

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Duquesne Light Company filed	:	A-2018-3000708
Pursuant To 15 Pa.C.S. § 1511(c) for a Finding	:	A-2018-3000768
and Determination that the Service to be Furnished	:	
by the Applicant through its Proposed Exercise	:	
of the Power of Eminent Domain to Acquire a	:	
Certain Portion of the Lands of Cathleen L. Scott	:	
in Plum Borough, Allegheny County, Pennsylvania	:	
for the Siting and Construction of the 138 kV	:	
Transmission Lines Associated with the	:	
Universal-Plum Project in Penn Hills, Monroeville,	:	
and Plum Borough, Allegheny County,	:	
Pennsylvania Is Necessary or Proper for the	:	
Service, Accommodation, Convenience or Safety	:	
of the Public.	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

This decision grants the Petition for Leave to Withdraw and Terminate the Application of Duquesne Light Company to Exercise the Power of Eminent Domain to Acquire an Easement and Right of Way Across the Property of Cathleen L. Scott.

HISTORY OF THE PROCEEDING

On March 23, 2018, Duquesne Light Company (Duquesne Light, Company or Applicant) filed and served the Application of Duquesne Light Company for Approval of the Siting and Construction of the 138 kV Transmission Lines Associated with the Universal-Plum Project in Penn Hills, Monroeville, and Plum Borough, Allegheny County, Pennsylvania, which was docketed at Docket No. A-2018-3000708 (Full Siting Application).

In the Full Siting Application, Duquesne Light avers that the proposed siting and construction of the transmission line (the proposed Project) is required to reinforce the 138 kV systems in the region, resolve identified reliability and planning criteria violations, and improve reliability of service for customers primarily in Braddock Hills Borough, Churchill Borough, Edgewood Borough, Forest Hills Borough, Penn Hills Borough, Penn Hills Township, Monroeville Borough, Pitcairn Borough, City of Pittsburgh, Plum Borough, Swissvale Borough, Wilkins Township, and Wilkinsburg Borough, Allegheny County. Duquesne Light further avers the proposed Project will reduce the number of customers affected by a single facility outage, as well as the duration of the outage.

The Applicant asserts that it is a “public utility” and an “electric distribution company” as defined in the Pennsylvania Public Utility Code. 66 Pa.C.S. §§ 102, 2803. According to the Applicant, the Company furnishes electric service to approximately 600,000 customers throughout its certificated service territory, which includes all or portions of Allegheny and Beaver Counties and encompasses approximately 800 square miles in western Pennsylvania.

The proposed Project involves the construction of the new Universal-Plum 138 kV Transmission Line that will extend approximately 5.26 miles between the Universal Substation in Penn Hills and the Plum substation in Plum Borough, according to Duquesne Light. The Company submits (1) that approximately 3.70 miles of the new Universal-Plum 138 kV Transmission Line will be built as an overhead transmission line and approximately 1.56 miles will be constructed as an underground transmission line, and (2) that an approximate 0.51 mile portion of the existing Cheswick-Plum 138 kV Transmission Line will be relocated as part of the proposed Project.

Contemporaneous with filing the Full Siting Application, the Applicant filed and served ten Applications for the exercise of eminent domain, including the Application of Duquesne Light Company Under 15 Pa.C.S. § 1511(c) For A Finding And Determination That The Service To Be Furnished By The Applicant Through Its Proposed Exercise Of The Power Of Eminent Domain To Acquire A Certain Portion of the Lands of Cathleen L. Scott in Plum

Borough, Allegheny County, Pennsylvania for the Siting and Construction of Transmission Lines Associated with the Proposed Universal-Plum Project is Necessary or Proper for the Service, Accommodation, Convenience or Safety of the Public at Docket No. A-2018-3000768 (Scott Condemnation Application).

On April 2, 2018, a Notice was issued for the Scott Condemnation Application, the Full Siting Application and nine other Condemnation Applications, scheduling a combined Initial Prehearing Conference before the undersigned Administrative Law Judge (ALJ) on Friday, June 15, 2018, at 10:00 A.M. in the 2nd Flooring Hearing Room, Piatt Place, Suite 220, 301 Fifth Avenue, Pittsburgh, PA. The Initial Prehearing Conference convened as scheduled. Duquesne Light was represented by Anthony D. Kanagy, Esquire and Michael Zimmerman, Esquire. Condemnee Ms. Cathleen L. Scott appeared at the Initial Prehearing Conference, self-represented, to contest the Scott Condemnation Application. Gary Kalmeyer, Esquire was present for the conference as counsel for Condemnees, Antoinette Cardinale, Anna Louise Palumbo and Maria Palumbo-Aiello, who were also present.

By Prehearing Order dated July 2, 2018, the Scott Condemnation Application and nine other Applications were consolidated with Duquesne Light's Full Siting Application at Docket No. A-2018-3000708.

On October 9, 2018, the evidentiary hearing in this proceeding was conducted by the ALJ. Ms. Cathleen L. Scott did not appear for the evidentiary hearing.

On October 12, 2018, the Applicant filed and served a Petition for Leave to Withdraw and Terminate the Application of Duquesne Light Company to Exercise the Power of Eminent Domain to Acquire an Easement and Right of Way Across the Property of Cathleen L. Scott (Petition). In the Petition the Applicant avers, "Duquesne Light has obtained all necessary real estate rights with respect to the Scott property, which renders the Scott Condemnation Application unnecessary." Consequently, the Applicant further avers, "Pursuant to Sections 1.82 and 5.94(c) of the Regulations of the Pennsylvania Public Utility Commission, 52 Pa.Code §§ 1.82 and 5.94(c), Duquesne Light seeks to withdraw and terminate the Scott Condemnation

Application in its entirety.” For relief, the applicant requests that Pennsylvania Public Utility Commission permit Duquesne Light to withdraw the Scott Condemnation Application and terminate the proceeding docketed at Docket No. A-2018-3000768 in its entirety.

No objection was filed within 10 days of service of the Petition as provided for under the Commission’s regulations at 52 Pa.Code § 5.94(a).

FINDINGS OF FACT

1. Applicant Duquesne Light Company is a jurisdictional public utility providing electric service to Pennsylvania customers.
2. On March 23, 2018, Duquesne Light filed and served the Company’s Application of Duquesne Light Company for Approval of the Siting and Construction of the 138 kV Transmission Lines Associated with the Universal-Plum Project in Penn Hills, Monroeville, and Plum Borough, Allegheny County, Pennsylvania, which was docketed at Docket No. A-2018-3000708 (Full Siting Application).
3. Contemporaneous with filing the Full Siting Application, the Applicant filed and served the Application of Duquesne Light Company Under 15 Pa.C.S. § 1511(c) For A Finding And Determination That The Service To Be Furnished By The Applicant Through Its Proposed Exercise Of The Power Of Eminent Domain To Acquire A Certain Portion of the Lands of Cathleen L. Scott in Plum Borough, Allegheny County, Pennsylvania for the Siting and Construction of Transmission Lines Associated with the Proposed Universal-Plum Project is Necessary or Proper for the Service, Accommodation, Convenience or Safety of the Public at Docket No. A-2018-3000708. (Scott Condemnation Application).
4. By Prehearing Order dated July 2, 2018, the Scott Condemnation Application was consolidated with Duquesne Light’s Full Siting Application at Docket No. A-2018-3000708.

5. On October 9, 2018, the evidentiary hearing in this consolidated proceeding convened; Condemnee Cathleen L. Scott did not appear for the evidentiary hearing.

6. On October 12, 2018, the Applicant filed and served a petition to withdraw the Scott Condemnation Application and represented Duquesne Light had obtained all necessary real estate rights with respect to the Scott property; consequently, Duquesne Light requested permission to withdraw the Scott Condemnation Application.

7. No objection was filed within 10 days of service of the withdrawal petition.

DISCUSSION

Legal Standards

Section 5.94(a) of the Commission's regulations, 52 Pa.Code § 5.94(a), in relevant part, provides as follows:

(a) ... 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.

Analysis

The filing of the Siting Application and Ms. Scott's appearance at the Initial Prehearing Conference to challenge the Scott Condemnation Application constituted a contested or adversarial proceeding.¹ Therefore, the Petition must be considered under the provisions of

¹ An adversarial proceeding is defined as, "[a] proceeding initiated by a person in order to seek authority, approvals, tariff changes, enforcement, fines, remedies or other relief from the Commission which is contested by

Section 5.94, cited above. In its Petition, Duquesne Light avers the Company has obtained all necessary real estate rights with respect to the Scott property, thereby rendering the Scott Condemnation Application unnecessary. No response or objection was filed to the Petition.

Considering the above, the Commission has no interest in mandating that Duquesne Light continue litigation of the Scott Condemnation Application. In the instant case, Duquesne Light has effectively abandoned the Application.

Accordingly, granting Duquesne Light's request for leave to withdraw the Scott Condemnation Application will terminate the litigation at Docket No. A-2018-3000768 and thereby save the parties and the Commission the time and money in continuing litigation costs, without impacting the public interest.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.
2. Section 5.94(a) of the Commission's Rules of Practice and Procedure, 52 Pa.Code § 5.94(a), permits a party to withdraw a pleading in a contested proceeding by permission of the presiding officer or Commission.
3. In determining whether to permit withdrawal of the pleading, the presiding officer or Commission must consider the petition, any objections thereto and the public interest.

one or more other persons and which will be decided on the basis of a formal record.” 52 Pa.Code § 1.8.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Petition for Leave to Withdraw and Terminate filed by Duquesne Light Company is granted, consistent with this Order.

2. That the Application of Duquesne Light Company filed Pursuant To 15 Pa.C.S. § 1511(c) for a Finding and Determination that the Service to be Furnished by the Applicant through its Proposed Exercise of the Power of Eminent Domain to Acquire a Certain Portion of the Lands of Cathleen L. Scott in Plum Borough, Allegheny County, Pennsylvania for the Siting and Construction of the 138 kV Transmission Lines Associated with the Universal-Plum Project in Penn Hills, Monroeville, and Plum Borough, Allegheny County, Pennsylvania Is Necessary or Proper for the Service, Accommodation, Convenience or Safety of the Public at Docket No. A-2018-3000768 is hereby withdrawn.

3. That the Commission's Secretary's Bureau shall mark Docket No. A-2018-3000768 closed.

Date: November 19, 2018

/s/
Conrad A. Johnson
Administrative Law Judge