

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105**

**Application of Pennsylvania
Electric Company Seeking
Approval to Locate, Construct,
Operate and Maintain a High-
Voltage Transmission Line
Referred to as the Bedford North-
Central City West 115 kV HV
Transmission Line Project**

**Public Meeting: February 8, 2018
2565296-ALJ
Docket No. A-2016-2565296, et al.**

MOTION OF VICE CHAIRMAN ANDREW G. PLACE

Before the Commission is the Application of Pennsylvania Electric Company¹ for approval of the siting and construction of the high-voltage transmission line referred to as the Bedford North-Central City West 115 kV HV transmission line project and the Application to exercise the power of eminent domain to acquire certain rights of way affecting the properties of Robin F. Miller and Tammy J. Miller filed at Docket No. A-2016-2565326; Katherine L. Ziegler filed at Docket No. A-2016-2565344; Fritz Land Holdings LP filed at Docket No. A-2016-2565360; Shirley J. Huston and Gary E. Lambert filed at Docket No. A-2016-2565472; Martha Lorraine Anderson and John S. Anderson filed at Docket No. A-2016-2565480; Keith A. Lohr filed at Docket No. A-2016-2565504; Albert Stiles filed at Docket No. A-2016-2565545; and Vincent Beal filed at Docket No. A-2016-2565635. I support approval of the Application, as recommended by the Administrative Law Judge (ALJ), as amended by my Motion.

While I support the approval of the Application, a few aspects of the Recommended Decision (RD) require modification. In accordance with the provisions of Title 66 and the Commission's regulations at 52 Pa. Code §§57.71-57.77 regarding the siting and construction of high voltage transmission lines, the ALJ analyzed the application in a thorough manner. However, the ALJ included case precedent references to the *Payne v. Kassab* test in the RD which is no longer valid and should be stricken.² The Pennsylvania Supreme Court invalidated the *Payne v. Kassab* test in *Penna. Environmental Defense Foundation v. Commonwealth of Penna.*, 161 A.3d 911 (2017).³ Therefore, the Commission will no

¹ Mid-Atlantic Interstate Transmission Line, LLC (MAIT) became the successor in interest to Penelec, as Applicant in this proceeding, pursuant to the Final Order entered August 24, 2016, at Docket Nos. A-2015-2488903, et al.

² RD at 51.

³ This opinion was issued after the evidentiary record had closed. Neither the Applicant nor any of the other parties to this proceeding were parties to that appeal. As that matter did not involve the regulation of public utilities, it is understandable that the parties did not appreciate the implication of the decision and bring this case to the attention of the presiding ALJ.

longer apply the three-part test articulated in *Payne v. Kassab* in transmission line cases.

Penna. Environmental Defense Foundation addressed the contours of the trust created by Article I, Section 27 of the Pennsylvania Constitution, which placed Pennsylvania's public natural resources in trust, and named the Commonwealth as its trustee, to conserve and maintain those resources for the benefit of all people, including future generations. *Penna. Environmental Defense Foundation* replaced the three-part test articulated in *Payne v. Kassab* with instructions to apply the text of Article I, Section 27 itself and the underlying principles of Pennsylvania trust law, as they related to the Commonwealth's public natural resources. The Supreme Court also noted that the individual rights of citizens to clean air, pure water, and to the preservation of natural, scenic, historic, and esthetic values of the environment may be subject to reasonable regulation. *Id.* at 931. Our siting regulations are in accord with the Environmental Rights Amendment by requiring that the environmental impact of the proposed transmission siting route be minimized. *See* 52 Pa. Code 57.75-57.76.

Specifically, the Commission's regulations require the review of evidence regarding the necessity and safety of the proposed line, and the impact on, and mitigation of effects on several criteria including land use, soil and sedimentation, plant and wildlife habitats, terrain, hydrology, landscape, scenic rivers and archaeologic, geologic, historic, scenic and wilderness areas. In addition, the Commission will consider evidence regarding reasonable alternative routes. After review of the evidence, the Commission's regulations require that no order will be issued granting an application unless it finds that there is a need for the line, that it will not create an unreasonable risk of danger to the health and safety of the public, that it is in compliance with applicable law for the protection of the natural resources of this Commonwealth, and that it will have a minimum environmental impact.

The Commission's regulatory scheme for high-voltage line transmission siting cases therefore provides for a robust, evidence-based deliberative process that provides due process for all interested parties. The Commission, consistent with its role as a fiduciary responsible for the preservation of the Commonwealth's natural resources, and consistent with *Penna. Environmental Defense Foundation*, acts with prudence, loyalty and impartiality when it adheres to these regulations. In this manner, the Commission fulfills its responsibilities to protect the public's natural resources from depletion or degradation, while also allowing legitimate development that improves the lot of Pennsylvania's citizenry, as the Supreme Court recognized in *Robinson Township v. Commonwealth*, 83 A.3d 901, 958.

I agree with the ALJ's determination that the Applicant submitted substantial evidence to warrant a recommendation that the Application be

approved. I conclude that the evidentiary record, the process used to evaluate it, and the approval of this project is fully consistent with the Environmental Rights Amendment and the Supreme Court's Opinion.

Having addressed the main point of concern, the Recommended Decision requires several other modifications. First, the reference to "PPL" on page 86 of the RD is incorrect and should be replaced with "Applicant."

Lastly, approval of the Application should be conditioned on requiring MAIT, as successor in interest to Pennsylvania Electric Company, to comply with any and all permit requirements received from any agency or entity from which a permit is required in order to construct the project. This provision is similar to that required in our Orders on PPL's Susquehanna-Roseland 500 kV Transmission Line application.⁴

THEREFORE, I MOVE THAT:

1. The Recommended Decision approving the Application of Mid-Atlantic Transmission, LLC, as successor in interest to Pennsylvania Electric Company, for approval to site, construct and operate the proposed high-voltage transmission line referred to as the Bedford North-Central City West 115 kV HV transmission line project and the Application to exercise the power of eminent domain to acquire rights of way for the construction, operation and maintenance of an electric transmission line and related facilities be adopted, as modified by this Motion.

2. The Applicant is to comply with any and all permit requirements received from any agency or entity from which a permit is required in order to site and construct the high-voltage transmission line referred to as the Bedford North-Central City West 115 kV HV transmission line project.

3. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

DATE: February 8, 2018



Andrew G. Place, Vice Chairman

⁴ See Docket No. A-2009-2082652, et al., Order entered February 12, 2010, Ordering Paragraph 7B.