believes that Route E is preferable because it is located almost entirely on existing ROW owned by Duquesne Light. DLC Statement No. 6, pp. 3-5; Ex. TS-2, TS-3; N.T. 526.

42. Between September 1923 through March 1931, Duquesne Light obtained ROWs for approximately 2.8 miles of Route E that: (i) generally allow for conveying or transmitting electric current for any and all purposes; (ii) provide the right to trim or remove vegetation; and (iii) do not specify an easement width. DLC Statement No. 6, p. 4; Ex. TS-2, TS-3; N.T. 478-480.

43. Duquesne Light obtained a 50-foot ROW on an approximately 0.9-mile long portion of Route E dated December 31, 1969, for transmission and/or distribution systems that also grants the right to trim or remove vegetation. DLC Statement No. 6, p. 5; Ex. TS-2, TS-3.

44. Duquesne Light obtained a license to install and maintain facilities on approximately 0.6 miles of Route E by agreement with Allegheny County dated January 18, 1983. DLC Statement No. 6, p. 5; Ex. TS-2, TS-3.

45. Duquesne Light obtained verbal permission to construct facilities on a 0.3-mile long section of Route E in Allegheny Memorial Park on July 1, 1930. Since verbal permission may not be legally enforceable, this section of the proposed line is on a public road and therefore could be constructed in the road ROW. DLC Statement No. 6, p. 5; Exhibits TS-2, TS-3.

46. The remainder of Route E is either in road ROW (0.1 miles) or on property owned by Duquesne Light (0.2 miles).

47. Duquesne Light modified Route E as proposed by GAI to supply it through a dedicated line at North Substation rather than terminating at a tap on circuit Z-20; this modification improves reliability by making the proposed line dependent upon a bulk substation with more than one source of supply rather than a single circuit that may be subject to service interruptions. N.T. 275-277, 439, 441, 708-709.

48. The proposed line will be engineered to comply with the National Electrical Safety Code (NESC), Duquesne Light Design Criteria and T & D Standards, and applicable regulations of state agencies, including the Commission, PennDOT, and the Department of Environmental Resources. DLC Statement No. 2, pp. 2-4.

49. The estimated cost of the proposed line is $2,900,000. DLC Statement No. 6, p. 7.

50. Duquesne Light would like to start work on the proposed line in mid-2007, to be completed in the first quarter of 2008, with a proposed in-service date of April 1, 2008. DLC Statement No. 6, p. 7.

51. The proposed line will have three phase conductors and one or two shield wires; each phase conductor will be an 853.7 kcmil 24/13 Aluminum Conductor Alloy Reinforced Conductor (ACAR) and each shield wire will be a #1 AWG Aluminum Wire Equivalent (AWAC) shield wire. DLC Statement No. 2, p. 5.

52. The proposed line will replace an existing 23 kV line and will be supported primarily by wood or steel poles, with some wood h-frames. DLC Statement No. 2, pp. 5, 7; Exhibits PC-1, PC-2, and PC-3.

53. The specific location of the poles has not yet been determined. The poles will generally be 85 feet or shorter (including buried portions). Both Class 1, Western Red Cedar, light brown galvanized steel poles are being considered. DLC Statement No. 2, p. 8.

54. The final location of each pole will: (i) be determined using a PLC-Cadd transmission line design program; (ii) seek a balanced looking line with pole spacing approximately the same as the existing pole line; and (iii) be designed to minimize the impact from transmission structures on property. DLC Statement No. 2, pp. 6-7.

55. During construction, Duquesne Light will avoid service interruptions to customers except as necessary to protect the safety of its workers, and will coordinate traffic obstructions with local police departments to achieve minimal impact. DLC Statement No. 2, p. 8.

56. After construction, Duquesne Light will install reflective pole bands along Thompson Run Road to improve visibility of the poles. N.T. 672-674, 682-683, 725-728.

57. In response to concerns raised by property owners in Shady Oak Circle, Duquesne Light has offered to relinquish its existing ROW in exchange for a grant of ROW at the rear of the properties by the Shady Oak property owners, provided all affected property owners agree; the proposed relocation would be within 500 feet of proposed Route E and, as a result, would not require additional Commission proceedings. N.T. 524-525, 527.

58. Duquesne Light's witness William H. Bailey, who holds a Ph.D. in Neuropsychology from City University of New York, has studied the health effects of electric and magnetic field (EMF) for 25 years and has authored or presented more than 50 scientific papers on EMF and related subjects. He has held academic positions and has served as advisor to state, federal, and international agencies. DLC Statement No. 4, pp. 1-4; Exhibit WHB-1; N.T. 546-547.

59. Dr. Bailey explained that voltage produces an electrical field, measured in "volts per meter" ("V/m"), while current produces a magnetic field, measured in "milligauss" ("mG"). DLC Statement No. 4, p. 2.

60. Anything that uses electricity creates EMF, including small appliances. N.T. 390-391, 552.

61. Raising voltage causes current to go down, which produces lower magnetic fields for the amount of power being transmitted. N.T. 285, 378-9.

62. DLC's witness David W. Fugate of Electric Research & Management, Inc. calculated the impact of the proposed line on EMF. DLC Statement No. 3, p. 1, Ex. DWF-2.

63. Dr. Fugate, who holds a Ph.D. in electrical engineering from Carnegie Mellon University, has over 16 years of professional experience in modeling and measuring EMF, including consulting for utilities, hospitals, universities, architects and government organizations. DLC Statement No. 3, p. 1; Exhibit DWF-1.

64. Dr. Fugate's calculations show that the electric field will increase due to the increased operating voltage of the proposed line; however, electric field calculations are generally higher than actual measurements because electric fields are attenuated by nearly all objects, including telephone/cable lines, trees, and nearby structures. DLC Statement No. 3, pp. 3-4; Exhibit DWF-2, pp. 1-18, 21; DLC Statement No. 4, p. 6,.N.T. 377, 413-5.

65. Operation at a higher voltage reduces magnetic fields; also, location of distribution circuits on the same poles underneath the transmission circuit reduces the magnetic field levels because of the mutual 'cancellation' of the fields from both circuits on the same structure. DLC Statement No. 4, p. 9.

66. Dr. Fugate's calculations indicate that the magnetic fields produced by the proposed 138 kV line will be similar or lower in magnitude than those produced by the existing

23 kV line. DLC Statement No. 3, p. 3; Exhibit DWF-2, pp. 1-18, 21; DLC Statement No. 4, p. 7, N.T. 380-384.

67. According to Dr. Bailey, a comprehensive review of relevant research performed for the World Health Organization and published in 2002, as well as his own review of more recent studies, existing scientific evidence is inadequate to establish a statistical association between EMF and the risk of any disease, with the exception of a weak statistical association between magnetic fields and childhood leukemia. DLC Statement No. 4, pp. 10-15; N.T. 547-599, 605-606.

68. Dr. Bailey offered the opinion that, if magnetic fields were in fact found in the future to create health problems, as Dr. Fugate's calculations demonstrate, the installation of the proposed 138 kV line along Route E would result in lower levels of magnetic field exposure to residents. N.T. 619, 622.

69. Dr. Fugate's calculations show that 40 feet from centerline of the proposed line, audible noise will be essentially inaudible in fair weather and relatively quiet during wet weather. DLC Statement No. 3, p. 4; Exhibit DWF-2, p. 19, 21.

70. Dr. Fugate's calculations show that radio interference will be well below the estimated interference threshold in fair weather and essentially right at the threshold in foul weather at 40 feet from centerline of the proposed line; interference is not expected or would affect only weak signals at the low end of the AM band and would not affect emergency radio communications. DLC Statement No. 3, pp. 4, 5; Exhibit DWF-3, pp. 19-22.

71. Dr. Fugate's calculations show that television interference is low enough that interference is not expected at 40 feet from centerline of the proposed line. DLC Statement No. 3, p. 4; Exhibit DWF-3, pp. 19-22.

72. Dr. Fugate's calculations indicate that interference at ham radio frequencies is possible during wet weather, but not expected. DLC Statement No. 3, pp. 5-6.

73. Dr. Fugate's calculations indicate that EMF levels resulting from the proposed line will be lower than typical recommended safety levels for medical implant devices established by the American Conference of Governmental Industrial Hygienists (ACGIH); nevertheless, information from the manufacturer and medical experts should be used to ensure safe operation. DLC Statement No. 3, p. 6; DLC Statement No. 4, p. 8; N.T. 389.

74. There are no federal or Pennsylvania standards for EMF exposure; standards for new transmission lines at maximum loading have been set by New York and Florida, and the fields from the proposed line would be well below these standards. DLC Statement No. 4, p. 8.

75. According to Dr. Bailey, the highest electric and magnetic field levels associated with the proposed line are well below limits on public exposure recommended by the International Committee on Non-ionizing Radiation Protection and the International Committee on Electromagnetic Safety. DLC Statement No. 4, pp. 4, 9; N.T. 559.

76. On June 6, 2005, representatives of Duquesne Light and GAI conducted a public information session with McCandless Township residents. After describing the project the representatives responded to questions from the public.

77. On June 22, 2006, a similar proceeding was conducted at the Hampton Township regularly scheduled public meeting.

78. There are 116 houses within 100 feet of centerline on Route E. The number of houses similarly situated on the alternate routes are: A-35; B-89; C-11; D-41; D/C-38; and 128 homes on Route E-1. DLC Statement No. 5; table A-1.

79. For safety reasons trees must be cleared for a greater distance from a 138 kV line than from the existing 23 kV line. Tr. p. 678.

III. PUBLIC INPUT HEARINGS

Three public input hearings were held and testimony was taken from concerned residents in the area of the proposed route. Below is a summary of the concerns expressed at those hearings which were conducted at the Ross Township Municipal Building.

June 27, 2006; 1:00 p.m.

Paul Miller, 1945 Shady Oak Circle. The lines run through his back yard bisecting his property and are within 25 feet of his house, 15 feet from his patio. He has concerns for the health of his child. He has talked with representatives of Duquesne Light about relocating a pole to the rear of his property. (Tr. 81)

George Pozzuto. An employee of Equitable Gas Company and on behalf of Equitable Gas he expressed no objection to the proposed line. (Tr. 85)

Donald M. Cook, 8265 Thompson Run Road. He is concerned with the effect of the proposed lines on property value, and the safety situation if a line falls or is struck by a vehicle. (Tr. 87)

Mark R. Janosko, 1649 Penn Oak Drive, (Complainant at Docket No. C-20065987) is concerned about the electromagnetic fields (EMF) caused by the 138 kV lines. His fear is that EMFs may cause leukemia in children. He cites an article in the British Medical Journal from 2005. He believes that electricity demands are increasing in the northern area of the county and that Duquesne Light should modernize its electric grid to meet those demands. However, he believes the lines should be lower voltage or located in less-populated areas. (Tr. 91)

June 27, 2006; 7:00 p.m.

Pawel Kalinski, 8977 Ringeisen Road, Allison Park, testified briefly about the three issues he would later address at the technical hearings scheduled to be held in Pittsburgh on July 11-13, 2006. He expressed a concern for the effect that the transmission line would have on property

values; the potential of electromagnetic fields as a carcinogen agent; and the environmental effect of these lines on people living near them. (Tr. 109-115)

Jim Balik, 2154 Coventry Drive, expressed his belief that the study done to evaluate the various optional routes for the transmission line was flawed. Some routes were not studied in their entirety, and some studies did not account for the differences between the existing and the proposed usage of the rights-of-way. Mr. Balik believes that the company is relying too heavily on a 1991 study prepared for a 500 kV line that was proposed to traverse 268 miles of Pennsylvania. The witness believes that the route along the railroad tracks should be utilized instead of the one elected by the company. (Tr. 116-126)

Kirk Henderson, 8196 Streamside Drive, testified that he resides about 50 yards from the proposed line. He is concerned with the potential health effects of the line on his three children and the 30 or so children who live in his neighborhood alone. He expressed his hope that a suitable location could be found that didn't impact so many residences. (Tr. 127-128)

Robert Kunkel, Thompson Run Road, also concerned for the well being on his three children, all under the age of five. The line is about 300 feet from his house. He agrees with the comments of the earlier witnesses at this public input session. (Tr. 129-130)

Mike Martin, (no address provided). Mr. Martin testified that he believes that the railroad route should be the preferred choice. (Tr. 130-132)

Mark R. Janosko, who had testified at the 1:00 p.m. public input hearing earlier the same day, testified a second time. He expressed his approval of Duquesne Light's intention to improve and modernize its electric grid. However, he disagrees with the chosen route. He restated his concerns about EMF's and the potential carcinogenic effect. He favors different routes. (Tr. 133-137)

Steven Hamrock, no address listed, has lived in the area for 20 years and estimates the existing 23 kV line to be 300 feet from his house. His background is in electrical engineering and he is worried about the health effects of EMF's and about property values. (Tr. 137-138)

Barbara Zaun, 8233 Thompson Run Road, has lived at this location for 19 years. She is concerned with the effect the line might have on the trees in the area, especially as it might affect her view and the general appearance of the road. She is concerned with safety issues and her sense of privacy. Her house is 47 feet from the current 23 kV line. Ms. Zaun introduced a series of photographs showing aerial views of Thompson Run Road. Those pictures will be made part of the record and identified at a later hearing. Ms. Zaun also questions Duquesne Light's "ethical and fiscal responsibility" in choosing the proposed routing. (Tr. 139-145)

June 28, 2006; 7:00 p.m.

Dean Buccilli, 783 Thompson Run Road, indicated that he is prepared to file suit in the event his property value is affected. He is worried about the lines interfering with firefighters who might have to save his house. He wants compensation for outages that may occur during construction of the line and he wants control over placement of poles on his property. He anticipates excessive tree clearing for the project. (Tr. 154-159)

Jeanne Brown, 785 Thompson Run Road, operates a licensed family daycare facility for children aged five years and younger from her home. Her home is located 40 or 50 feet from the existing line. Ms. Brown believes that parents will not use her daycare services simply because of the potential EMF danger. She believes the 138 kV line will cause her to lose her livelihood and her home. She has been operating from her home for eight years, usually with five children in her care daily. (Tr. 159-162)

Gordon Higgins, 1925 Shady Oak Circle, objects to the proposal because of the reduction of his and his neighbor's property values. The lines are health hazards and unsightly. He says he has done construction work in third-world countries and that in those countries any transmission line over 100,000 volts must be isolated by a clearance of 100 feet. (Tr. 162-164)

Terrence J. Nypaver, 1956 Shady Oak Circle, estimates that 60% of the proposed route is through residential areas. His home is 80 feet from the line. The lines go directly over his neighbor's house. The house recently was on fire and he's concerned with the safety of firefighters. Mr. Nypaver states that there are three lines near his house. The high poles, he says, will diminish his monetary and aesthetic value of his property. He has safety concerns regarding car accidents and medical devices. A map of the area, photographs and charts were received into evidence from Mr. Nypaver. (Tr. 165-177; Nypaver Ex. A)

Tom Negle, 1959 Shady Oak Circle, testified that Route C, the line which follows the CSX railroad should be the preferred route. He reasons that the cost for Duquesne Light to use the CSX route might be expensive but it would cost less than the value of all the $200,000 homes which would be devalued along the chosen option. (Tr. 178-181)

Francis Cooper, 1645 Pin Oak, along with his wife Nancy, think that cost should not be a factor in deciding which route to choose. He believes that the unpopulated CSX route is the best route and that electric customers should be willing to pay what is needed to provide them with electricity. (Tr. 184)

Barbara Zaun, (previous witness) introduced, without objection, Zaun Exhibits A through S, aerial photographs downloaded from the internet of the Thompson Run Road substation, to Ringeisen Road, Shady Oak, High Meadow Road and Shady Oak Circle. The purpose of the exhibits is to show the residential nature of the route. Ms. Zaun stressed the point that the alternate railroad route had no homes located on it. Ms. Zaun also introduced a list of signatures of neighbors expressing opposition to the selected route. (Tr. 184-204; Zaun Exhibits A–S)

Robert Watkins, 1933 Shady Oak Circle. The existing line is 40 feet from Mr. Watkins' front door. His patio, where his 2-1/2 year old son plays, is directly below the line. His concerns are for safety and the health of his child. He feels that the proposed line will force him to sell his property at a loss and require him to move. He believes that, like cigarette smoke, EMF's may, in the future, be shown by science to cause disease. Mr. Watkins prefers the CSX route. He

knew there were power lines on his property when he bought his house but he never thought that there would be high-voltage lines there in the future. (Tr. 205-213)

Beverly Gruarin, 8110 Thompson Run Road, appreciates and fears for the future of the tall oak trees on her property. She testified that on the very day of the public input hearing she saw an electric line sparking and causing a branch to fall onto Thompson Run Road. She fears what harm a 138 kV line might cause. The harm will be financial a well as a detriment to the quality of life. (Tr. 213-218)

James Moorehead, 1650 Pin Oak Drive, testified that he has two small children and that the existing line is about 50 feet from his home. He is concerned for the health of his children and for his property value. He is also concerned about automobile accidents involving the utility poles. The taller poles will spoil the aesthetics. (Tr. 219-226)

Cindy Moorehead, 1650 Pin Oak Drive, is concerned about the safety of her children, both during installation of the poles and afterwards because they wait for their school bus underneath the power lines. (Tr. 226-228)

Gene Maire, 769 Thompson Run Road, testified about his concerns for EMF's. He described how Thompson Run Road has changed since his parents purchased a house there in 1947. The road has widened, and the poles have gotten more wires attached to them. He believes that the company does not maintain their existing poles or equipment. He has seen many automobile accidents on the road. Property values have decreased. (Tr. 228-235)

Darlene Loebig, 671 Thompson Run Road, affirmed her support for those who spoke against the proposed line especially for her neighbor's young children and for the safety of the Berkley Hills Firefighters. She questioned the morality of jeopardizing health for the sake of corporate profit. (Tr. 235-236)

Joe Loebig, 671 Thompson Run Road, testified that his home (with his wife Darlene) is less than 50 feet from the line. He urged the Commission to consider choosing another route. (Tr. 236-238)

Bruce Krist, 3954 North Monet Court, testified that he believed Duquesne Light was ignoring the residents' concerns. He questions the company's motive in amending its initial application. He notes that only residents and not businesses appeared to protect the line siting. He referred to a recent car-to-utility pole accident, and warned that bigger poles will mean bigger accidents. He believes that other routes would be safer. (Tr. 238-245)

Daria Brown, 1635 Pin Oak Drive, stated that there are 11 homes within 100 feet of the center line on Route C and there are 116 homes the same distance from the center line of Route E (the line chosen by Duquesne Light Company). Ms. Brown has two small children and is concerned for the health effects of EMF's. She is also concerned about property values. (Tr. 246-248)

Eric Schroeder, 8281 Thompson Run Road, addressed the safety issue as he sees it. He is a nurse anesthetist and witnessed a person die from electrocution from an accident near his house a couple of years ago before a traffic light was installed. The road is not straight and he has helped out with medical assistance when a pole was sheared off near the entrance to the Synagogue. He said that if the poles are higher the accidents will be more dangerous. (Tr. 248-251)

Joanne Segal, 787 Thompson Run Road, tried to sell her house eight years ago and it was on the market for over a year, but the road is like a highway and that's the reason she couldn't sell. Her mailbox has been knocked over once and garbage cans replaced twice. She is worried about the health of her children. She wants the company to choose another route. (Tr. 251-253)

Richard Jacobs, (Complaint No. C-20066500), 8110 Thompson Run Road, testified as to his concern for how the proposed line would affect the quality of life in the area, including, but not limited to the value of the residents' property.

IV. DISCUSSION

Public utilities are required to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the Commission." 66 Pa. C.S.A. §1501.

In deciding whether or not to approve an application for the siting and construction of a HV transmission line or any portion thereof, the Commission's regulations are specific as to the criteria upon which it will base its determination. Initially it is noted that the regulations define a HV transmission line or HV line as "an overhead electric supply line with a design voltage greater than 100,000 volts". 52 Pa. Code §57.1.

Applications for siting and constructing HV lines must be considered in light of a record consisting, among other things, of evidence relating to:

> (1) The present and future necessity of the proposed HV line in furnishing service to the public.
>
> (2) The safety of the proposed HV line.
>
> (3) The impact and the efforts which have been and will be made to minimize the impact, if any, of the proposed HV line upon the following:
>
> (i) Land use.
> (ii) Soil and sedimentation.
> (iii) Plant and wildlife habitats.
> (iv) Terrain.
> (v) Hydrology.
> (vi) Landscape.
> (vii) Archeologic areas.
> (viii) Geologic areas.
> (ix) Historic areas.

(x) Scenic areas.
(xi) Wilderness areas.
(xii) Scenic rivers.

(4) The availability of reasonable alternative routes.

52 Pa. Code §57.75(e)(1-4)

After gathering and considering evidence on the matters listed above, the regulations provide that:

> (a) The Commission will issue its order, with its opinion, if any, either granting or denying the application, in whole or in part, as filed or upon the terms, conditions or modifications, of the location, construction, operation or maintenance of the line as the Commission may deem appropriate. The Commission will not grant the application, either as proposed or as modified, unless it finds and determines as to the proposed HV 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 available technology and the available alternatives.
>
> (b) A Commission order granting a siting application will be deemed to include a grant of authority, subject to the provisions of law, to locate and construct the proposed HV transmission line within a corridor consisting of the area of 500 feet on each side of the centerline of the proposed HV transmission line unless the applicant requests and the Commission approves a corridor of a different size. A proposed HV transmission line may not be constructed outside the corridor, except upon petition to and approval by the Commission.

52 Pa. Code §57.76(a) and (b)

As the Applicant, i.e. the party seeking an Order from the Commission, Duquesne Light Company bears the burden of proof in this proceeding. See 66 Pa. C.S.A. §332(a). The

"burden of proof" means that the Applicant has the duty to show by a preponderance of the evidence that the proposed HV line meets the four criteria set forth in 52 Pa. Code §57.76(a) and (b).

Once the existence of a fact or facts have been established by prima facie evidence, the burden of rebutting the prima facie case shifts to the adverse party. Milkie v. Pa. PUC, 768 A.2d 1217 (Pa. Cmwlth. 2001). If the evidence presented by the Protestants is of co-equal value or "weight", the burden of proof has not been met. The Applicant would then have to provide some additional evidence to rebut that of the Protestants.

After weighing the testimony and evidence presented by the parties and after a thorough review of the transcript, exhibits and briefs filed by the parties, I am compelled to conclude the Application meets the standards set forth in the Commission's regulations and that the Application should be granted.

This decision will consider those four elements which the regulations require to be proven before the Commission will grant an application for siting and constructing a HV transmission line.

A. Is there a need for the proposed HV line?

Duquesne Light's evidence supporting the need for the proposed line is substantial and virtually unchallenged. It is, therefore, the easiest criterion to address.

Homer R. Zucconi, the company's system planner explained how the Wildwood Substation, which was built in 1938, is experiencing increasing difficulty in its ability to supply reliable electricity from its existing 23 kV subtransmission system. The Wildwood substation is supplied from the 23 kV subtransmission system. The 23 kV subtransmission system is in turn supplied from the larger 138 kV transmission substations called North and Pine Creek Substations. The distribution service voltage at Wildwood is 4 kV. Portions of the area served by Wildwood Substation were largely rural. But as the area continued to develop into larger

commercial and residential areas the original 4 kV distribution was no longer able to provide additional capacity. During the 1970s, the area continued to be supplied by Wildwood Substation and a newer 13 2/23 kV distribution system. These circuits originate from the 138 kV transmission North and Pine Creek Substations.

Mr. Zucconi's testimony describes how the electrical load on the system continued to grow in the late 1990s and that maximum loading has occurred at peak times on the original 4 kV Wildwood Substation, the newer 13 2/23 kV distribution circuits as well as the main 138 kV transmission substations. Mr. Zucconi concludes that, in order to provide adequate electrical capacity and reliable service to the area described, it will be necessary to upgrade the existing 23 kV Wildwood Substation to 138 kV. The new upgrade will eliminate the older kV circuits and will also eliminate overloads on the existing 13 2/23 kV circuits by establishing new 13 2/23 kV distribution circuits at the upgraded Wildwood Substation. Finally, he says, the upgrade will eliminate overloads on the North and Pine Creek 138 kV substations by transferring portions of distribution load to the newly upgraded Wildwood Substation. Pine Creek Substation is now at its operating limit during the summer months and future load growth will overload the substation. Both North Substation and Wildwood Substation are already overloaded. Running substations beyond their operating ratings will accelerate loss of life of the equipment and cause premature failure.

The Protestants' objections to the issue of need for the transmission line do not contradict the company's testimony. The objections seem to be that the need may exist but that need is in some area other than that over which the proposed 138 kV transmission line will be positioned.

I find that the testimony supports a finding that the proposed line, however it is configured, and wherever it is sited, is, indeed necessary to provide reliable electric service to Duquesne Light's utility customers.

B. Will the proposed HV line create an unreasonable risk of danger to the health and safety of the public?

The risk of a health and safety danger being created by this Application is of major concern to those residing along the proposed route. As expressed in the public input testimony and at the technical hearings, the Protestants to this line are concerned mainly about the possible harmful effects of EMFs. The testimony on this issue was intense and emotional because of fear for what effect EMFs might have on the public, especially on young children.

Duquesne Light provided testimony that the proposed line will be constructed according to the requirements of the National Electrical Safety Code (NESC). This is a code published by the Institute of Electrical and Electronic Engineers which governs practical safeguarding of persons during the installation, operation or maintenance of electrical supply lines. The principal engineer for the company, Paul G. Cass, testified that Duquesne Light's criteria for transmission line design meet or exceed the NESC criteria.

David W. Fugate, a consulting engineer with a Ph.D. in Electrical Engineering produced an electric and magnetic field analysis for the Wildwood Transmission line project. This work was performed for GAI Consultants, a firm retained by Duquesne Light to conduct a line route study and environmental assessment on a variety of alternative routes.

A particular aspect of Dr. Fugate's study concerned an electric and magnetic field effects analysis for the proposed replacement of an existing 23 kV subtransmission line with a 138 kV transmission line. Included in this analysis were calculations of EMFs. Dr. Fugate's report concluded that operation at a higher voltage actually reduces magnetic fields, and that the location of distribution circuits on the same poles underneath the transmission circuit reduces the magnetic field levels because of mutual cancellation of the fields from both circuits on the same structure. According to Dr. Fugate's study the magnetic fields produced by the proposed 138 kV line will be similar or lower in magnitude than those produced by the existing 23 kV line.

To address the scientific evidence relating EMFs effect on health issues, Duquesne Light offered the testimony of William H. Bailey, Ph.D., a research and consulting scientist specializing in human exposure assessment and in the health sciences. Dr. Bailey's credentials and over 25 years' experience in research and teaching in this field is impressive. His research into EMFs includes laboratory, exposure assessment, and epidemiological studies concerning alternating current (AC) electric magnetic fields and studies on direct current (DC) electric fields and air ions. Dr. Bailey testified that his own review of the subject as well as a comprehensive review of relevant research performed by the World Health Organization published in 2002, existing scientific evidence does not establish a statistical association between EMF and the risk of disease, except for one exception. That exception, Dr. Bailey testified is in the area of childhood leukemia. There does exist, in the opinion of researchers, a statistical association between magnetic fields and childhood leukemia. The statistical association is acknowledged but it is described as a weak association.

It is this concern that prompted much of the opposition to the line from the residents who will have to live within its shadow. The Protestants argue that EMFs may at some future time be linked to this or some other childhood or adult disease in the same way tobacco has become recognized over the years as a carcinogen. Dr. Bailey agrees that even the smallest statistical health risk should not be ignored. But his testimony makes clear that the scientific evidence, while statistically associating EMFs with childhood cancer, is not sufficient to conclude that a causal relationship exists between EMFs and the disease.

In the event that future scientific research were to recognize a causal connection between a certain level of EMF and the creation of health problems, Dr. Bailey pointed out that Dr. Fugate's calculations demonstrate that the proposed 138 kV line, because of its configuration, would result in lower EMF exposure to the residents than they are now experiencing.

I find that the scientific research in the area of EMFs and human health is inadequate for one to do more than speculate that electric and magnetic forces cause human disease. The data, as Dr. Bailey states, does not merit that EMFs be listed as "carcinogenic to

humans", nor can it be categorized as "probably carcinogenic to humans". Likewise, EMF data cannot be categorized as "probably not carcinogenic to humans". (DLC Statement No. 4, p. 14)

In 1991, the Commission addressed the issue of EMFs in a case then before it. The Commission stated:

> Although the Commission has not independently investigated the issue of EMF, it is well apprised of current scientific thought on this subject. We, therefore, cannot agree with the Petitioners' conclusion that EMF from high voltage transmission lines represents an acknowledged health risk. The overwhelming consensus in the technical community, after review of available epidemiological and scientific studies, is that there is no conclusive evidence of the adverse health effects associated with EMF from electric transmission lines. Re Emergency Petition of Non-Noticed Property Owners, No. A-110500 F.055, Order adopted at Public Meeting on March 6, 1991; entered March 8, 1991; 74 Pa. P.U.C. 542, 1991 WL 476317 (Pa. P.U.C.)

As noted above, the state of scientific thought regarding the health effects associated with EMFs from electric transmission lines has become no more illuminating in the intervening years.

I believe that the record supports a conclusion that the siting and construction of this line will not create an unreasonable risk of danger to the health and safety of the public.

C. Is the proposed HV transmission line in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth?

The Commission's regulations require that it consider the impact and efforts which have been and will be made to minimize the impact, if any, of the proposed HV line upon the following:

(i) Land use.
(ii) Soil and sedimentation.

(iii) Plant and wildlife habitats.
(iv) Terrain.
(v) Hydrology.
(vi) Landscape.
(vii) Archeologic areas.
(viii) Geologic areas.
(ix) Historic areas.
(x) Scenic areas.
(xi) Wilderness areas.
(xii) Scenic rivers.

52 Pa. Code §57.75(e)(3)

Robert J. Houston, an employee of GAI Consultants, and a qualified expert witness, conducted a line route study and environmental assessment of the alternate line routes which were considered in regards to this project. After explaining the methodology used in his review and evaluation of the various potential routes, Mr. Houston concluded that the proposed route has "the lowest environmental impact score" and is "the most suitable alternative for the proposed transmission line project" (Exhibit RH-2, p. 3-11; DLC Statement 5, p. 7)

I find no evidence in the record to indicate that the proposed route will impact unique geological, scenic or natural areas. The section of line transversing a section of North Park will follow an existing ROW where a 23 kV line already is in place and operational. The proposed line crosses Pine Creek and an unnamed tributary of Pine Creek but, because the route is adjacent to existing roadways in the footprint of an existing line in the ROW already owned by Duquesne Light, there will be no additional environmental impact.

In fact, the proposed route, 4.8 miles in length, is located entirely on existing ROW or Duquesne Light substation property. The existing ROW is either in grass land (primarily in North Park) or transportation use throughout the remainder of the route. Since the ROW is already cleared, there will be little impact from additional clearing required.

The GAI Consultants' Environmental Assessment Line Route Study (Exhibit RH-2) did discover the existence of a wildflower rare in Pennsylvania known as the snow

trillium. The Pennsylvania Department of Conservation and Natural Resources had a recorded sighting of the snow trillium in Hampton Township in 1993. But the plant sighting was not in the vicinity of the proposed route. The July 2003 field investigations did not reveal that the snow trillium was present in an area where it would be impacted. The discovery and discussion of this plant by the GAI Environmental Assessment and Line Route Study is, for me, an example of that study's thoroughness.

Andrew Berchin, Supervisor of Forestry for Duquesne Light, is a certified arborist with a degree in environmental conservation. Mr. Berchin testified that in cases involving new line installations, the company reviews all properties on the line including every single tree and determine how each will be handled. The company attempts to work with property owners regarding vegetation removal or management.

In my opinion, since the proposed route for this transmission line will follow in the ROW of an existing lower voltage line, its environmental impact will be minimal.

D. Will the proposed HV line, sited and constructed at Route E have a minimum adverse environmental impact?

GAI Consultants, hired by Duquesne Light to conduct a route study and environmental assessment on a variety of alternate routes in conjunction with this project, identified seven alternative routes for this proposed Wildwood Substation project. Those alternatives are set forth in detail at Findings of Fact Numbers 15 through 21.

The overall objective of the route selection process was to site "an environmentally sound, economically feasible, and licensable route within the study area between Wildwood Substation and Duquesne Light Company's 138 kV transmission lines." Ex. RH-2, p. 3-1. Comparative costs of the different routes were not a factor in the company's selection of the best alternative route. The company's most important criteria in this selection process is claimed to be the reliability of the completed line since it will be the only source of

power to the Wildwood Substation. Constructability and environmental impact were also significant criteria, but reliability remained the company's key factor.

The GAI Consultants recommended and Duquesne Light Company selected and applied for Commission authority to site and construct the line on Route E. The record shows that GAI completed a comprehensive analysis of the suitability of the seven alternative routes. GAI's summary of the route analysis is found in its report at Ex. RH-2, pp. 3-9 to 3-11:

> Route A. Route A is the third most desirable route from an environmental resource perspective. This route has the highest impacts to urban areas (commercial/densely populated). The route is located adjacent to major roadways for nearly its entire length, impacting a heavily developed section of Route 8 and the intermittent development along Wildwood Road. Conversely, Route A has little impact on natural resources including vegetation, wildlife, streams, and most other natural systems. This route has a moderate low score for construction on new ROW.
>
> Route B. Route B is the fifth most desirable route considering overall effects on environmental resources. It has relatively high impacts to adjacent residential areas. The route is located on existing ROW for 84 percent of its length and, therefore, impacts to natural resources would be less than for routes having large amounts of new ROW.
>
> Route C. Route C is the fourth most desirable route considering effects on environmental resources. It is located almost entirely on existing railroad ROW, minimizing potential impacts. As illustrated in Table 3-4, Route C had a low impact score for commercial/densely populated areas crossed. The railroad ROW and Route C avoid residential areas, one of the highest-weighted resource criteria. Visual impacts are considered lowest since nearly all of the route is in the Pine Creek valley, shielded from view for much of its length. Also, since Route C would be located near the edge of railroad ROW, impacts to forest land would be less than on new ROW.
>
> Route D. Route D is the least desirable route (seventh) considering effects on environmental resources. For one-half of its length, this route is located on new ROW and, therefore, impacts to all resources studied would be greater than for routes following existing ROW. This route has the highest impact score for non-existing ROW impacts. Two other recreational areas are involved with this route. North Park is crossed and the Wildwood Golf Club is crossed and paralleled by this route. It also has the highest score for forested area cleared and new ROW required.

The route also crosses a building of the old Wildwood Mine (currently in commercial use) as it spans Wildwood Road and adjacent Pine Creek.

Route D/C. Route D/C is the sixth most desirable route considering effects on environmental resources. It has the highest impact scores for other recreational areas, and has substantial impacts in forested land cleared categories (third highest). Otherwise, it follows subtransmission line and distribution line ROW or railroad ROW for much of its length, with about 0.6-mile of non-existing ROW located where the route transitions from Route D to Route C, and at the southern terminus.

Route E. Route E is the most desirable route considering effects on environmental resources. Route E has the lowest score for non-existing ROW since it is located entirely on existing ROW or substation property. No commercial/densely populated areas or residential land or roads are crossed on non-electric line ROW. Since it follows existing ROW there are little impacts to forest land.

Route E-1. Route E-1 is the second most desirable route considering effects on environmental resources. It also is tied with Route E for the least impacts to commercial/densely populated areas, and is relatively low in impacts to residential areas on new ROW. The fact that it is primarily on existing ROW has minimized impacts to many natural resources categories.

Because the selected route (Route E) is located primarily on ROWs currently owned by Duquesne Light, that route is superior to all the other routes when it comes to constructability. The company will have clear legal right to construct and maintain the line. The company's ROW agreements allow it to transmit electric power along the selected route. It is already doing so at a voltage of 23 kV and, as an easement holder, it has the right to reasonably expand its use of the ROW, as long as the expansion is within the scope of the original easement and remains within the bounds of the ROW. See: Hoch v. Philadelphia Electric Company, 492 A.2d 27 (Pa. Super. 1985).

Being located on Duquense Light's ROW further enhances reliability of the line in that vegetation management can best be accommodated where the company owns the right to site, construct, and keep the lines clear of vegetation which, if ignored, could cause the transmission line to fail.

The company also demonstrated that the selected route further enhances reliability because it allows it to terminate the line at a tap in North Substation, which has more than one power source. The other alternative routes tap transmission circuits, making the other routes more vulnerable to loss of power in the event the transmission circuit should experience a service interruption.

Route A presents construction and maintenance problems which make it a less desirable route. It impacts a heavily developed section of Route 8 and intermittent development along Wildwood Road for nearly its entire length. This would present adverse conditions for both construction and maintenance. Route A would also require Duquesne Light to purchase new property ROW for some 700 feet. Traffic on Route 8 would have to be completely stopped to install poles. This would compromise both worker and driver safety as well as increase the risk of customer service interruptions, and the installation of anchors would be limited to the road ROW. Even when road ROWs are applied for and received, such rights are limited and utilities can be forced to relocate facilities at their own expense.

Routes B, D, and D/C are considered by GAI Consultants to be the least desirable routes because of the impact each would have on environmental resources. For this reason, these routes were not considered to be practical options.

At first glance Route C would appear to be the most appropriate route to choose. Route C runs almost entirely along an existing railroad ROW. It impacts a scarcely populated area, and would have low visual impact. However, there are substantial drawbacks to the construction of this line along Route C. The railroad ROW is located almost entirely along a trout stream in a flood prone area. Duquesne Light would be required to purchase new ROWs and the railroad will not convey permanent rights. Any ROW conveyed would be subject to relocation upon 30-day notice by the railroad. In addition the railroad would require that the utility place its facilities at the edge of the railroad ROW, at least 25 feet from the nearest track rail. The terrain does not accommodate such restrictions. Four bridges would have to be extensively altered to accommodate access to facilities within the ROW. Vertical hillsides would allow vegetation, especially trees, to endanger the transmission line, threatening

equipment damage and power interruption. And portions of the line would have to be built in Pine Creek itself, a situation requiring Department of Environmental Resources approval. All of these factors combine to place Route C much less favorable than the proposed route. Route C is not constructable.

The GAI Consultants concluded that Route E-1 was the second most desirable route considering effects on environmental resources. While both Route E-1 and the selected route (Route E) run through residential areas there are 128 houses within 100 feet of the ROW centerlines on Route E-1, and 116 houses similarly located along Route E.

The GAI report found Route E to be the most suitable alternative from an environmental perspective. This route is also superior to the other routes in terms of constructability because it is located entirely on Duquesne Light property or within Duquesne Light owned ROWs. These ROWs grant the company the right to convey electric power and do not limit the level of voltage in those lines. As an easement holder, Duquesne Light has the right to reasonably expand its use of the ROW, as long as the expansion is within the purpose of the original easement and does not infringe past the scope of the ROW. Bodman v. Bodman, 321 A.2d 910 (Pa. 1974). In West Penn Power Company v. Bruni, 387 A.2d 1316 (Pa. Cmwlth., 1978), the Commonwealth Court concluded that West Penn Power's replacement of wooden poles carrying 12 kV and 25 kV lines with steel poles carrying a 138 kV line did not exceed the rights granted in the right-of-way agreement.

Duquesne Light's ROWs permit vegetation management for the entire length of the proposed line. This inherent right to trim, prune and even remove vegetation that might come into physical contact with the proposed line, allows Duquesne Light to prevent failure of the transmission line, and thus assure the reliability of a constant electric power supply to its customers.

The proposed route further enhances the prospect of reliability because it allows the company to terminate the line at a tap in North Substation, which has more than one power source. Contrast this with the other alternative routes which tap transmission circuits. Tapping

into a circuit makes a line vulnerable to a loss of power should the transmission circuit experience a service interruption.

The residents living along the ROW delineated by Route E vigorously voiced their opposition to the siting and construction of this transmission line. The testimony of those who spoke out in opposition to it is summarized above. The cold black-on-white accounts of their statements do not convey the strong emotional nature of the response engendered by the company's application. A general concern about the diminution of property values resulting from the line was forcefully expressed. Likewise, concern about the possible harmful effects of electromagnetic force from higher voltage transmission lines, especially as a danger to young children, was vehemently expressed.

The Protestants to this application, and their representatives, especially Mr. Janosko, Mr. and Mrs. Nypaver, Misters Kalinski, Lapets and Krist along with Ms. Zaun attended the technical hearings and cross-examined the company's witnesses on their testimony in support of the application. Collective legal briefs were filed by the Protestants.

I have given careful attention to the testimony and the positions of both sides to this proceeding. My recommended decision must be based on the record before me and on the controlling law regarding the subject matter of the application. The possible diminution in property values to those affected by this upgrade in the size of the power lines already on the subject property and within an existing ROW is not a criterion requiring the Commission to deny this application. The possible deleterious effects of EMFs on human beings, while troublesome, has simply not been proven to be a medical fact. It is equally possible that EMFs currently produced by the existing line would be reduced by the construction of the line described in the application.

V. CONCLUSION

I am compelled by the evidence in this record to conclude that the Applicant has met the burden required by Section 57.76 of the Commission's regulations (52 Pa. Code §57.76)

for the siting and construction of this 138 kV transmission line along the route proposed. The record establishes that there is a need for the line. The unrebutted testimony of Duquesne Light's expert witnesses is convincing evidence that the current state of scientific study is insufficient upon which to conclude that exposure to EMFs presents an unreasonable risk of danger to public health or safety. Granting this application is appropriate because the proposed line violates no law or regulation providing for the protection of the Commonwealth's natural resources. And, overall, considering the electric power needs of the public, the state of available technology and the available alternatives, I find that the granting of this application will have minimum adverse environmental impact.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction to consider and rule on this application.

2. Public utilities are required to furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and to provide service that is reasonably continuous and without unreasonable interruptions or delay. 66 Pa. C.S.A. §1501.

3. Duquesne Light Company, as the Applicant seeking Commission approval for the siting and construction of this proposed HV transmission line, bears the burden of proving that it is in compliance with the Commission's regulations regarding the siting and construction of such lines. 66 Pa. C.S.A. §332(a).

4. As required by Commission regulations, the Applicant has met its burden of proving that: 1) there is a need for the proposed HV transmission line; 2) that the line will not create an unreasonable risk of danger to the health and safety of the public; 3) that the line is in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth; and 4) that the line will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and available alternatives. 52 Pa. Code §57.76.

VII. ORDER

THEREFORE,

IT IS ORDERED:

1. That the Amended Application of Duquesne Light Company for the Siting and Construction of a 138 kV Transmission Line in Hampton, McCandless, and Ross Townships, Allegheny County, at Docket No. A-110150F0031 is hereby granted.

2. That the transmission line as proposed will be constructed and maintained in accordance with the National Electrical Safety Code.

3. That the transmission line as proposed will be constructed, operated, and maintained in compliance with all applicable statutes and regulations for the protection of the public and the natural resources of this Commonwealth.

4. That the complaint of Mark R. Janosko, et al. v. Duquesne Light Company at Docket No. C-20065987 and the complaint of Raymond Jacobs v. Duquesne Light Company at Docket No. C-20066500 are dismissed.

5. That all formal protests filed in regard to this Amended Application are dismissed.

Date: December 5, 2006

Fred R. Nene

Fred R. Nene
Administrative Law Judge

Act 294

Case Identification:	**A-110150F0031; Amended Application of Duquesne Light Co. For the Siting and Construction of a 138 kV Transmission Line in Hampton, McCandless and Ross Townships, Allegheny County C-20065987; Mark R. Janosko, et al. v. Duquesne Light Co. and C-20066500; Raymond Jacobs v. Duquesne Light Co.**
Initial Decision By:	**ALJ Fred R. Nene**
Deadline for Return to OSA:	**January 22, 2007**

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Case Identification:	**A-110150F0031; Amended Application of Duquesne Light Co. For the Siting and Construction of a 138 kV Transmission Line in Hampton, McCandless and Ross Townships, Allegheny County C-20065987; Mark R. Janosko, et al. v. Duquesne Light Co. and C-20066500; Raymond Jacobs v. Duquesne Light Co.**
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Commissioner Date

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Case Identification:	**A-110150F0031; Amended Application of Duquesne Light Co. For the Siting and Construction of a 138 kV Transmission Line in Hampton, McCandless and Ross Townships, Allegheny County C-20065987; Mark R. Janosko, et al. v. Duquesne Light Co. and C-20066500; Raymond Jacobs v. Duquesne Light Co.**
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Commissioner Date

Act 294

Case Identification:	**A-110150F0031; Amended Application of Duquesne Light Co. For the Siting and Construction of a 138 kV Transmission Line in Hampton, McCandless and Ross Townships, Allegheny County C-20065987; Mark R. Janosko, et al. v. Duquesne Light Co. and C-20066500; Raymond Jacobs v. Duquesne Light Co.**
Initial Decision By:	**ALJ Fred R. Nene**
Deadline for Return to OSA:	**January 22, 2007**

This decision has not been reviewed by OSA.

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2007 JAN 11 AM 8:50
OFFICE OF SPECIAL ASSISTANTS

* * * * * *

I want full Commission review of this decision.

_____ _____

Commissioner Date

I do not want full Commission review of this decision.

Terrance J. Fitzpatrick

_____ 1/9/07

Commissioner Date

DATE: February 1, 2007

SUBJECT: A-110150 F0031

TO: Office of Administrative Law Judge
Susan Hoffner

FROM: James J. McNulty
Secretary
nvl

DUQUESNE LIGHT COMPANY
HAMPTON AND MCCANDLESS TOWNSHIP KV LINE

The Initial Decision has been served upon all parties of interest.

Neither exceptions nor requests for review from the Commissioners have been received by the Commission. This matter is referred to your office for whatever action you deem necessary.

cc: Office of Special Assistants

P.S. Please note that exceptions or reply exceptions may come in timely with certificates of mailings. A second memo will not be released for these exceptions.