

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Duquesne Light Company : A-2018-3000708  
filed Pursuant to 52 Pa. Code Chapter 57, :  
Subchapter G, 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 :

Application of Duquesne Light Company Under : A-2018-3000747  
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 Maria :  
Palombo Aiello, Antoinette Cardinale and Anna :  
Louise Palombo, now known as, Anna Louise :  
Aspden, 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 :

**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 (Duquesne Light, Applicant or Company) to Exercise the Power of Eminent Domain to Acquire an Easement and Right of Way Across the Property of Maria Palombo Aiello, Antoinette Cardinale and Anna Louise Palombo, now known as, Anna Louise Aspden.

## HISTORY OF THE PROCEEDING

On March 23, 2018, Duquesne Light 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, pursuant to 52 Pa.Code § 57.72 (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 Wilkesburg 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 Maria Palombo Aiello, Antoinette Cardinale and Anna Louise Palombo, 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-2018-3000747 (Palombo Condemnation Application).

The nine other Condemnation Applications were filed at Docket Nos. A-2018-3000732, A-2018-3000733, A-2018-3000743, A-2018-3000754, A-2018-3000755,<sup>1</sup> A-2018-3000756, A-2018-3000766, A-2018-3000768,<sup>2</sup> and A-2018-3000769.

On April 2, 2018, a Notice was issued for the Palombo 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. Condemnees, Antoinette Cardinale, Anna Louise Palumbo and Maria Palumbo-Aiello, (Palombo Parties) were present for the conference, together with their counsel,

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<sup>1</sup> On March 13, 2019, I issued an Initial Decision which granted Duquesne Light's Petition for Leave to Withdraw the Condemnation Application at Docket No. A-2018-3000755. On April 22, 2019, by Final Order entered under 66 Pa.C.S. § 332(h), the Initial Decision became final without further Commission action, thereby closing Docket No. A-2018-3000755.

<sup>2</sup> On November 19, 2018, I issued an Initial Decision which granted Duquesne Light's Petition for Leave to Withdraw the Condemnation Application at Docket No. A-2018-3000768. On December 27, 2018, by Final Order entered under 66 Pa.C.S. § 332(h), the Initial Decision became final without further Commission action, thereby closing Docket No. A-2018-3000768.

Gary Kalmeyer, Esquire, to contest the Palombo Condemnation Application at Docket No. A-2018-3000747. Condemnee Cathleen L. Scott also appeared at the Initial Prehearing Conference, self-represented, to contest the Scott Condemnation Application at Docket No. A-2018-3000768.

By Prehearing Order dated July 2, 2018, the Palombo 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 matter was convened. During the hearing, Landowner Anna Louise Palombo, testified that "Palombo" was her maiden name, and her correct name is Anna Louise Aspden. Tr. 42, 220. Counsel for the Applicant, Garrett P. Lent, and counsel for Anna Louise Aspden, Gary Kalmeyer, Esquire stipulated to amending the caption for the Palombo Condemnation Application at Docket No. A-2018-3000747 to reflect the name **Anna Louise Palombo, now known as, Anna Louise Aspden**. Tr. 219-221. Consistent with the stipulation, a Fourth Interim Order Amending the Case Caption at Docket No. A-2018-3000747 was issued on March 15, 2019.

On April 16, 2019, 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 Maria Palombo Aiello, Antoinette Cardinale and Anna Louise Palombo [now known as Anna Louise Aspden] (Petition). In the Petition the Applicant avers, "Duquesne Light has obtained all necessary real estate rights with respect to the Palombo property, which renders the Palombo 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 Palombo Condemnation Application in its entirety." For relief, the Applicant requests that the Pennsylvania Public Utility Commission permit Duquesne Light to withdraw the Palombo Condemnation Application and terminate the proceeding at Docket No. A-2018-3000747 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.

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 Maria Palombo Aiello, Antoinette Cardinale and Anna Louise Palombo [now known as Anna Louise Aspden] 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-2018-3000747.

4. By Prehearing Order dated July 2, 2018, the Palombo 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; the Palombo Parties appeared for the hearing and testified.

6. On March 15, 2019, a Fourth Interim Order Amending the Case Caption at Docket No. A-2018-3000747 was issued to reflect the name Anna Louise Palombo, now known as Anna Louise Aspden.

7. On April 16, 2019, the Applicant filed and served a Petition to Withdraw the Palombo Condemnation Application and represented Duquesne Light had obtained all necessary real estate rights with respect to the Palombo property; consequently, Duquesne Light requested permission to withdraw the Palombo Condemnation Application.

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

## DISCUSSION

### Legal Standards

An application for Commission authorization or permission may be filed pursuant to Section 5.12 of the Commission regulations. 52 Pa.Code § 5.12.

A person objecting to the approval of an application filed with the Commission may file a protest to the application. 52 Pa.Code § 5.51.

The Business Corporation Law of 1988 (BCL), 15 Pa.C.S. § 1101, *et seq.*, provides for the exercise of eminent domain by certain public utilities. Specifically, Section 1511(c) of the BCL requires a public utility to file an application with the Commission to receive approval to exercise the power to condemn property.

Section 5.94 of the Commission's regulations, 52 Pa.Code § 5.94, 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 Full Siting Application and the Palombo Parties' appearance at Initial Prehearing Conference to challenge the Palombo Condemnation Application constituted a contested or adversarial proceeding.<sup>3</sup> Therefore, the Petition must be considered under the provisions of Section 5.94 of the Commission's regulations, cited above. In its Petition, Duquesne Light avers the company has obtained all necessary real estate rights with respect to the Palombo property, thereby rendering the Palombo 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 Palombo Condemnation Application. In the instant case, Duquesne Light has effectively abandoned the Application.

Accordingly, granting Duquesne Light's request for leave to withdraw the Palombo Condemnation Application will terminate the litigation at Docket No. A-2018-3000747 and thereby save the Parties and the Commission the time and expense in continuing litigation costs, without impacting the public interest. Therefore, in the ordering paragraphs below the withdrawal Petition will be granted.

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<sup>3</sup> 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 one or more other persons and which will be decided on the basis of a formal record." 52 Pa.Code § 1.8.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 15 Pa.C.S. § 1511(c) and 52 Pa.Code §§ 5.12, 5.51
  
2. Section 5.94 of the Commission's Rules of Practice and Procedure, 52 Pa.Code § 5.94, 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. 52 Pa.Code § 5.94.

## ORDER

THEREFORE,

IT IS ORDERED:

1. That the Petition for Leave to Withdraw and Terminate filed by Duquesne Light Company at Docket No. A-2018-3000747 is granted, consistent with this Order.
  
2. That 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 Maria Palombo Aiello, Antoinette Cardinale and Anna Louise Palombo, now known as, Anna Louise Aspden, 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-2018-3000747 is hereby withdrawn.

3. That the Commission's Secretary's Bureau shall mark Docket No. A-2018-3000747 closed.

Date: May 1, 2019

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Conrad A. Johnson  
Administrative Law Judge