**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania Electric Company : A-2016-2565296

Robin F. Miller and Tammy J. Miller : A-2016-2565326

Katherine L. Ziegler : A-2016-2565344

Fritz Land Holdings LP : A-2016-2565360

James B. MacRae, Jr. and Nancy K. MacRae : A-2016-2565364

Michael C. Long : A-2016-2565368

Wilmore Coal Company : A-2016-2565369

Frank J. Shenigo, Trustee of Frank J. Shenigo : A-2016-2565377

Kenneth J. Skone and Karen Jane Skone : A-2016-2565378

Shirley J. Huston and Gary E. Lambert : A-2016-2565472

Martha Lorraine Anderson and John S. Anderson : A-2016-2565480

Dick B. Lohr and Karen G. Lohr : A-2016-2565502

Keith A. Lohr : A-2016-2565504

Robindale Energy Services, Inc. : A-2016-2565509

Scott M. Andrews and Audrey A. Andrews : A-2016-2565543

Albert Stiles : A-2016-2565545

Kathy R. Kelley and Jeffrey Kelley : A-2016-2565547

Berwind Corporation : A-2016-2565549

Vincent Beal : A-2016-2565635

Brian C. Jones and Traci A. Jones : A-2016-2565644

**PREHEARING ORDER**

**ESTABLISHING VARIOUS PROCEDURAL MATTERS, CONSOLIDATING THE APPLICATION PROCEEDING AND THE EMINENT DOMAIN APPLICATIONS AND GRANTING THE MOTION TO WITHDRAW FOUR EMINENT DOMAIN APPLICATIONS**

On September 1, 2016, the Pennsylvania Electric Company (Penelec or Applicant) filed an application at Docket No. A-2016-2565296 (application or siting application) pursuant to the regulations of the Pennsylvania Public Utility Commission (PUC or Commission) at 52 Pa. Code Chapter 57, Subchapter G. The application seeks siting approval for Penelec to locate, construct, operate and maintain a high-voltage (HV) transmission line referred to as the Bedford North-Central City West 115 kV HV Transmission Line Project (Project). The proposed Project involves constructing a new 115 kV transmission line from the existing Penelec-owned Bedford North substation, located in Bedford Township, Bedford County, Pennsylvania, to the existing Penelec-owned Central City West substation, located in Central City Borough, Somerset County, Pennsylvania. A portion of the Project will involve rebuilding a section of the existing Penelec-owned Bedford North – New Baltimore 115 kV Transmission Line which is located in Napier, East St. Clair, and Bedford Townships, Bedford County, Pennsylvania. Penelec has requested that the Commission approve the Project as a double-circuit, 115 kV transmission line.

On September 1, 2016, Penelec also filed 19 separate applications to exercise the power of eminent domain (eminent domain applications) to obtain property rights for the construction and operation of the Project. The 19 eminent domain applications were captioned and docketed as set forth below. The eminent domain applications were filed concurrently with the siting application. The eminent domain applications were filed pursuant to Section 1511(c) of the Pennsylvania Business Corporation Law of 1988, 15 Pa.C.S. § 1511, to obtain a finding and determination from the Commission that the exercise of eminent domain by Penelec for the Project is “necessary or proper for the service, accommodation, convenience or safety of the public.”

Section 57.75(i) of the Commission’s siting regulations, 52 Pa.Code § 57.75(i), provides that “[p]roceedings on eminent domain applications for the same HV line are entitled to be consolidated with the proceeding on the HV line’s siting application.” Consistent with regulations, on September 1, 2016, Penelec requested consolidation of the Eminent Domain Applications and the Siting Application.

The 19 Eminent Domain Applications filed by Penelec with the Commission are identified below.

On September 1, 2016, Penelec also filed a certificate of service along with its application which indicated that a copy of the application or a notice of filing, as applicable, was served upon the persons and in the manner specified in 52 Pa.Code § 57.74.

On September 15, 2016, the Commission served on Penelec its notice that an initial prehearing conference was scheduled before the undersigned presiding officer, to be held on December 5, 2016. In addition, on September 15, 2016, a prehearing conference order was entered and served upon the Parties. By prehearing conference order, the Parties were notified that the proceeding was assigned to the undersigned Administrative Law Judge (ALJ or Presiding Officer) for a prehearing conference on December 5, 2016 at 10:00 a.m. In accordance with the regulations pertaining to prehearing conferences, 52 Pa.Code §§ 5.221-5.224, the Parties were directed to file prehearing memoranda on or before November 29, 2016. The prehearing conference proceeded as scheduled on December 5, 2016.

On September 24, 2016, a notice of the filing of the siting application and of the eminent domain applications was published in the *Pennsylvania Bulletin*. The notice specified that formal protests and petitions to intervene in response to the Penelec applications must be filed and served on or before Wednesday, November 23, 2016. The *Pennsylvania Bulletin* notice specified that a prehearing conference is scheduled for Monday, December 5, 2016 at 2nd Floor Hearing Room, Piatt Place, Suite 220, 301 Fifth Avenue, Pittsburgh, PA 15222.

**Protests**

A Protest was filed on November 23, 2016, by landowner Nancy K. MacRae. Ms. MacRae’s property is also the subject of an Eminent Domain Application of Penelec at Docket No. A-2016-2565364.

**Consolidation of Proceedings**

At the prehearing conference on December 5, 2016, Penelec moved to consolidate the Siting Application Proceeding with the 19 Eminent Domain Applications. No objection was made to the request to consolidate these proceedings.

The 19 Eminent Domain Applications filed by Penelec with the Commission are captioned and docketed as follows:

**A-2016-2565326**. Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of Robin F. Miller & Tammy J. Miller in Napier Township, Bedford County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project.

**A-2016-2565344**. Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of Katherine L. Ziegler in Napier Township, Bedford County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project.

**A-2016-2565360**. Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of Fritz Land Holdings LP in Napier Township, Bedford County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project.

**A-2016-2565364**. Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of James B. MacRae, Jr. & Nancy K. MacRae in Napier Township, Bedford County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project.

**A-2016-2565368**. Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of Michael C. Long in Napier Township, Bedford County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project.

**A-2016-2565369**. Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of Wilmore Coal Company in the Borough of Central City, Somerset County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project.

**A-2016-2565377**. Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of Frank J. Shenigo, Trustee of the Frank J. Shenigo Revocable Living Trust in Shade Township, Somerset County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project.

**A-2016-2565378**. Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of Kenneth J. Skone & Karen Jane Skone the Borough of Central City, Somerset County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project.

**A-2016-2565472.** Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of Shirley Huston& Gary E Lambert in the Shade Township, Somerset County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project.

**A-2016-2565480**. Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of Martha Lorraine Anderson & John S. Anderson in Napier Township, Bedford County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project.

**A-2016-2565502**. Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of Dick B. Lohr & Karen G. Lohr in Napier Township, Bedford County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project.

**A-2016-2565504**. Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of Keith A. Lohr in Napier Township, Bedford County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project.

**A-2016-2565509.** Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of Robindale Energy Services Incorporated in the Shade Township, Somerset County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project.

**A-2016-2565543**.Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of Scott M. Andrews & Audrey A. Andrews in Shade Township, Somerset County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project.

**A-2016-2565545**. Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of Albert Stiles in Shade Township, Somerset County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project.

**A-2016-2565547**. Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of Kathy R. Kelley & Jeffrey Kelley in Shade Township, Somerset County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project.

**A-2016-2565549**. Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of Berwind Corporation in Shade Township, Somerset County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project.

**A-2016-2565635**. Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of Vincent Beal in Napier Township, Bedford County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project.

**A-2016-2565644**. Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of Brian C. Jones & Traci A. Jones in Napier Township, Bedford County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project.

Under the circumstances, Penelec’s motionto consolidate the Siting Application Proceeding filed at Docket Number A-2016-2565296 with the 19 Eminent Domain Applications filed at Docket Numbers A-2016-2565326, A-2016-2565344, A-2016-2565360, A-2016-2565364, A-2016-2565368, A-2016-2565369, A-2016-2565377, A-2016-2565378, A-2016-2565472, A‑2016-2565480, A-2016-2565502, A-2016-2565504, A-2016-2565509, A-2016-2565543, A‑2016-2565545, A-2016-2565547, A-2016-2565549, A-2016-2565635, and A-2016-2565644is hereby granted by this Order .

**Withdraw of Certain Enumerated Applications**

At the prehearing conference and in its prehearing memorandum, Penelec also reported that it has resolved four of its eminent domain proceedings. On October 7, 2016, Penelec filed three separate Petitions for leave to withdraw and terminate the three above-captioned Applications of Penelec to Exercise the Power of Eminent Domain to Acquire an Easement and Right-of-Way, namely the Frank J. Shenigo, Trustee of the Frank J. Shenigo Revocable Living Trust Application, the Kenneth J. Skone & Karen Jane Skone Application, and the Brian C. Jones & Traci A. Jones Applications, pursuant to 52 Pa. §§ 1.82 and 5.94(c), and requested that the undersigned presiding officer approve the Petitions of Penelec to withdraw eminent domain proceedings pursuant to Sections 1.82 and 5.94(c) of the Commission’s regulations.

On November 16, 2016, Penelec filed one additional Petition, namely the Michael C. Long Petition, pursuant to 52 Pa. §§ 1.82 and 5.94(c), for leave to withdraw and terminate the Michael C. Long Applications of Penelec to Exercise the Power of Eminent Domain to Acquire an Easement and Right-of-Way, and requested that the undersigned presiding officer approve the Petition of Penelec to withdraw eminent domain proceedings pursuant to Sections 1.82 and 5.94(c) of the Commission’s regulations. Consequently, Penelec requested approval of the Petitions of Penelec to withdraw the four eminent domain proceedings referenced above.

The four eminent domain proceedings that have been resolved are:

**A-2016-2565368**. Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of Michael C. Long in Napier Township, Bedford County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project (Michael C. Long Application) ;

**A-2016-2565377**. Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of Frank J. Shenigo, Trustee of the Frank J. Shenigo Revocable Living Trust in Shade Township, Somerset County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project (Frank J. Shenigo, Trustee of the Frank J. Shenigo Revocable Living Trust Application) ;.

**A-2016-2565378**. Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of Kenneth J. Skone & Karen Jane Skone the Borough of Central City, Somerset County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project (Kenneth J. Skone & Karen Jane Skone Application) ; and,

**A-2016-2565644**. Application of Pennsylvania Electric Company for exercise of Eminent Domain upon property of Brian C. Jones & Traci A. Jones in Napier Township, Bedford County and Motion for Consolidation with Siting Application for Bedford North - Central City West 115 kV HV Transmission Line Project (Brian C. Jones & Traci A. Jones Application).

No objections were filed and no objections were raised at the prehearing conference to the four Petitions to Withdrew Eminent Domain Applications of Penelec filed at Docket Nos.:

* + - A-2016-2565368 (property of Michael C. Long);
    - A-2016-2565377(property of Frank J. Shenigo, Trustee of the Frank J. Shenigo Revocable Living Trust);
    - A-2016-2565378 (property of Kenneth J. Skone & Karen Jane Skone), and
    - A-2016-2565644 (property of Brian C. Jones & Traci A. Jones).

52 Pa.Code § 1.82 provides:

 (a)  A party that desires to terminate an uncontested matter or proceeding before final decision by the Commission or otherwise desires to withdraw a submittal or pleading, shall file a petition for leave to withdraw the appropriate document. If no party objects to the petition within 10 days of service, the matter may be stricken by the Commission or by the presiding officer. If upon review the presiding officer or the Commission determines that the public interest requires continuation of the proceedings, the petition will be denied and the staff may be directed to participate.

 (b)  Withdrawal of a pleading in a contested proceeding is governed by §  5.94 (relating to withdrawal of pleadings in a contested proceeding).

 (c)  Subsections (a) and (b) supersede 1 Pa.Code §  33.42 (relating to withdrawal or termination).

    52 Pa.Code §  5.94 provides:

 (a)  Except as provided in subsection (b), a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within 10 days of service. After considering the petition, an objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.

 (b)  A protest to an application may be withdrawn by filing a notice of withdrawal directed to the Commission or the presiding officer. The notice must state that the protest is withdrawn and provide the reasons for the withdrawal.

 (c)  Withdrawal or termination of an uncontested proceeding is governed by §  1.82 (relating to withdrawal or termination).

 (d)  Subsections (a)—(c) supersede 1 Pa. Code §  35.51 (relating to withdrawal of pleadings).

In its Petitions to WithdrawEminent Domain Applications, Penelec averred that the subject property owners have entered into agreements with Penelec for the grant of rights of way and easements over and across their land or an option therefor, thereby rendering the four subject condemnation applications unnecessary. Upon consideration of the petitions, it is apparent that the public interest will be served by granting the four subject petitions and permitting the withdrawal of the four subject condemnation applications.

Accordingly, thePetitions to Withdrew Eminent Domain Applications of Penelec filed at Docket Nos. A-2016-2565368 (property of Michael C. Long); A-2016-2565377(property of Frank J. Shenigo, Trustee of the Frank J. Shenigo Revocable Living Trust); A-2016-2565378 (property of Kenneth J. Skone & Karen Jane Skone); and A-2016-2565644 (property of Brian C. Jones & Traci A. Jones) are hereby granted and the Applications filed at those four enumerated Docket Numbers are hereby dismissed.

John L. Munsch, Esquire participated at the prehearing conference on behalf of Penelec. Peter J. Carfley, Esquire appeared on behalf of Kathy R. Kelley and Jeffrey Kelley. Calvin J. Webb II, Esquire appeared on behalf of Katherine L. Ziegler, Fritz Land Holdings LP, Shirley Huston and Gary E Lambert, Martha Lorraine Anderson and John S. Anderson, Keith A. Lohr, and Albert Stiles. Dick B. Lohr and Karen G. Lohr also attended the prehearing conference.

This Order sets forth the litigation schedule agreed upon by the Parties at the prehearing conference in this proceeding.

**Litigation Schedule**

The litigation schedule will be as follows:

**Siting Application: September 1, 2016.**

**Eminent Domain Applications (19): September 1, 2016.**

**Pennsylvania Bulletin Notice: September 24, 2016.**

**Penelec Written Direct Testimony: October 10, 2016.**

**Due date for Intervention Petition/Protests: November 23, 2016.**

**Prehearing Conference: December 5, 2016.**

**Intervenors Written Testimony: February 3, 2017.**

**Penelec Written Rebuttal Testimony: February 22, 2017**

**Evidentiary Hearing in Pittsburgh: April 4-5, 2017.**

**Main Briefs: April 25, 2017.**

**Reply Briefs (if necessary): May 9, 2017.**

For Parties accepting electronic service, the documents described in the litigation schedule referenced above shall be served electronically on the date indicated, by 4:00 p.m. unless otherwise indicated. Hard copies will follow by first class mail postage prepaid to all Parties, Protestants and Intervenors. For Parties not accepting electronic service, documents are to be served in hand or mailed not later than the due date.

Written testimony must be accompanied by all exhibits to which it relates. Electronic service and service by first class mail shall be provided to the Presiding ALJ. Service upon the Presiding ALJ by email shall be provided by 4:00 p.m. on the date due and provided the email is followed by sending a hard copy of the same material by first class mail postage prepaid on the same business day. The email address of the Presiding ALJ is: [jeffwatson@pa.gov](mailto:jeffwatson@pa.gov). The Presiding ALJ will not accept facsimile transmissions greater than ten pages in length without prior authorization. If the Parties have any questions, they may call the office of the Presiding ALJ at (412) 565-3550.

Any Party, wishing to submit written testimony, pursuant to 52 Pa.Code § 5.412(f), is advised to comply with the Commission’s requirement concerning the electronic filing of written testimony as specified in the Commission’s Implementation Order, dated January 10, 2013, at Docket No. M-2012-2331973. Furthermore, the Parties are reminded that Parties serving pre-served testimony in proceedings pending before the Commission pursuant to 52 Pa.Code § 5.412(f), shall be required, within thirty (30) days after the final hearing in an adjudicatory proceeding (unless such time period is otherwise modified by the presiding officer), to either eFile with or provide to the Secretary’s Bureau a Compact Disc (CD) containing all testimony furnished to the court reporter during the proceeding. In addition to the testimony that is electronically submitted to the Commission either by eFiling or by the submission of a CD to the Secretary’s Bureau, Parties must continue to submit two copies of such testimony to the court reporter at the hearing of this matter.

The hearings scheduled for Pittsburgh will begin promptly at 10:00 a.m. each day. The Parties must confer before commencement of the hearing to schedule their witnesses so as to avoid “holes” or “dead time” during the hearing. The Parties shall confer to resolve any such issues prior to the date of the hearing.

**Parties**

The Parties are directed to monitor filings with the Commission’s Secretary’s Bureau and advise the undersigned of any additional Petitions, Petitions to Intervene, Protests or Complaints are filed after the date of this Order.

**Issues**

In their respective prehearing memoranda, the Parties identified various issues they may wish to pursue. The reader is directed to these documents to review a recitation of these issues. Additional issues may arise as the discovery process unfolds.

**Discovery**

The Parties shall engage in informal discovery whenever and wherever possible in an attempt to resolve any discovery disputes amicably. 52 Pa.Code § 5.322. If this process fails, the Parties have recourse to the Commission’s procedures for formal discovery, as herein modified. 52 Pa.Code §§ 5.321, *et* *seq*. Except as herein allowed, the Parties must not send the Presiding ALJ discovery material or cover letters, unless attached to a motion to compel or a motion for sanctions. All such motions must contain a certification of counsel of the informal discovery undertaken and their efforts to resolve their discovery disputes informally. If a motion to compel fails to contain such certification, the Presiding ALJ will contact the Parties and direct them to pursue informal discovery.

The discovery procedures set forth in the Rules and Regulations of the Commission shall apply to this case, unless modified by a subsequent order in this proceeding.

The Parties must, in good faith and on an informal basis, attempt to resolve any discovery dispute amicably among themselves, before contacting the Presiding ALJ for resolution.[[1]](#footnote-1)

**Settlement and Stipulations**

The Parties are reminded it is the Commission’s policy to encourage settlements. 52 Pa.Code §5.231(a). The Parties are strongly urged to seriously explore this possibility. Submission of a Joint Settlement Petition executed by representatives of all Parties, together with all Parties’ Statements In Support of Settlement, must be filed with the Secretary for the Commission and received in-hand by the Presiding ALJ not later than the close of business on May 9, 2017. In addition to service of a hard copy, the Secretary must receive these documents on a CD ROM in searchable PDF format. An electronic version of all pleadings and briefs filed in this proceeding shall be served on the Presiding ALJ and shall be prepared on an IBM compatible system in Microsoft Office Word 2010 format or in an earlier version of this software application.

If settlement is not feasible, the Parties are encouraged to stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all Parties and conserve administrative hearing resources. 52 Pa. Code §§5.232 and 5.234. All stipulations entered into by the Parties must be reduced to writing, signed by the Parties to be bound thereby, and moved into the record during the hearings in this case. An exception to this requirement may occur when circumstances of time and expediency warrant. If so, an oral presentation of a stipulation is permissible, if it is followed by a reduction to writing as herein directed.

**Briefs**

The Parties must comply with 52 Pa.Code §§ 5.501, *et* *seq*., regarding the preparation and filing of briefs. Page limitations on briefs will be discussed at the hearing. Where possible, the Parties shall submit to the Presiding ALJ one hard copy of their briefs and one copy by email. If a Party cannot provide a copy by email or on computer disc, it must submit two hard copies of briefs. **The electronic version of a brief must be prepared on an IBM compatible system in Microsoft Office Word 2010 format or in an earlier version of this software application.** If any questions arise, please call the office of the Presiding ALJ for clarification.

The Parties shall also confer in order to agree upon a list of common issues which the Parties shall utilize in the organization of all briefs, settlement petitions and statements in support of settlement in these proceedings.

**Modification**

Any of the provisions of this Prehearing Order may be modified upon motion and good cause shown by any Party in interest.

Date: January 31, 2017 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Jeffrey A. Watson

Administrative Law Judge

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**A-2016-2565296 APPLICATION OF PENNSYLVANIA ELECTRIC COMPANY.**

**(Revised 9/19/2016)**

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***Accepts E-service***

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1. If the Parties cannot resolve their discovery dispute informally, they may request to confer informally with the Presiding ALJ to resolve any outstanding discovery disputes. [↑](#footnote-ref-1)