



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

IN REPLY PLEASE  
REFER TO OUR FILE

ISSUED: May 4, 2007

C-20066233

C-20066236

CLIFFORD B LEVINE ESQUIRE  
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ONE OXFORD CENTRE  
301 GRANT STREET 14<sup>TH</sup> FLOOR  
PITTSBURGH PA ,15219-1425

Ohioview Infrastructure, Inc.  
v.  
Duquesne Light Company

**DOCUMENT  
FOLDER**

Groveton Housing Partnership, LP  
v.  
Duquesne Light Company

TO WHOM IT MAY CONCERN:

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

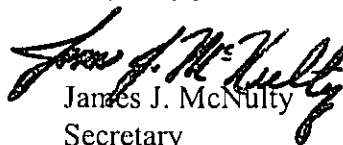
If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2<sup>ND</sup> FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, 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  
JF

REGINA M SESTAK ESQUIRE  
DUQUESNE LIGHT COMPANY  
411 SEVENTH AVENUE 8-2  
PITTSBURGH PA 15219

**BTL**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ohioview Infrastructure, Inc.	:	
	:	
v.	:	C-20066233
	:	
Duquesne Light Company	:	
Groveton Housing Partnership, LP.	:	
	:	
v.	:	C-20066236
	:	
Duquesne Light Company	:	

**DOCUMENT  
FOLDER**

**INITIAL DECISION**

**DOCKETED**  
MAY 04 2007

Before  
Michael A. Nemeo  
Administrative Law Judge

**HISTORY OF THE PROCEEDING**

Complainants' Ohioview Infrastructure, Inc. ("Ohioview" or "Complainant") and Groveton Housing Village Partnership LP ("Groveton" or "Complainant") filed these consolidated Complaints on April 10, 2006. The Ohioview Complaint concerns an affordable housing development known as "Pleasant Ridge," which was constructed between 2003 and 2006. The Groveton Complaint concerns an affordable housing development known as "Groveton Village," which was constructed between 2002 and 2004. The Complaints request a declaration that Pleasant Ridge and Groveton Village qualify as New Residential Developments under Duquesne Light Company's Tariff Rule 13.2. Each Complaint also seeks a refund of money paid to Duquesne Light for the installation of underground electric facilities at Pleasant Ridge and Groveton Village.

Duquesne Light filed its answers to the Complaints on May 15, 2006 and joined Complainants' request to join these Complaints. A Prehearing Conference Order was issued on June 21, 2006. On July 20, 2006 an Initial Prehearing Conference was held in Pittsburgh, and on July 21, 2006, a Further Prehearing Order was issued that established the ground rules for discovery and consolidated the two Complaints. The initial hearing was held on January 9, 2007 in Pittsburgh. All parties were and are represented by counsel. The record closed on February 9, 2007 in accordance with the notation on the OALJ Hearing Report.

The resulting record consists of a transcript of 174 pages of the testimony and discussion, 26 Complainant exhibits and 4 Respondent exhibits. Main and reply briefs were filed by Complainants and Respondent, along with proposed findings of fact and conclusions of law. The record is summarized in the findings of fact that follow and reviewed in the discussion section. The two Complaints are dismissed in the order at the end for failure to carry the burden of proof.

#### FINDINGS OF FACT

1. Ohioview is a corporation formed under and pursuant to the laws of the Commonwealth of Pennsylvania located at 230 Wyoming Avenue, Kingston, PA, 18704. Complainants' Exhibit No. 2.
2. Groveton is a partnership formed under and pursuant to the laws of the Commonwealth of Pennsylvania also located at 230 Wyoming Avenue, Kingston, PA 18704. Complainants' Exhibit No. 1.
3. Duquesne Light Company is a regulated Pennsylvania public utility located at 411 Seventh Avenue, Pittsburgh, PA 15219.
4. At the time Ohioview or its agent initially contacted Duquesne Light to discuss the provision of electric power to the planned Ohioview Acres development, there were already existing Duquesne Light electrical facilities including, but not limited to, poles, wires,

transformers, meters, and other structures and devices used in the distribution of electric power on the property. Tr. 79-80, 141-142, 144-145, 152-153; Complainants' Exhibits 10, 11, 16; Complainants' Response to Duquesne Light Company's Request for Admissions, No. 1; see Tr. 29-30.

5. Mr. Patrick Gallagher of GAI Consultants, Inc. served as project manager on the Ohioview Acres project. Tr. 140, 146.

6. Existing buildings on the Ohioview Acres site were demolished. Tr. 154-155.

7. Existing utilities on the Ohioview Acres site were removed at the expense of Ohioview as part of the development budget. Tr. 121.

8. Prior to demolition of the existing residential dwellings at the Ohioview Acres site, Mr. Gallagher contacted Duquesne Light concerning the planned relocation and installation, and was told by Duquesne Light that the cost for design and construction would be in excess of \$700,000. Tr. 146-149.

9. Design changes made with input from Duquesne Light resulted in the \$700,000+ estimate being reduced to \$253,416.73. Apparently, that amount was paid to Duquesne by Ohioview. Tr. 88-89, 154-157; Complainants' Exhibit 4 (See Exhibit 5 attached thereto).

10. As part of the Ohioview Acres project, existing electric facilities were relocated and installed underground. Tr. 140-145; Complainants' Exhibits 10, 11, 13.

11. At the time Groveton or its agent initially contacted Duquesne Light to discuss the provision of electric power to the planned Groveton Village development, there were already existing Duquesne Light electrical facilities including, but not limited to poles, wires, transformers, meters, and other structures and devices used in the distribution of electric power,

on the property. Complainants' Response to Duquesne Light Company's Request for Admissions, No. 2, see Tr. 29-30; Tr. 117-118; Tr. 149-151; Complainants' Exhibits 16, 19.

12. Existing utilities on the Groveton Village site were removed at the expense of Groveton as part of the development budget. Tr. 118.

13. As part of the Groveton Village project, existing electric facilities were relocated and installed underground. Tr. 126-127; Complainants' Exhibits 17, 19.

14. Groveton paid \$117,000 to Duquesne Light for installation of underground service at Groveton Village. Tr. 118.

#### DISCUSSION

Complainants seek an order from this Commission directing Duquesne to pay back monies paid to Duquesne for design, equipment and installation of electrical distribution systems for the Ohioview and Groveton housing projects. The total requested is \$371,006.78, plus interest, costs and attorney fees. Complainants cite Section 1312 of the Public Utility Code as authority for their request. Section 1312 does indeed provide for the payment of interest as part of a refund, but attorney fees and costs are imposed only if the Commission orders a refund that is not made within a year of the order. Section 1312(a)(b) of the Public Utility Code, 66 Pa. C.S. §1312(a)(b); Complainants' Main Brief, p. 16.

Complainants properly recognize that they have the burden of proof in this proceeding. Complainants' Main Brief, p. 18; Section 332(a) of the Public Utility Code, 66 Pa. C.S. §332(a).

Complainants contend that Duquesne is obligated under the terms of its Tariff provision No. 13.2 to pay for the costs of installing underground facilities for new residential developments, except for the costs of excavating and backfilling the utility trenches. While Complainants address the issue of interpretation and application of tariff provisions, that

discussion is largely irrelevant as Duquesne's provision 13.2 is nearly identical to this Commission's regulations at 52 Pa. Code §§57.81 – 57.88. Complainants' Main Brief, pp. 17, 19.

While Complainants expended a great deal of effort in establishing that both developments were new, with the removal of all of the preexisting structures, roads and infrastructure, Duquesne does not, and could not contest that contention. Complainants also expended a great deal of effort in explaining the rationale for replacing the old structures, and the change in philosophy that resulted in the design of the new developments. The decision to replace the old dwelling units and the design of the new ones was a matter of public policy arrived at by political entities at the local and national levels. Duquesne was involved in the process because both developments are in Duquesne's service territory, and the Complainants desired to have electrical distribution systems installed at both locations.

Duquesne's position is that 13.2 does not apply. As stated in its Main Brief, Duquesne Light's Tariff Rule 13.2 applies only if providing service necessitates extending Duquesne Light's existing distribution lines. Both projects at Ohioview Acres, now known as Pleasant Ridge, and Groveton Village were built on sites that had existing overhead distribution infrastructure serving residential dwellings, which infrastructure was relocated at Complainants request and replaced with underground infrastructure. Since it was not necessary for Duquesne Light to extend its existing distribution lines to provide service, Tariff Rule 13.2 does not apply. Complainants were properly required to bear the costs in accordance with Tariff Rule 9.B, which is now Rule 13.1.A.B. Duquesne's Main Brief, pp. 5-6; Duquesne Exhibits R-3, R-4.

The language that Complainants rely on is found in Duquesne Rule 13.2 that includes the title, "Underground Electric Service in New Residential Developments." Duquesne Rule 13.2 (A)(3) contains the definition of development, and reads as follows:

(3) Development – A planned project which is developed by a developer/applicant for electric service set out in a recorded plot plan of five or more adjoining unoccupied lots for the construction of single-family residences, detached or otherwise, or mobile homes and one or more five-unit apartment

houses, all of which are intended for year-round occupancy, *if providing electric service to such project necessitates extending the Company's existing distribution lines.* (emphasis supplied) (The language is similar with that found in 52 Pa. Code §57.81, "Definitions".)

Duquesne Exhibit R-3; Complainants' Exhibit 1(A).

As noted above, Complainants have gone to great lengths to demonstrate that Ohioview and Groveton involved the construction of new residential developments. Also as noted above, Duquesne does not contest that the developments are new, only that it was the choice of the developers to change the distribution system within the development to an underground system as opposed to using the existing overhead system. Complainants place great emphasis on the title to Duquesne's Rule 13.2, and 52 Pa. Code § 57.81, "Underground Electric Service in New Residential Developments." Pennsylvania's rules of statutory construction can be helpful in a situation such as the one presented here. Section 1924 states that a title of a statute may be considered in the construction of the statute. 1 Pa.C.S. § 1924. However, Section 1933 states that the particular controls the general. Wherever possible, where a general provision conflicts with a special provision, if possible, effect should be given to both. However, if the difference is irreconcilable, the special provision shall prevail. 1 Pa. C.S. § 1933. Here we are not dealing with a general provision, but a title. The proviso in question here imposes an additional requirement before a project can qualify as a "development" under either Duquesne's tariff or the Commission's regulation.

Duquesne contends that the situation presented by the Ohioview and Groveton projects is governed by its tariff provision found at Rule 13.1, Underground Distribution:

### 13.1 UNDERGROUND DISTRIBUTION

(A) When the Company is required by government order or enters into agreements with redevelopment authorities, a private real estate developer or a group of customers to change its distribution supply lines from overhead to underground, customers receiving or to receive electric service at voltages of 600 volts or less from these supply lines shall provide at their own expense the necessary facilities for receiving such underground service.

Duquesne Exhibit R-3

Complainants place reliance on a 1977 decision of this Commission recorded under its Investigation Docket No. 99. Mr. Thomas Rue petitioned the Commission for an exemption from the requirement to underground the electrical distribution system for a new subdivision. His petition included three points, one of which is pertinent here. He contended that because one house on the property was already served by an overhead line, his development should be exempt. In response to his contention, this Commission stated:

The line serving the house is approximately 2,000 feet long and generally follows the road in the development. We believe that the existence of a single overhead *service* line in a 160-acre, 115 –lot housing development does not present a compelling reason to permit deviation from our undergrounding rule. (emphasis supplied)

Re. Thomas A. Rue, 1977 Pa. PUC LEXIS 157, 50 Pa. PUC 542, 543 (1977)

This Commission's regulations on underground electrical service distinguishes between a service line and a distribution line. A distribution line is an electric supply line of untransformed voltage which delivers energy to one or more service lines. A service line is defined as an electric supply line that delivers transformed, or lower, voltage service to a residence or building. 52 Pa. Code § 57.81. The language in Duquesne's tariff Rule 13.2 (4) (5) is substantially the same. Duquesne Exhibit R-3; Complainants' Exhibit 1(A).

Complainants also frame the issue in terms of policy. In their main brief at page 24 they state the following:

Duquesne's position really is an affront to any urban project that involves the adaptive reuse of land. Its interpretation clearly would discriminate against affordable housing developments (which, given the layers of HUD regulations regarding their disposition are unique) in favor of suburban private residential developments. Such a policy would be inconsistent with the clear policy of the Commonwealth of Pennsylvania to avoid urban sprawl and encourage brownfield revitalization. (citation omitted)

Complainants' Main Brief, p. 24.

Complainants' policy argument avoids the question of who will pay for the cost of the construction. The end result of adoption of Complainants' position would be that ultimately the cost would be placed on Duquesne's current customers. Such a policy would seem to conflict with this Commission's regulations on extension of service by water utilities. 52 Pa Code §§ 65.21, 65.22. The regulations on water service distribution extensions provide for a balancing of the costs of the extension against the anticipated revenue. I am not aware of any similar provision applicable to electric utilities.

The present case does not involve an extension of Duquesne's facilities. Its distribution system existed and was present at each site. The record here is clear that both sites could have been redeveloped and served from above ground facilities. The developers chose to build developments with underground facilities. That decision was not imposed on the developers by either Duquesne or this Commission. In response to Duquesne's initial cost estimate, the electric system design for Ohioview was modified to retain some of the above ground system that resulted in a reduced cost estimate. Tr. 145-148, 155, 165.

I conclude that Complainants have failed to carry their burden of showing that Duquesne has in some fashion violated the provisions of the Public Utility Code, this Commission's regulations or any other order or law this Commission is authorized to enforce. As a result the two complaints here should be dismissed.

#### CONCLUSIONS OF LAW

1. This Commission has jurisdiction over the parties and subject matter of this proceeding.
2. Neither Complainant has carried its burden of proof of showing that Duquesne has in some fashion violated the provisions of the Public Utility Code, this Commission's regulations or any other order or law this Commission is authorized to enforce.

3. Specifically, neither Complainant has sustained its burden of proving that Duquesne's Tariff Rule 13.2 applies to either the new development at the former Ohioview Acres or Groveton Village.


**ORDER**

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Ohioview Infrastructure, Inc., against the Duquesne Light Company at Docket No. C-20066233 is dismissed for failure to carry the burden of proof.
2. That the Complaint of Groveton Housing Partnership, LP, against the Duquesne Light Company at Docket No. C-20066236 is dismissed for failure to carry the burden of proof.

Date: April 27, 2007



Michael A. Nemec  
Administrative Law Judge

C-20066233 Ohioview Infrastructure v. Duquesne Light Company  
C-20066236 Groveton Housing v. Duquesne Light Company

Billing dispute.

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