

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

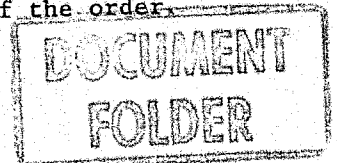
1. <u>REPORT DATE:</u> June 7, 1991	:	2. <u>BUREAU AGENDA NO.:</u>
3. <u>BUREAU:</u> Law	:	JUN-91-L-724*
4. <u>SECTION(S):</u> Fixed Utility Service	:	5. <u>PUBLIC MEETING DATE:</u>
6. <u>APPROVED BY:</u>	:	June 14, 1991
Director: J. Povilaitis 7-5000	:	RECORDED JUL 29 1991
Supervisor: F. Wilmarth 3-2810	:	
7. <u>MONITOR:</u>	:	
8. <u>PERSON IN CHARGE:</u> Patricia Krise Burket 3-2810	:	
9. <u>DOCKET NO.:</u> A-110550,F.055	:	
10. (a) <u>CAPTION (abbreviate if more than 4 lines)</u>		
(b) <u>Short summary of history & facts, documents & briefs</u>		
(c) <u>Recommendation</u>		

- (a) Letter of Notification of Philadelphia Electric Company relative to reconstructing and rebuilding of the existing 138 kV line to operate as a Woodbourne-Heaton 230 kV line in Montgomery and Bucks Counties.
- (b) On September 14, 1990, Petitioners Small, et al. filed an Emergency Petition of Non-Noticed Property Owners to Intervene for Reopening and to Suspend Approval (Emergency Petition) of a Commission order entered February 9, 1990 at No. A-110550,F.055. The February 9 order granted Philadelphia Electric Company (PECO) authority to reconstruct an abandoned Conrail 138 kV line as the Woodbourne-Heaton 230 kV line. On March 8, 1991, the Commission denied the Emergency Petition.

On April 2, 1991, the Petitioners appealed the March 8 order to Commonwealth Court, and on April 26, 1991, filed a Petition for Stay Pending Review with the Court. After oral argument on the petition for stay, an order issued May 24, 1991 which remanded the case to the Commission to hold a hearing to determine whether the Petitioners were adversely affected by PECO's re-conductoring of the line. The remand order also directed that hearing be held within 90 days of the date of the order.

See next page

NVL



11. MOTION BY: Commissioner Chm. Smith

Commissioner Holland - Y
Commissioner Rhodes - Y
Commissioner

SECONDED: Commissioner Rolka

CONTENT OF MOTION: Staff recommendation adopted.
Statement of Commissioner Joseph Rhodes, Jr., attached.

- (c) Given the Commission's election not to pursue appeal of the Commonwealth Court remand, the Law Bureau herein recommends adoption of the proposed order which reopens docket No. A-110550,F.055 and assigns the matter to the OALJ for hearing and determination on the limited issue of whether the Petitioners will be adversely affected by PECO's reconductoring of the former Conrail transmission line.

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
HARRISBURG, PA. 17120

Letter of Notification of
Philadelphia Electric Co.
relative to the proposed
230 KV Woodbourne Heaton line

Public Meeting
June 14, 1991
Docket No. A-110550F.055
JUN-91-L-724*

STATEMENT OF COMMISSIONER JOSEPH RHODES, JR.

I consider this case to be very important, as it will play a crucial role in determining this Commission's position on high voltage EMF, an issue that raises critical public policy questions that could affect all Pennsylvanians. Given this case's importance, I would respectfully encourage all affected parties, such as the Office of Consumer Advocate, the Small Business Advocate, industry representatives, the Office of Trial Staff, and other Commonwealth agencies with specialized relevant expertise like the Department of Environmental Resources, and the Department of Health, to intervene and participate in this proceeding.

As part of the hearing process of this reopened Docket I would like the following information provided for the record.

1. Information regarding the expected level of electromagnetic fields (EMF) at centerline and edge of right-of-way based upon the design of the line employed by the company.
2. Discussion of the line design employed and whether mitigation of EMF has been maximized by the company efforts.

6-13-91

Date

J. Rhodes, Jr.
Joseph Rhodes, Jr.
Commissioner

June 14, 1991

KJR

A-110550,F.055

DONALD BLANKEN ESQUIRE
PHILADELPHIA ELECTRIC COMPANY
PO BOX 8699
PHILADELPHIA PA 19101

Letter of Notification of Philadelphia Electric Company
relative to reconstructing and rebuilding of the existing
138 KV line to operate as a Woodbourne-Heaton 230 KV line
in Montgomery and Bucks Counties.

To Whom It May Concern:

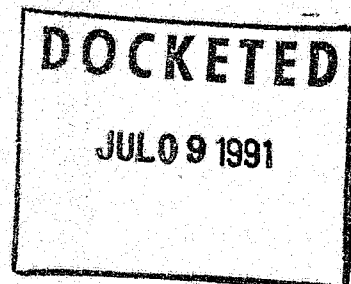
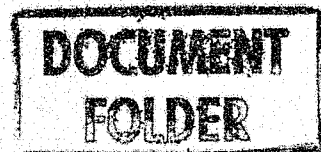
This is to advise you that an Order has been adopted
by the Commission in Public Meeting on June 14, 1991 in
the above entitled proceeding.

A copy of this Order has been enclosed for your records.

Very truly yours,

Jerry Rich, Secretary

smk
Encls.
Cert. Mail



**DOCUMENT
FOLDER**

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held June 14, 1991

Commissioners Present:

William H. Smith, Chairman
Joseph Rhodes, Jr., Vice-Chairman
Wendell F. Holland, Commissioner
David W. Rolka, Commissioner

Letter of Notification of Philadelphia Electric Company relative to reconstructing and rebuilding of the existing 138 kV line to operate as a Woodbourne-Heaton 230 kV line in Montgomery and Bucks Counties.

No. A-110550, F.055

DOCKETED

JUL 09 1991

O R D E R

BY THE COMMISSION:

On September 14, 1990, Petitioners Robert Small, Frank English and Diane P.S. Koerper, et al., filed at the above docket an Emergency Petition of Non-Noticed Property Owners to Intervene for Reopening and to Suspend Approval (Emergency Petition) of a Commission order entered February 9, 1990. The February 9 order granted Philadelphia Electric Company (PECO) authority to reconstruct an abandoned Conrail 138 kV electric line as the Woodbourne-Heaton 230 kV line. Letter of Notification of Philadelphia Electric Company relative to reconstructing and rebuilding the existing line to operate as a Woodbourne-Heaton 230 kV line in Bucks and Montgomery Counties, A-110550, F.055. On March 8, 1991, the Commission issued an order denying the Emergency Petition.

On April 2, 1991, the Petitioners filed a Petition for Review with Commonwealth Court requesting that the Court 1) set aside the Commission order denying reopening and 2) remand the matter for hearing. On April 16, 1991, the Petitioners also filed with the Commonwealth Court a Petition for Stay Pending Review (Petition for Stay) in which the Petitioners requested the Court stay construction of the Woodbourne-Heaton line. On May 20, 1991, the Petitioners filed a Brief in Support of their Petition for Stay wherein they suggested that any harm to PECO could be avoided by requiring that the Commission institute hearings on an emergency basis, but they did not request remand hearings as relief. On May 21, 1991, the Commission filed an Answer to the Petition for Stay arguing that the Petitioners had not satisfied any of the criteria for a stay under Pa. P.U.C. v. Process Gas Consumers Group, 502 Pa. 545, 467 A.2d 805 (1983). Oral argument on the Petition for Stay was held before Commonwealth Court

Judge Madaline Palladino on May 22, 1991. At oral argument, Petitioners changed their request for relief and asked that the Judge remand the appeal to the Commission for hearing.

On May 24, 1991, the Commonwealth Court Judge issued an order remanding the case to the Commission to hold a hearing on the question of whether the Petitioners will be adversely affected by the reconductoring of the former Conrail line. The order further directed that this hearing be held within 90 days from the date of the remand order. On May 29, 1991, Judge Palladino issued an order supplementing her order of May 24, 1991 to reflect that jurisdiction over this matter was relinquished by Commonwealth Court.

On June 3, 1991, the Petitioners filed with the Commission a Petition for Hearing. In this petition, the Petitioners asked that a hearing be scheduled immediately; disclosed that they have already served discovery requests on PECO; and requested three days of hearings.

In compliance with the Judge's order issued May 24, 1991, the Commission directs that the record at Docket No. A-110550, F.055 be reopened so that the Petitioners can at a hearing introduce testimony and documentary evidence on the sole issue of whether the Petitioners will be adversely affected by the reconductoring of this former Conrail line as PECO's Woodbourne-Heaton 230 kV line. Accordingly, the Commission assigns this matter to Office of Administrative Law Judge and further directs that a hearing be scheduled no later than August 22, 1991 for the determination of the afore-mentioned issue.

We wish to emphasize that the scope of discovery and hearing on remand is to be limited to the issue as defined in Judge Palladino's order and herein. We also note that the number of days of hearing as well as the disposition of all discovery requests is left to the sound discretion of the Administrative Law Judge assigned to this proceeding; THEREFORE,

IT IS ORDERED:

1. That pursuant to Judge Palladino's May 24, 1991 order as supplemented by order dated May 29, 1991 the record at Docket No. A-110550, F.055, be hereby reopened for hearing and determination of the sole issue of whether the Petitioners will be adversely affected by the reconductoring of this former Conrail transmission line;

2. That consistent with the relief granted in Paragraph No. 1 above, the Petition for Hearing filed June 3, 1991 is granted to the extent consistent with this order;

3. That the Office of Administrative Law Judge expeditiously schedule a hearing for not later than August 22, 1991 for the sole purpose of determining whether the Petitioners will be adversely affected by the reconductoring of the former Conrail transmission line by Philadelphia Electric Company;

4. That a copy of this order is served on all parties of record to the instant Commission transmission line siting proceeding as well as to all parties having participated before the Commonwealth Court in the appeal of our earlier order at this docket.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Jerry Rich". The signature is stylized with a large, sweeping initial "J" and "R".

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: June 14, 1991

ORDER ENTERED: June 14, 1991

PHILADELPHIA ELECTRIC COMPANY

LEGAL DEPARTMENT

James W. Durham
Senior Vice President
and General Counsel

Eugene J. Bradley
Of Counsel

Bjarnie R. Anderson
Legal Administrator

2301 MARKET STREET, BOX 8699
PHILADELPHIA, PA 19101
(215) 841-5544 FAX: 568-3389

Donald Blanken
Paul R. Bonney
Ellen M. Cavanaugh
Rudolph A. Chillemi
Edward J. Cullen, Jr.
Katherine K. Dodd
Aubra S. Gaston
Gregory Golazeski
E. C. Kirk Hall
J. Lindsay Johnston
Kimberly Lewis
Stephanie Whitton Lewis
T. Michael Mather
Mary R. McFall
Assistant General Counsel

June 13, 1991

RLS

RECEIVED

JUN 17 1991

Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17120

SECRETARIES OFFICE
Public Utility Commission

Re: Letter of Notification of Philadelphia Electric Company relative to reconductoring and rebuilding of the existing 138 KV line to operate as a Woodbourne-Heaton 230 KV Line in Montgomery and Bucks Counties. - A-110550F055

Dear Mr. Rich:

Enclosed is an original and two copies of Philadelphia Electric Company's Motion to Suppress Intervenor's Request for Documents in the subject proceeding. A copy of this motion has been served upon all parties of record.

Very truly yours,

Donald Blanken

Donald Blanken

DB:bmt
Enclosures (3)

cc: Robert J. Sugarman, Esquire
Tanya McCloskey, Esquire
Patricia Krise Burket, Esquire
John F. Povilaitis, Esquire

DOCUMENT
FOLDER

ORIGINAL

RECEIVED

JUN 17 1991

SECRETARY'S OFFICE
Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: LETTER OF NOTIFICATION :
OF PHILADELPHIA ELECTRIC COMPANY :
RELATIVE TO RECONDUCTORING AND :
REBUILDING OF THE EXISTING 138 KV :
LINE TO OPERATE AS A WOODBOURNE- :
HEATON 230 KV LINE IN MONTGOMERY :
AND BUCKS COUNTIES. :

DOCKET NO. A-110550F055

MOTION TO SUPPRESS INTERVENORS REQUEST FOR DOCUMENTS JUN 22 1991

Philadelphia Electric Company (hereinafter "PECO") respectfully requests your Honorable Commission to suppress intervenors' request for documents, and in support of this motion states as follows:

1. The memorandum Opinion and Order by the Commonwealth Court of May 24, 1991, held that petitioners ". . . are entitled to a hearing on the question of whether they will be adversely affected by the reconductoring of the high tension electrical line at issue in this case." The Court then remanded the case to the Commission to "hold a hearing on this issue within 90 days from the date of this Order."

2. The Court did not stay the construction of the transmission line. Furthermore, petitioners/intervenors withdrew their request for a stay.

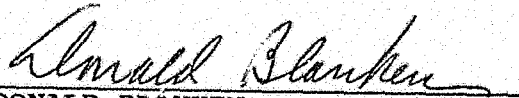
3. The issue before the Commission on remand is to determine whether petitioners/intervenors will be adversely affected by the proposed reconductoring. Accordingly, the request for documents relating to load projections, line

DOCUMENT
FOLDER

capacity, peak loads attained and projected peak loads in intervenors' request for documents, copy of which is attached, are not relevant to the issue of adverse affects from the reconductoring of the line. Accordingly, PECO submits that all of the requested documents relating to the need for the line are irrelevant to the issue to be heard by the Commission.

4. As stated previously, the Court's Order of May 24, 1991, orders a hearing within 90 days. The Commission has not yet issued its order scheduling a hearing and defining the scope of the hearing or the evidence to be presented. Accordingly, it is submitted that this request for documents is premature and should be suppressed without prejudice to be renewed at the appropriate time and in accordance with any hearing orders and rulings issued by the Commission.

Respectfully submitted,



DONALD BLANKEN
Counsel for
Philadelphia Electric Company
2301 Market Street
Philadelphia, PA 19101
(215) 841-4256

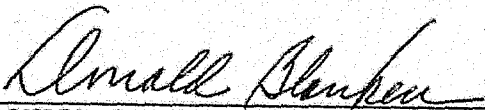
CERTIFICATE OF SERVICE

I certify that I have caused a copy of the foregoing Motion to Suppress Intervenor's Request for Documents to be served on the following by first class mail, postage prepaid, this date:

Robert J. Sugarman, Esquire
Sugarman & Associates
16th Floor, City Place
101 North Broad Street
Philadelphia, PA 19107

Tanya McCloskey, Esquire
Office of the Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Patricia Krise Burket, Esquire
John F. Povilaitis, Esquire
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17120


DONALD BLANKEN, ESQUIRE

Date: June 13, 1991

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: LETTER OF NOTIFICATION : DOCKET NO. A-110550F055
OF PHILADELPHIA ELECTRIC :
COMPANY UNDER 52 PA :
CODE § 57.72(d) RE: PROPOSED :
230 KV WOODBOURNE :
TRANSMISSION LINE :

INTERVENORS REQUEST FOR DOCUMENTS FROM
PHILADELPHIA ELECTRIC COMPANY

Pursuant to 52 Pa. Code § 5.321 of the Rules of the Pennsylvania PUC, intervenors request production of the following documents by applicant Philadelphia Electric Company within 20 days of service:

1. System load projections, 1986 - 91.
2. Load growth projections (for winter and summer peaks) 1985 - 1991.
3. System map.
4. System reliability standards and criteria, 1985 to 1991.
5. Line capacity and KW for transmission lines in Bucks and Montgomery Counties, in whole or in part, and all lines connected to heat and substation.
6. Line diagram showing rating of high and low side buses (and number of buses) in each substation in Montgomery and Bucks Counties, and at Heaton. (Include Woodburne if located in Bucks or Montgomery Counties).
7. Applicable design standards for clearance (horizontal and vertical), pole entire height and design.
8. The clearance diagram (horizontal and vertical plan)

for proposed line.

9. To the extent not enclosed in the above, anticipated loading on proposed new line and on substation, through 1996.

10. Annual energy consumption in area to be served by line, 1985 - 91.

11. Peak loads (peak hour and peak day) in same area, 1985 - 1991.

12. System wide peak hour 1985 - 1991.


13. System annual energy sales, 1985 - 1991.

14. In each case where data is requested from 1985 to 1981, the data is requested for each calendar year, or portion thereof.

15. System planning studies, 1985 - 1981, bearing in whole or in part on the area to be served by the line.

16. Map describing system area characterized as to be served by the line.

17. Any and all intrusions upon ^{private} ~~personal~~ property, including but not limited to Robert Smalls.



ROBERT J. SUGARMAN
Counsel for Intervenors

Date: 5/31/91

OF COUNSEL:

SUGARMAN & ASSOCIATES
16TH FLOOR, CITY PLACE
101 N. BROAD STREET
PHILADELPHIA, PA 19107
(215) 751-9733
pldngs91\pause.006

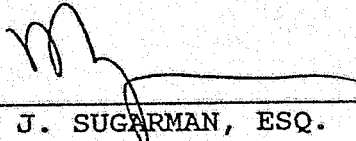
CERTIFICATE OF SERVICE

I, certify that I have caused a copy of the foregoing Intervenor's Request for Documents from Philadelphia Electric Company to be served on the following by first class mail, postage pre-paid, this date:

Donald Blanken, Esquire
Philadelphia Electric Company
2301 Market Street
P. O. 8699
Philadelphia, PA 19101

Tanya McCloskey, Esquire
Office of the Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Pennsylvania Public Utility Commission
Patricia Krise Burket, Esquire
John F. Povilaitis, Esquire
G-28 North Office Building
Harrisburg, PA 17120


ROBERT J. SUGARMAN, ESQ.

Date: 5/31/91

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265
June 19, 1991

In Re: A-110550F055

(See attached list)

Letter of Notification of Philadelphia Electric Company relative to reconstructing and rebuilding of the existing 138 kv line to operate as a Woodbourne-Heaton 230 kv line in Montgomery and Bucks Counties.

NOTICE

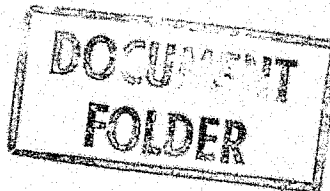
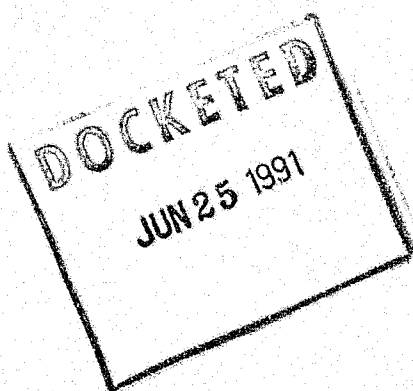
This is to inform you that a hearing on the above captioned case will be held Thursday, August 15, 1991, at 10:00 a.m. in Room 1306, Philadelphia State Office Building, Broad and Spring Garden Streets, Philadelphia, Pennsylvania.

The presiding officer in this proceeding is Administrative Law Judge Herbert Smolen. Judge Smolen can be contacted at 1302 Philadelphia State Office Building, Broad and Spring Garden Streets, Philadelphia, Pennsylvania 19130; telephone (215) 560-2105.

cc: Judge Smolen
Mr. Bramson
Consumer Advocate
Law Bureau
Ms. Kelly
Mrs. Howell
Docket Room

Certified Mail
Receipt Requested &
Reg. Mail to Complainant

NVL





COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

June 26, 1991

Jerry Rich, Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

IN REPLY PLEASE
REFER TO OUR FILE

RECEIVED

JUN 26 1991

SECRETARY'S OFFICE
Public Utility Commission

Re: Letter of Notification of Philadelphia Electric Company relative to reconstructing and rebuilding of the existing 138 kV line to operate as a Woodbourne-Heaton 230 kV line in Montgomery and Bucks Counties, No. A-110550, F.055.

Dear Secretary Rich:

Enclosed for filing please find an original and two copies of my Notice of Appearance in the above-referenced matter. A Certificate of Service is attached.

Sincerely,

Patricia Krise Burket
Assistant Counsel

Enclosures

cc: All parties of record

DOCUMENT
FOLDER

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Letter of Notification of :
Philadelphia Electric Company :
relative to reconstructing and :
rebuilding of the existing :
138 kV line to operate as a :
Woodbourne-Heaton 230 kV line :
in Montgomery and Bucks :
Counties :

Docket No.
A-110550, F.055

RECEIVED

JUN 26 1991

SECRETARY'S OFFICE
Public Utility Commission

NOTICE OF APPEARANCE

To The Secretary:

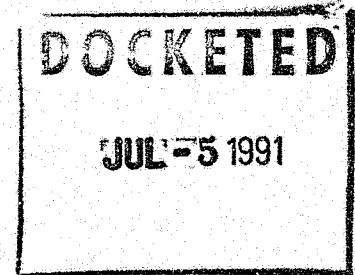
Please enter the appearance of the Pennsylvania Public Utility Commission Law Bureau Prosecutory Staff in the above-captioned proceeding. Pursuant to authority at 66 Pa. C.S. §§308(b) and 332(h), Prosecutory Staff will be participating as a party in the proceeding.

Counsel for Law Bureau Prosecutory Staff in this proceeding will be:

Patricia Krise Burket
Assistant Counsel

and

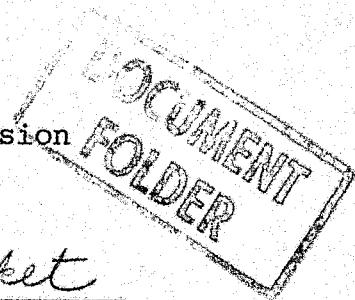
Frank B. Wilmarth
Deputy Chief Counsel



All service and communications to Law Bureau Prosecutory Staff should be made to:

Patricia Krise Burket
Assistant Counsel
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120
(717) 783-2810

Patricia Krise Burket
Patricia Krise Burket
Assistant Counsel



DATED: June 26, 1991

CERTIFICATE OF SERVICE

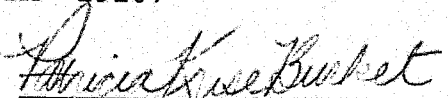
I hereby certify that the foregoing document has been served by first-class mail upon the following persons:

Herbert Smolen
Administrative Law Judge
Pennsylvania Public Utility
Commission
1302 Philadelphia State
Office Building
Philadelphia, PA 19130

Paul Bonney, Esq.
Donald Blanken, Esq.
Philadelphia Electric Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101

Tanya McCloskey, Esq.
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Robert J. Sugarman, Esq.
Sugarman & Associates
16th Floor, City Place
101 North Broad Street
Philadelphia, PA 19107



Patricia Krise Burket
Assistant Counsel

DATED: June 26, 1991

PHILADELPHIA ELECTRIC COMPANY

LEGAL DEPARTMENT

2301 MARKET STREET, BOX 8699
PHILADELPHIA, PA 19101
(215) 841-5544 FAX: 568-3389

ORIGINAL

AMH

James W. Durham
Senior Vice President
and General Counsel

Eugene J. Bradley
Of Counsel

Bjarnie R. Anderson
Legal Administrator

Donald Blankin
Paul R. Bonney
Ellen M. Cavanaugh
Rudolph A. Chillemi
Edward J. Cullen, Jr.
Katherine K. Dodd
Aubra S. Gaston
Gregory Gofazaski
E. C. Kirk Hall
Elizabeth P. Harris
J. Lindsay Johnston
Kimberly Lewis
Stephanie Whittton Lewis
T. Michael Mather
Mary R. McFall
Jenny P. Shulbank
Assistant General Counsel

July 9, 1991

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
North Office Building
P.O. Box 3265
Harrisburg, PA 17120

Re: Letter of Notification of Philadelphia Electric
Company Relative to Reconstructing and Rebuilding
of the Existing 138 KV Line to Operate as a
Woodbourne-Heaton 230 KV Line in Montgomery and
Bucks Counties; Docket No. A-110550,F.055

Dear Secretary Rich:

Enclosed for filing in the above-captioned proceeding are an original and two copies of the Notice of Appearance of Tom Watson and Ward L. Smith on behalf of Philadelphia Electric Company. As indicated in the attached Certificate of Service, I have served copies of this filing upon all parties of record.

Sincerely,

Paul R. Bonney
Paul R. Bonney

PRB/lae
Enclosure
cc: See Certificate of Service

RECEIVED
JUL 11 1991
SECRETARYS OFFICE
Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

LETTER OF NOTIFICATION OF :
PHILADELPHIA ELECTRIC COMPANY :
RELATIVE TO RECONSTRUCTING AND :
REBUILDING OF THE EXISTING :
138 KV LINE TO OPERATE AS A :
WOODBOURNE-HEATON 230 KV LINE :
IN MONTGOMERY AND BUCKS COUNTIES :

DOCKET NO. A-110550,F.055

NOTICE OF APPEARANCE

Please enter the appearance of Tom Watson and Ward L. Smith from the law firm of Crowell & Moring who, along with Paul R. Bonney, will represent Philadelphia Electric Company in the above-captioned matter. Please withdraw the appearance of Donald Blanken, who has retired from the Company.

All service and communications to Philadelphia Electric Company should continue to be made to:

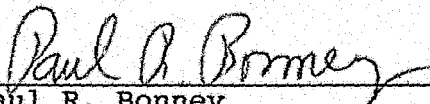
Paul R. Bonney
Assistant General Counsel
Philadelphia Electric Company
2301 Market Street, 23rd Floor
Philadelphia, PA 19101
(215) 841-4252
FAX: (215) 568-3389

RECEIVED
JUL 11 1991
SECRETARY'S OFFICE
Public Utility Commission

DOCKETED
JUL 13 1991

We request that the parties also send a copy of all documents served upon Philadelphia Electric Company directly to:

Ward L. Smith, Esquire
Crowell & Moring
1001 Pennsylvania Avenue, N.W
Washington, DC 20004
(202) 624-2594
FAX: (202) 528-5116


Paul R. Bonney
Assistant General Counsel
Philadelphia Electric Company

Dated: July 9, 1991

RECEIVED
JUL 11 1991
SECRETARY'S OFFICE
Public Utility Commission

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Notice of Appearance upon the parties and in the manner indicated below in accordance with the requirements of 52 Pa. Code § 1.54.

By First Class Mail

Honorable Herbert S. Smolen
Administrative Law Judge
Pennsylvania Public Utility Commission
1302 Philadelphia State Office Building
Broad & Spring Garden Streets
Philadelphia, PA 19130

Patricia Krise Burket, Esquire
Pennsylvania Public Utility Commission
G-28, North Office Building
P.O. Box 3265
Harrisburg, PA 17120

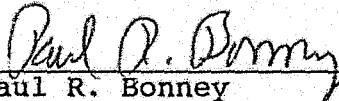
Robert J. Sugarman, Esquire
Sugarman & Associates
16th Floor, City Place
101 North Broad Street
Philadelphia, PA 19107
(Counsel for Intervenors)

Tanya J. McCloskey, Esquire
Assistant Consumer Advocate
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

RECEIVED

JUL 11 1991

SECRETARY'S OFFICE
Public Utility Commission


Paul R. Bonney
Assistant General Counsel
Philadelphia Electric Company
2301 Market Street
Philadelphia, PA 19101
(215) 841-4252

Dated: July 9, 1991

PHILADELPHIA ELECTRIC COMPANY

LEGAL DEPARTMENT

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AMH
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Edward J. Cullen, Jr.
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Aubra S. Gaston
Gregory Golazeski
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Elizabeth P. Harris
J. Lindsay Johnston
Kimberly Lewis
Stephanie Whilton Lewis
T. Michael Mather
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Assistant General Counsel

July 11, 1991

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
North Office Building
P.O. Box 3265
Harrisburg, PA 17120

RECEIVED
JUL 11 1991
SECRETARY'S OFFICE
Public Utility Commission

Re: Letter of Notification of Philadelphia Electric
Company Relative to Reconstructing and Rebuilding
of the Existing 138 KV Line to Operate as a
Woodbourne-Heaton 230 KV Line in Montgomery and
Bucks Counties; Docket No. A-110550,F.055

Dear Secretary Rich:

Enclosed for filing in the above-captioned proceeding are an original and two copies of Philadelphia Electric Company's Prehearing Conference Memorandum. As indicated in the attached Certificate of Service, I have served copies of this filing upon all parties of record.

I have attached to the original Memorandum a U.S. Postal Form 3817, dated July 11, 1991, to evidence the filing of the Memorandum as of this date. I have also enclosed an additional copy of this cover letter which I request that you date-stamp and return to me.

Sincerely,

Paul R. Bonney
Paul R. Bonney

PRB/lae
Enclosure
cc: See Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Philadelphia Electric Company's Prehearing Conference Memorandum upon the following parties and in the manner indicated below in accordance with the requirements of 52 Pa. Code § 1.54:

By Telecopier or Hand Delivery
and First Class Mail

Honorable Herbert S. Smolen
Administrative Law Judge
Pennsylvania Public Utility Commission
1302 Philadelphia State Office Building
Broad & Spring Garden Streets
Philadelphia, PA 19130

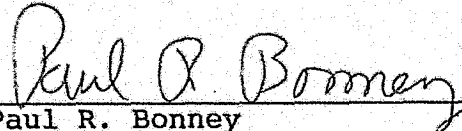
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Sugarman & Associates
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Philadelphia, PA 19107
(Counsel for Intervenors)

Tanya J. McCloskey, Esquire
Assistant Consumer Advocate
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

(Continued)

Tinku Khanwalkar, Esquire
Associate General Counsel
Pennsylvania Power & Light Co.
Two North Ninth Street
Allentown, PA 19101



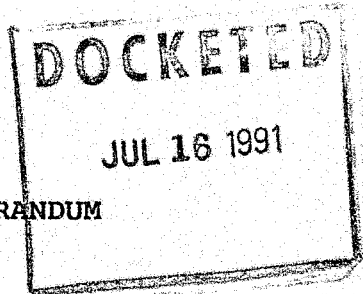
Paul R. Bonney
Assistant General Counsel
Philadelphia Electric Company
2301 Market Street
Philadelphia, PA 19101
(215) 841-4252

Dated: July 11, 1991

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

LETTER OF NOTIFICATION OF :
PHILADELPHIA ELECTRIC COMPANY :
RELATIVE TO RECONSTRUCTING AND :
REBUILDING OF THE EXISTING :
138 KV LINE TO OPERATE AS A :
WOODBOURNE-HEATON 230 KV LINE :
IN MONTGOMERY AND BUCKS COUNTIES :

DOCKET NO. A-110550,F.055



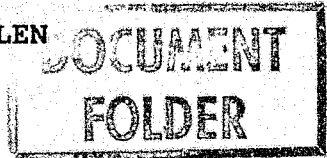
PREHEARING CONFERENCE MEMORANDUM

OF

PHILADELPHIA ELECTRIC COMPANY

BEFORE

ADMINISTRATIVE LAW JUDGE HERBERT SMOLEN



Paul R. Bonney
Katherine K. Dodd
Assistant General Counsel
Philadelphia Electric Company

DATED: July 11, 1991

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I. INTRODUCTION AND BRIEF HISTORY OF THE PROCEEDING

This proceeding involves Philadelphia Electric Company's ("PECO" or the "Company") rebuilding and reconductoring of a de-energized railroad 138 kV transmission line located in Montgomery and Bucks Counties along an active Consolidated Rail Corporation ("Conrail") freight line. In 1989, PECO agreed to purchase from Conrail an easement along its rail line, together with the existing structures supporting the de-energized 138 kV transmission line, for the purpose of building a 12.8-mile 230 kV line between PECO's Woodbourne and Heaton Substations. PECO located its line within the existing railroad right-of-way -- that is, PECO employed the "common corridor" approach -- and the line will use most of the existing transmission line structures. PECO's line required no condemnation of property.^{1/}

On November 21, 1989, PECO filed with the Pennsylvania Public Utility Commission (the "Commission") a Letter of Notification, pursuant to 52 Pa. Code § 57.72(d)(1), with respect to the proposed Woodbourne-Heaton transmission line. In its Letter of Notification, the Company described and explained, among other things, the location of, the need for, the engineering justification for, the design of, and the

^{1/}PECO did purchase a two-acre parcel of land located between the railroad right-of-way and the Woodbourne Substation to enlarge the Substation property so it will abut the railroad and to avoid conflict with the runway approach at Buehl Field airport.

construction and maintenance of the line. PECO served copies of its Letter of Notification upon 29 state and local public officials in compliance with 52 Pa. Code §§ 57.72(d)(3) and 57.74.

No party filed a protest regarding the Company's Letter of Notification. In an Order issued February 9, 1990 at this docket, the Commission approved the Company's Letter of Notification. Thereafter, PECO commenced construction of the line.

On September 4, 1990, Robert Small, Jill Small, Frank English, Diane P.S. Koerper and others ("Petitioners") filed with the Commission an Emergency Petition of Non-Noticed Property Owners to Intervene for Reopening and to Suspend Approval. The Petitioners claimed that they own neighboring property that "will be affected by the construction of" the Woodbourne-Heaton transmission line and that they should have received notice of PECO's filing with the Commission. The Petitioners requested that the Commission admit them as parties, reopen the proceeding, and suspend its February 9, 1990 Order.

After various other submissions to the Commission, including PECO's Answer to the Emergency Petition and intervention by the Office of Consumer Advocate, the Commission denied the Emergency Petition in an Order entered March 8, 1991. The Commission concluded that the Company properly employed the Letter-of-Notification process and that the Petitioners were not entitled

to notice because they did not own property "within the proposed right-of-way." 52 Pa. Code § 57.74(c). The Commission also noted that in its review and approval of PECO's Letter of Notification, it had considered and dismissed the issues raised by the Petitioners, such as the purported effects from electric and magnetic fields ("EMF").

On April 2, the Petitioners filed with the Commonwealth Court a Petition for Review of the Commission's March 8, 1991 Order, claiming that the Commission erred in denying them notice and a hearing. On April 4, 1991 the Petitioners filed with the Commission a Petition for Stay Pending Appeal, requesting that the Commission direct the Company to cease construction of the line pending the Petitioners' appeal in the Commonwealth Court. The Commission denied that Petition in an Order entered May 8, 1991.

On April 26, 1991, the Petitioners had also filed with the Commonwealth Court a Petition for Stay Pending Review. Oral argument on the Petition for Stay was held before Commonwealth Court Judge Madaline Palladino on May 22, 1991. At oral argument, the Petitioners changed their requested relief and, instead of asking for a stay of construction, asked that Judge Palladino remand the case for hearing before the Commission -- the ultimate relief requested in their original Petition for Review before the Court.

In an Order issued May 24, 1991, Judge Palladino determined that the Letter of Notification process set forth in the Commission's regulations was "insufficient" in this instance. Judge Palladino concluded that "Petitioners are entitled to a hearing on the question of whether they will be adversely affected by the reconductoring of the high tension electrical line at issue in this case." The Judge further directed that the Commission hold the hearing within 90 days after May 24.

On May 30, 1991, the Petitioners filed with the Commission a Petition for Hearing, requesting among other things that they be permitted "three days of hearings . . . within 30 days." In an Order entered June 14, 1991 the Commission, in compliance with Judge Palladino's Order, directed that the record "be reopened so that the Petitioners can at a hearing introduce testimony and documentary evidence on the sole issue of whether the Petitioners will be adversely affected by the reconductoring of this former Conrail line as PECO's Woodbourne-Heaton 230 kV line." The Commission assigned this matter to the Office of Administrative Law Judge, who in turn assigned it to Administrative Law Judge Herbert Smolen. The Commission further ordered that a hearing be scheduled no later than August 22, 1991. A hearing has been scheduled for August 15, 1991.

The Company firmly believes that at the close of the record in this proceeding, the Petitioners will not have satisfied their

burden of proving that they will be "adversely affected" by the reconductoring of the Woodbourne-Heaton line.

II. ISSUES AND SCOPE OF THE HEARINGS

As noted above, Judge Palladino's May 24, 1991 Order and the Commission's June 14, 1991 Order clearly define the sole issue to be addressed in these hearings -- whether the Petitioners will be "adversely affected" by the reconductoring of the transmission line involved. The Commission in particular, in its June 14 Order, emphasized the narrow scope of the hearings: "Petitioners can . . . introduce testimony and documentary evidence on the sole issue of whether the Petitioners will be adversely affected We wish to emphasize that the scope of discovery and hearing on remand is to be limited to the issue as defined in Judge Palladino's order and herein." (emphasis added) The Commission reiterated the limited scope of the hearings in both ordering paragraphs 1 and 3 of its Order.

The sole question in this proceeding, i.e. whether the Petitioners will be "adversely affected" by the Woodbourne-Heaton line, is, in essence, a threshold question of whether the Petitioners' have standing. Notably, that determination does not involve questions regarding the need for or propriety of the location or design of the Woodbourne-Heaton line. Rather, such questions could be addressed in a subsequent proceeding, if necessary, but only if the Commission first determines in this proceeding that the Petitioners have satisfied their burden of proving that they will be "adversely affected" in some legally and factually recognizable way.

In addition, in accordance with the Commission's March 8, 1991 Order in this proceeding (page 10, fn. 9, and page 13, fn. 11), the Petitioners are specifically precluded from introducing any evidence regarding alleged decreases in property values due to the reconstruction of the line:

"The Petitioners contend that they would have also raised the issue of depreciation of their property values caused by the electric transmission line, and that in fact their properties were taken by 'inverse condemnation'. However, these issues are outside the Commission's jurisdiction. Thus, the desire of the Petitioners to raise this issue at a hearing is irrelevant

. . . .

The Petitioners also aver that they will suffer a reduction in property value, and that building the line would be the equivalent of taking their properties by inverse condemnation. However, as already explained, the Commission does not have the authority to address these two issues and thus, cannot evaluate the injury which the Petitioners allege they will suffer." (emphasis added)

The principle that the Commission cannot consider in transmission line cases questions of property value decreases or award damages therefor is well established. See, e.g., Fairview Water Co. v. Pa. P.U.C., 502 A.2d 162, 167 (Pa. S. Ct. 1985) ("the issues of scope and validity [of a right-of-way for an aerial electric transmission line] and damages must be determined by a Court of Common Pleas exercising equity jurisdiction."); Kearns v. Pa. P.U.C., 191 A.2d 700, 703 (Pa. Super. Ct. 1963) ("the Commission has no jurisdiction over the question of damages" in a transmission line case). That is not to say that the Petitioners

are deprived of a forum in which to voice such claims. Rather, the proper place to raise property value claims is in state court.

In various pleadings filed with the Commission and the Commonwealth Court, the Petitioners also have raised questions regarding possible health effects from EMF associated with the line. The Company acknowledges that evidence on that issue is properly within the scope of these hearings. It should be made clear, however, that the Company strongly believes that the Petitioners will not be able to sustain their burden of proving that they will be "adversely affected" by EMF from the Woodbourne-Heaton line.

For the reasons set forth above, the Company requests that ALJ Smolen issue an Order that in this proceeding the parties are precluded from introducing evidence on issues related to the need for or the propriety of the location or design of the Woodbourne-Heaton line and on issues related to any alleged decrease in property values due to the line.

III. BURDEN OF PROOF

As in many cases, the determination of which party has the burden of proof is critical in this case. That determination is easily made here. For several reasons the Petitioners undoubtedly have the burden of proof, both of "going forward" (sometimes called the burden of production) and of persuasion.

First, it is the Petitioners who have requested a hearing. It follows naturally, then, that they have the burden of proof. In its June 14, 1991 Order the Commission stressed that the record is being reopened "so that the Petitioners can at a hearing introduce testimony and documentary evidence" (emphasis added) In short, the Petitioners sought the opportunity to be heard, and, with that request having been granted, it is incumbent upon them to come forward and attempt to prove their case.

Second, and relatedly, although the Petitioners have in prior pleadings provided some indication of the general points they might raise at a hearing, it is not clear -- and will not be made clear until the Petitioners submit evidence -- exactly how the Petitioners believe they will be adversely affected. As a practical matter, the Company and other parties cannot be expected to submit testimony to establish all of the ways in which the Petitioners will not be affected. Rather, the obvious

course is to have the Petitioners spell out their allegations and present support therefor, and then permit the Company and others to respond.

Finally, the Petitioners are the "proponent[s] of a rule or order" -- namely, that they will be adversely affected by the reconductoring of the Woodbourne-Heaton line. Consequently, they have the burden of proof under the express provisions of the Public Utility Code. 66 Pa. C.S. § 332(a). See also Ledbetter v. Factoryville Water Co. and National Utilities, Inc., 70 Pa. P.U.C. 391, 397 (1989) ("Certainly a utility customer could file a formal complaint . . . [and] raise the issue of inadequate service Of course, in such a proceeding the burden of proof is on the complainant [under Section 332(a)]."); Lynch v. Pa. P.U.C., Docket No. 2651 C.D. 1990 (Cmlth. Ct., June 27, 1991) (Slip op. at 4) ("[S]ince Lynch alleges the unreasonableness of the utility's rule or regulation, he has the burden of establishing this unreasonableness [under Section 332(a)].").

For the foregoing reasons, the Company requests that ALJ Smolen issue an Order confirming that the Petitioners have the burden of proof.

IV. COMPANY WITNESSES

As explained above, the Company and the other parties will not know exactly what allegations of "adverse affect" the Petitioners are going to make until the Petitioners submit their testimony and evidence in this proceeding. As a result, PECO cannot say with specificity at this point which witnesses it will present in response to the Petitioners' allegations, or what will be the subject matter of their testimony. Nevertheless, the Company does intend to be prepared to present witnesses -- both Company employees and, if needed, outside experts^{2/} -- to testify on the following general areas to the extent such testimony is required to respond to the Petitioners' evidence:

- (1) Background information regarding the location and design of the Woodbourne-Heaton line;
- (2) EMF levels expected to be produced by the line once it is energized;
- (3) EMF exposure assessment;
- (4) Epidemiology (related to EMF); and
- (5) Oncology (related to EMF).

The Company reserves the right to present, as necessary, evidence on additional topics, depending largely on the evidence the Petitioners and other parties submit.

^{2/}The Company has not yet retained any outside expert witnesses. It will, however, inform the other parties of the identity of those witnesses once, and if, they are retained.

V. PROPOSED SCHEDULE

Set forth below is a proposed schedule for hearings, the submission of testimony and the filing of briefs in this proceeding:

Prehearing Conference	July 11, 1991
Receipt of Petitioners' and Opposing Party Written Expert Witness Testimony	July 25, 1991
Oral Direct Testimony and Cross-Examination of Resident Petitioners	August 15, 1991
Cross-Examination of Petitioners' and Opposing Party Expert Witnesses	August 20-21, 1991
Receipt of PECO Written Testimony	August 28, 1991
Cross-Examination of PECO Witnesses	September 17-18, 1991
Oral Rebuttal Testimony by Petitioners' and Opposing Party Witnesses and Cross-Examination	September 19, 1991
Oral Surrebuttal Testimony by PECO Witnesses and Cross-Examination	September 24, 1991
Initial Briefs Due	October 14, 1991
Reply Briefs Due	October 28, 1991

The Company believes that the above schedule fully complies with Commonwealth Court Judge Palladino's May 24, 1991 Order that the Commission permit the Petitioners to have a hearing within 90 days of that Order, or by August 22, 1991. The Company also

believes that the schedule complies with the Commission's June 14, 1991 Order that a hearing be scheduled no later than August 22, 1991.

The Company is firmly of the view that pre-filed written testimony, except by the resident Petitioners, is in order given the complexity of the issues likely to be raised by the Petitioners and the apparent need for expert testimony. See 52 Pa. Code § 5.412(a) ("Use of written testimony in Commission proceedings is encouraged, especially in connection with the testimony of expert witnesses."). The schedule set forth above provides for reasonable periods of time for the preparation of written expert testimony and discovery with respect to that testimony.^{3/}

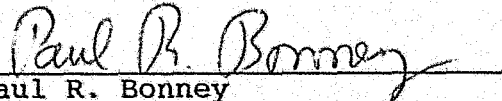
The Company requests that ALJ Smolen issue an Order adopting the schedule presented above.

^{3/}The Company suggests that the written testimony and brief due dates set forth in the schedule be considered "in-hand" receipt dates.

VI. CONCLUSION

Philadelphia Electric Company requests that Administrative Law Judge Smolen issue an Order adopting the positions and recommendations set forth above.

Respectfully submitted,



Paul R. Bonney
Katherine K. Dodd
Assistant General Counsel
Philadelphia Electric Company
2301 Market Street, S23-1
Philadelphia, PA 19101
(215) 841-4252

Dated: July 11, 1991

AMH

ORIGINAL

CERTIFICATE OF SERVICE

RECEIVED

JUL 15 1991

SECRETARYS OFFICE
Public Utility Commission

Re: Letter of Notification
of Philadelphia Electric
Company Re: Proposed 230 KV
Woodbourne to Heaton
Transmission Line,
Docket No. A-110550, F. 055

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Responses to Interrogatories and Requests for Production of Documents and Data of the Philadelphia Electric Company upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

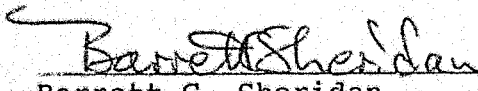
Dated this 15th day of July, 1991.

SERVICE BY FIRST CLASS MAIL

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JUL 22 1991

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ID29

DEPOSITED
EX-102



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

ORIGINAL

July 12, 1991

IN REPLY PLEASE REFER TO OUR FILE **AMH**

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17112

Re: Letter of Notification of Philadelphia
Electric Company Relative to Reconstructing
and Rebuilding of the Existing 138 kV Line
to Operate as a Woodbourne-Heaton 230 kV
Line in Montgomery and Bucks Counties;
Docket No. A-110550, F.055

Dear Secretary Rich:

Enclosed for filing please find a Certificate of Service certifying that on July 12, 1991, the Pennsylvania Public Utility Commission served upon counsel for Intervenors, and the other parties to the above captioned case, Objections of the Commission's Prosecutory Staff to Request for Production of Documents, dated May 31, 1991.

Sincerely,

Patricia Krise Burket
Patricia Krise Burket
Assistant Counsel

cc: All parties of record (w/enclosures)
ALJ Smolen



RECEIVED

JUL 12 1991

SECRETARYS OFFICE
Public Utility Commission

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document on the parties listed below in the manner indicated in accordance with the requirements of 52 Pa. Code §1.54.

By First Class Mail and FAX

Robert J. Sugarman, Esq.
Sugarman & Associates
16th Floor, City Place
101 North Broad Street
Philadelphia, PA 19107

RECEIVED

JUL 12 1991

SECRETARY'S OFFICE
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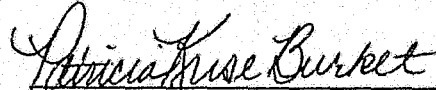
DOCKETED

JUL 22 1991

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Patricia Krise Burket
Assistant Counsel

Prosecutory Staff for the
Pennsylvania Public Utility
Commission

P.O. Box 3265
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(717) 783-2810

DATED: July 12, 1991



Pennsylvania Power & Light Company

Two North Ninth Street • Allentown, PA 18101-1179 • 215/774-5151

AMH

Arundhati Khanwalkar
Attorney
215/774-4452

ORIGINAL

July 11, 1991

Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17120

Re: Letter of Notification of
Philadelphia Electric Company
Relative to Reconstructing and
Rebuilding of the Existing 138 kV
Line to Operate as a Woodbourne-
Heaton 230 kV Line in Montgomery
and Bucks County;
Docket No. A-110550, F.055

Dear Secretary Rich:

Enclosed for filing are an original and two (2) copies of Pennsylvania Power & Light Company's (PP&L) Petition to Intervene in the above-referenced matter. PP&L is requesting permission to intervene in this proceeding because Commission action could provide a significant precedent that would affect PP&L.

Very truly yours,

A. Khanwalkar

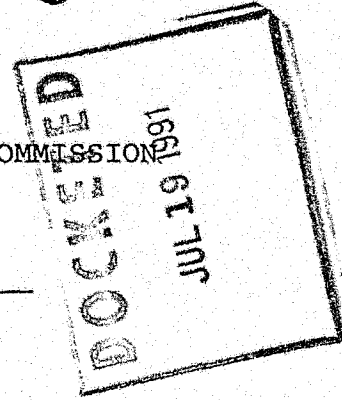
Arundhati Khanwalkar

Enclosure

cc: The Honorable Herbert Smolen

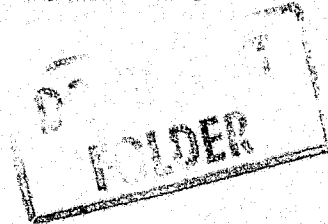
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JUL 15 1991
SECRETARYS OFF,
Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION



Letter of Notification of :
Philadelphia Electric Company :
Relative to Reconstructing :
and Rebuilding of the Existing :
138 kV Line to Operate as :
a Woodbourne-Heaton 230 kV :
Line in Montgomery and Bucks :
Counties :

Docket No. A-110550,F.055



RECEIVED

JUL 15 1991

SECRETARYS OFFICE
Public Utility Commission

PETITION TO INTERVENE OF
PENNSYLVANIA POWER & LIGHT COMPANY

1. Pursuant to 52 Pennsylvania Code §5.71, Pennsylvania Power & Light Company (PP&L), by its attorneys, hereby files this Petition to Intervene in the above-referenced proceeding.

2. By order entered June 14, 1991 (Order), the Pennsylvania Public Utility Commission (Commission) reopened the record at Docket No. A-110550,F.055 for hearing and determination on the sole issue of whether a group of property owners (Petitioners) will be adversely affected by the

Philadelphia Electric Company's (PECO) reconductoring of an abandoned Consolidated Rail Corporation (Conrail) 138 kV line as the Woodbourne-Heaton 230 kV line. The Order was issued pursuant to a decision issued by Commonwealth Court Judge Madeline Palladino remanding the case to the Commission.

3. In various pleadings before the Commission and the Commonwealth Court, Petitioners raise questions about electromagnetic fields (EMFs) related to the high voltage line and issues about procedures under the Commission's line certification regulations.

4. During discussion of the Order, Commissioner Rhodes indicated, in a prepared statement dated June 13, 1991, that the above-captioned case "will play a crucial role in determining (the) Commission's position on high voltage EMFs." Statement of Commissioner Joseph Rhodes, Jr., JUN-91-L-724*. Further, in his statement, Commissioner Rhodes "encourage(d)...all affected parties, such as...industry representatives...to intervene and participate in (the) proceeding." Statement of Commissioner Joseph Rhodes, Jr., JUN-91-L-724*.

5. By this petition, PP&L does not propose to broaden the scope of this proceeding. However, issues may be raised in this proceeding that have a direct and

significant impact on PP&L. In that event, the other parties to this proceeding may not be in a position to adequately protect PP&L's interests.

WHEREFORE, in view of the foregoing, PP&L respectfully requests that the Commission grant this petition to intervene.

Respectfully submitted,

PENNSYLVANIA POWER & LIGHT COMPANY
By:

A. Khanwalkar
Arundhati Khanwalkar
Paul E. Russell
Its Attorneys

Dated: July 11, 1991
at Allentown, Pennsylvania

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Letter of Notification of :
Philadelphia Electric Company :
Relative to Reconstructing :
and Rebuilding of the Exist- : Docket No. A-110550,F.055
ing 138 kV Line to Operate as :
a Woodbourne-Heaton 230 kV :
Line in Montgomery and Bucks :
Counties :

CERTIFICATE OF SERVICE

I certify that I have this date served by
telecopier or first class mail, postage prepaid, a copy of
"Petition to Intervene of Pennsylvania Power & Light
Company" on the following parties:

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Feasterville, PA 19047

Dennis O'Brien, Chairman
Board of Supervisors
Lower Southampton Township
1500 Desire Avenue
Feasterville, PA 19047

Joseph M. Seborowski, Chairman
Planning Commission
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Mr. Robert M. Pellagrino
Township Manager
Upper Southampton Township
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Southampton, PA 18966

Jerry S. Goldman, Chairman
Planning Commission
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Willow Grove, PA 19090

Mr. David A. Dodies
Assistant Township Manager
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Andrew L. Warren, Chairman
County Commissioners
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Doylestown, PA 18901

Paul B. Bartle, Chairman
Commissioners
County of Montgomery
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Norristown, PA 19404

David Shafter, Chairman
Board of Supervisors
Upper Southampton Township
939 Street Road
Southampton, PA 18966

Mr. John S. Burke
Township Manager
Middletown Township
2140 Trenton Road
Levittown, PA 19056

Clark Weitzel, Chairman
Planning Commission
Middletown Township
2140 Trenton Road
Levittown, PA 19056

William Seiverlich, President
Board of Commissioners
Upper Moreland Township
117 Park Avenue
Willow Grove, PA 19090

Ms. Alison D. White
Township Manager
Lower Moreland Township
640 Red Lion Road
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Charles Esayian, Chairman
Planning Commission
Lower Moreland Township
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Huntingdon Valley, PA 19066

Robert E. Moore, Executive Dir.
Planning Commission
County of Bucks, Almshouse Rd.
Neshaminy Manor Center
Doylestown, PA 18901

Arthur F. Loeben, Commissioner
Montgomery County Planning
Commission
Montgomery Plaza
Suite 207
Airy & Swede Streets
Norristown, PA 19404

The Honorable Roy Murphy
Mayor, Borough of Langhorne
114 East Maple Avenue
Langhorne, PA 19047

Denise Traub, Secretary
Borough of Langhorne
114 East Maple Avenue
Langhorne, PA 19047

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Consolidated Rail Corporation
Room 200
15 North 32nd Street
Philadelphia, PA 19104

Howard Yerusalim, Secretary
PennDOT
Room 1200
Trans. & Safety Bldg.
Harrisburg, PA 17120

John Hocker, Director
Bureau of Real Estate and
Insurance
Dept. of Property & Supplies
Commonwealth of PA
Room 503, North Office Bldg.
Harrisburg, PA 17105

Steven H. Benner, Chairman
Board of Supervisors
Northampton Township
55 Township Road
Richboro, PA 18954

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Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

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Borough of Langhorne
114 East Maple Avenue
Langhorne, PA 19047

Elsie Knight, Chairperson
Planning Commission
Borough of Langhorne
151 West Maple Avenue
Langhorne, PA 19047

Arthur A. Davis, Secretary
Pennsylvania DER
Attn: Bureau of Environ. Plng.
P. O. Box 2357
101 S. Second Street
Harrisburg, PA 17120

Vivian Piasecki, Chairperson
PA Historical & Museum Commission
P. O. Box 1026
Harrisburg, PA 17120

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55 Township Road
Richboro, PA 18954

Walter C. Evans, Township Planner
Northampton Township
55 Township Road
Richboro, PA 18954

Patricia Krise Burket, Esq.
John F. Povilaitis, Esq.
Pennsylvania Public Utility
Commission
P. O. Box 3265
Harrisburg, PA 17120

The Honorable Roy Reinard
State Representative
178th Legislative District
House of Representatives
Commonwealth of PA
P.O. Box 5, Main Capitol Bldg.
Harrisburg, PA 17120

Charles O. Marte, Jr., Esq.
Solicitor
Lower Southampton Township
344 South Bellevue Avenue
Langhorne, PA 19047

Ms. June Perry
House of Representatives
Room 14
Capitol Annex Building
Harrisburg, PA 17120

A. Khanwalkar
Arundhati Khanwalkar

Dated: July 11, 1991
at Allentown, Pennsylvania

APPEARANCE SHEET

ALJ HEARING REPORT

DOCKET NO. A-110550 F.055

CHECK THOSE BLOCKS WHICH APPLY:

CASE NAME LETTER OF NOTIFICATION

TELEPHONIC Hearing held YES NO **AMH**

OF PHILA ELECTRIC CO. RELATIVE TO

Testimony taken YES NO

RECONSTRUCTING AND REBUILDING OF THE

Hearing concluded YES NO

EXISTING 138 KV LINE TO OPERATE AS A

Further hearing needed YES NO

WOODBORNG-HEATON 230 KV LINE IN MONTGOMERY

PREHEARING LOCATION PHILA AND DOCKETS COUNTIES

Estimated add'l days _____

PREHEARING DATE 7-11-91

RECORD CLOSED YES _____ NO

ALJ HERBERT SMOLEN

Briefs to be filed YES _____ NO _____

TELEPHONIC PREHEARING CONFERENCE

BENCH DECISION YES _____ NO

REMARKS: HEARING SCHEDULED

5/15/91

RECEIVED

JUL 15 1991

Office of A. L. J.
Public Utility Commission

NAMES, ADDRESSES AND TELEPHONE NUMBERS OF PARTIES OR COUNSEL OF RECORD
PLEASE PRINT CLEARLY
INCOMPLETE INFORMATION MAY RESULT IN DELAY OF PROCESS

RECEIVED
JUL 23 1991

NAME and TELEPHONE NUMBER	ADDRESS	APPEARING FOR
ROBERT J. SUGARMAN Telephone No. (215) 751-9733	16TH FLOOR, CITY PLACE 101 N. BROAD ST City PHILA State PA Zip 19107	PETITIONERS/PROTESTANTS
PAUL R. BONNEY KATHY DODD Telephone No. (215) 841-5544	LEGAL DEP'T 2301 MARKET ST City PHILA State PA Zip 19101	PECO
WARD L. SMITH, ESQ + TOM WATSON 90 CROWELL + MORING Telephone No. (202) 624-2594	1001 PENNA. AVE. N.W. City WASHINGTON State DC Zip 20004	PECO

CHECK THIS BOX IF ADDITIONAL PARTIES OR COUNSEL OF RECORD APPEAR ON BACK.

Reporter



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

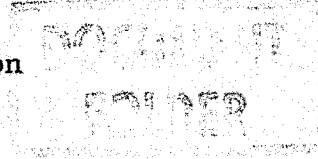
ORIGINAL

July 16, 1991

IN REPLY PLEASE
REFER TO OUR FILE

TAMH

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265



Re: Letter of Notification of Philadelphia Electric
Company Relative to Reconstructing and Rebuilding
of the Existing 138 kV Line to Operate as a
Woodbourne-Heaton 230 kV Line in Montgomery and
Bucks Counties, Docket No. A-110550, F.055.

Dear Secretary Rich:

Enclosed please find an original and two copies of the
Prosecutory Staff's Pre-Hearing Memorandum in the above-captioned
proceeding. Copies of this memorandum have been served on all
parties of record this date as evidenced by the attached
Certificate of Service.

Sincerely,

Patricia Krise Burket
Assistant Counsel

Enclosure

cc: All parties of record
ALJ Smolen

RECEIVED

JUL 16 1991

SECRETARYS OFFICE
Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

LETTER OF NOTIFICATION OF :
PHILADELPHIA ELECTRIC COMPANY :
RELATIVE TO RECONSTRUCTING AND : DOCKET NO.
REBUILDING OF THE EXISTING 138 : A-110550,F.055
KV LINE TO OPERATE AS A :
WOODBOURNE-HEATON 230 KV LINE :

DOCKETED

JUL 17 1991

PREHEARING MEMORANDUM
OF THE PROSECUTORY STAFF

DOCKET
FOLDER

Introduction

On March 8, 1991 the Commission entered an order denying the Emergency Petition of Non-Noticed Property Owners to Intervene for Reopening and to Suspend Approval (Petition) in the above captioned letter of notification.¹ The Petition had been filed by neighboring property owners who are also members of PAUSE (Parents Against an Unsafe Environment). In the Petition, it was stated that PAUSE members received no notification of the filing of the letter of notification for the line and that PAUSE members wanted an opportunity to present evidence and testimony on the adverse effects they would suffer from the line. Most notably PAUSE members wanted a hearing on the alleged public health risk of electromagnetic fields (EMF) produced by the line.

¹ On February 9, 1990, the Commission entered an order which approved Philadelphia Electric Company's letter of notification to rebuild an old Conrail 138 kV transmission line as the Woodbourne-Heaton 230 kV line.

On April 2, 1991, Robert Small, Frank English and Diane P. S. Koerper, members of the group PAUSE, filed a Petition for Review of the Commission's March 8, 1991 order with Commonwealth Court. Robert Small, et al. v. Pa.P.U.C., No. 761 C.D. 1991.

On April 16, 1991, PAUSE members filed a Petition for Stay in which they requested a halt to construction of the line (the Woodbourne-Heaton 230 KV line). On May 20, 1991, a brief was filed in support of the Petition for Stay. In the brief, however, it was suggested that to prevent harm to Philadelphia Electric Company (PECO) the Court could require the Commission to institute hearings on an emergency basis (Exhibit A).

On May 21, 1991, the Commission filed an Answer to the Petition for Stay arguing that the Petitioners had not satisfied any of the criteria for stay under Pa.P.U.C. v. Process Gas Consumers Group, 502 Pa. 545, 467 A.2d 805 (1983). Oral argument on the Petition for Stay was held before Commonwealth Court Judge Madaline Palladino on May 22, 1991. At oral argument, counsel for PAUSE for the first time formerly requested that the Judge remand the appeal to the Commission for hearing.

On May 24, 1991 Judge Palladino issued an order which concluded that "Petitioners [PAUSE members] are entitled to a hearing on the question of whether they will be adversely affected by the reconductoring of the high tension electrical line at issue in [the] case" (Exhibit B-1). The Judge then ordered the case be remanded to the Commission to hold a hearing on this issue within 90 days of the date of the order. On May 29, 1991, Judge Palladino

issued a supplemental order relinquishing jurisdiction over the appeal (Exhibit B-2).

On June 14, 1991, the Commission entered an order which directed that the record be reopened for hearing and the determination of the sole issue of whether PAUSE members will be adversely affected by the reconductoring of the former Conrail line (Exhibit C). On June 26, 1991, the Prosecutory Staff entered its appearance in this proceeding.

On July 11, 1991, a telephone pre-hearing conference was held during which a number of issues were discussed. This pre-hearing memorandum addresses these issues.

Burden of Proof

In regard to the allocation of the burden of proof in this hearing, PAUSE and the OCA put great stock in the fact that the Commission reopened this proceeding. They argue that because the proceeding involves a letter of notification in which the utility has the burden of proof, the burden remains with PECO to prove safety of the line, including the question of whether EMF has an adverse effect on human health. Because PECO has this burden of proof, PAUSE and OCA argue that PECO should present its evidence on EMF first at the hearing.

However, PECO has already addressed the issue of safety of the Woodbourne-Heaton 230 kV line in its letter of notification. As averred in PECO's letter of notification and as found by the Commission in its order entered February 1990, the Woodbourne-Heaton 230 kV line would be designed, constructed and maintained

in accordance with the National Electric Safety Code and that minimum standards would be met or exceeded. Moreover, under Commission regulations, PECO only needed to show generally that safety considerations would be incorporated into the design, construction and maintenance of the line. 52 Pa. Code §57.72(c)(6). PECO did not need to prove the absolute safety of the line. Similarly, to approve the line, the Commission did not need to find that the line was absolutely safe. The Commission needed to find only that the line would not create an unreasonable risk of danger to the health and safety of the public. 52 Pa. Code §57.76(a)(3).

From a different perspective, in the context of this hearing PAUSE members are the protestants² to PECO's proposal to rebuild the old railroad line as the Woodbourne-Heaton 230 kV line. As protestants, PAUSE members cannot just say "I protest," make an unsupported allegation about the adverse health effects of EMF, and sit back and watch PECO try to disprove the allegation. Protesting in a legal proceeding is not a passive activity. A protestant to a public utility's proposed action has essentially filed a complaint against that proposed action and should be required to provide evidence in support of that complaint. Even in rate proceedings where the burden of proof is by statute on the utility to provide justification for the various components of the proposed

² In fact, the counsel for PAUSE insisted at the prehearing conference held July 11, 1991 that they were indeed protestants, and no longer Petitioners.

rate structure, the Commission has indicated that where a party proposes an adjustment to the ratemaking claim of a utility, the proposing party bears the burden of producing some evidence or analysis tending to demonstrate the reasonableness of the adjustment. Pa.P.U.C. v. Breezewood Telephone Company, Order entered January 31, 1991 at Docket No. R-901666. See e.g., Pa.P.U.C. v. PECO, R-891364, entered May 16, 1990, Slip. op. at 42-53. In the instant case, PAUSE members (now called Protestants) have filed a complaint as to the safety of the proposed PECO Woodbourne-Heaton 230 kV line and now have the burden to produce evidence to prove their allegation of EMF's adverse effects on human health. After Protestants' presentation on EMF, PECO then should be afforded the opportunity to rebut this evidence.

In summary, PECO should not have to bear the burden of proving the negative of every unsupported allegation of harm, identified and at this point, unidentified, which the Protestants could conceivably raise which could adversely affect them. Only the Protestants can do this. If Protestants are not willing to, or cannot produce evidence to support their allegations of the adverse effects of the line involving EMF or any other matter, they should drop their opposition to PECO's line.

Therefore, the Prosecutory Staff requests the Administrative Law Judge to issue an order that the Protestants have the burden of proof on the EMF issue and all other issues involved in the question of whether they will be affected adversely by PECO's Woodbourne-Heaton 230 kV line.

Limitation of Issues

Judge Palladino's May 24, 1991 order and the Commission order entered June 14, 1991 made it clear that this hearing on remand was to be confined to one issue and one issue only -- whether Protestants would be adversely affected by the reconductoring and reconstruction by PECO of the former Conrail electric line on the railroad right-of-way.

The limitation of the scope of this hearing to one issue has precedence. Past Commission orders have similarly limited reopening of the record in various proceedings to reconsider one issue. Pa.P.U.C. v. General Telephone Company of Pa., 57 Pa.PUC 765 (1983); Skyline Motor Aircargo, Inc. et al. v. Amram Enterprises, Ltd., 57 Pa.PUC 579 (1983).

That one Commissioner may have made a statement that he wanted to see some other side issue or sub-issue like "prudent avoidance"³ explored in this hearing has no weight and is irrelevant to the Commission's final order. Pa.P.U.C. v. Bell Telephone Company of Pa., 59 PaPUC 42 (1984). Any modification to a proposed Commission order must be made by the adoption of a motion to modify that order at Public Meeting in accordance with the Sunshine Act, 65 P.S. §§227 et seq. No motion that incorporated Commissioner Rhode's statement was made, let alone seconded or approved by the Commission at Public Meeting on June

³ Prudent avoidance, in the context of management of EMF from transmission lines, is the strategy of making minimal cost modifications in the design and siting of lines that will help reduce EMF exposure to the public.

14, 1991 (Exhibit D). Absent such a motion, the Commission's order expresses the clear opinion of the majority of the Commissioners on this matter.

To clear up a misconception which has been perpetuated by the Protestants in this proceeding, Judge Palladino did not reverse or vacate the Commission's March 8, 1991 order which denied Protestants' Emergency Petition for Reopening⁴, nor the Commission's February 9, 1990 order which granted PECO authority to construct the Woodbourne-Heaton line. Therefore, no legal reason exists why PECO would have to reprove every issue inherent in its letter of notification.

Judge Palladino ruled only that the Commission regulation, 52 Pa. Code §57.72(d), which requires notice of a proposed transmission line to entities owning property within the right-of-way, was insufficient to notify neighboring property owners [Protestants]. She then prescribed a remedy to cure the insufficient notice -- that the Commission hold a hearing on one issue within 90 days of the date of her order. That one issue is whether the Protestants would be adversely affected by the reconstruction of the line. If Protestants or OCA were disturbed or disappointed by the scope of the hearing which was set by Judge Palladino's May 24, 1991 order and was granted by the Commission's June 14, 1991 order, they could have appealed these orders. Since

⁴ In fact, Judge Palladino, sitting as a single judge on a preliminary matter, Protestants' Petition for Stay for construction of this line, did not have the power to reverse or vacate the Commission's May 8, 1991 order. Pa.R.A.P. §1561(a).

the Protestants and OCA did not appeal, they cannot now before the ALJ seek to expand the scope of the hearing by argument.

Of course, the scope of the hearing on this one issue must also be constrained by the Commission's lack of jurisdiction over certain subject matter. Springdale Township v. Allegheny Board of Property Assessment, Appeals and Review, 78 Pa. Commonwealth Ct. 100, 467 A.2d 74 (1983). The Commission has no jurisdiction over inverse condemnation, or determinations involving private property values or monetary damages. Springdale Township; Elkin v. Bell Telephone Co. of Pa., 491 Pa. 123, 420 A.2d 371 (1980). Such issues are properly litigated in the court system.

For the above reasons, the Prosecutory Staff requests that the Administrative Law Judge issue an order that the hearing is to be limited only to the issue outlined in Judge Palladino's May 24, 1991 order and the Commission's June 14, 1991 order -- whether the Protestants will be adversely affected by the reconductoring and reconstruction of the Woodbourne-Heaton 230 kV line.

Intervention of Pennsylvania Power & Light Co.

The Prosecutory Staff has no objections to the intervention of Pennsylvania Power & Light Company (PP&L) in this proceeding. The Prosecutory Staff believes that PP&L's participation in this hearing will contribute greatly to the development of as complete a record as possible on the subject of the possible adverse effects of EMF on human health, an issue which should be of concern to the entire electric utility industry.

Accordingly, the Prosecutory Staff requests that the Administrative Law Judge issue an order permitting the intervention of Pennsylvania Power & Light Company in this proceeding.

Written Testimony

Under 52 Pa. Code §5.42(a), the use of written testimony is encouraged in Commission proceedings, especially in connection with expert witnesses. Under 52 Pa. Code §5.412(b), the administrative law judge may direct that direct expert testimony be reduced to the form of prepared written testimony when circumstances of a particular case deem that expert testimony is desirable or necessary. Under 52 Pa. Code §5.223, the administrative law judge may direct advance distribution of written testimony in advance of the hearing session.

The Prosecutory Staff believes that circumstances of exigency in this matter and the complexity of the EMF issue itself warrant the pre-filing of expert testimony of all witnesses. PECO was given authority by Commission order dated February 9, 1990 to construct the Woodbourne-Heaton line and began construction of the line during the summer of 1991. PECO is now in the final construction phase of this line. Allowing direct testimony by expert witnesses to be taken orally would do nothing but unnecessarily delay and complicate this proceeding.

Inasmuch as Protestants represented to Commonwealth Court Judge Palladino in their brief on the Petition for Stay that an expedited hearing on this matter would alleviate the need for a stay of construction of PECO's Woodbourne-Heaton 230 kV line

(Exhibit A), the Protestants should agree that pre-filed written direct testimony of expert witnesses is necessary to move the hearing along.

The Prosecutory Staff requests that the Administrative Law Judge issue an order directing that all expert direct testimony be written testimony pre-filed 20 days prior to the applicable hearing date as scheduled.

Discovery

The Prosecutory Staff supports the OCA's suggestion that the Administrative Law Judge grant a waiver of the Commission's regulations regarding the turn-around time for discovery matters. 52 Pa. Code §§5.321, et seq. The Prosecutory Staff believes that the rules should be modified as follows:

1. The period of time for answering interrogatories at 52 Pa. Code §5.342(d) should be shortened from 20 days to 10 days.
2. The period of time for filing objections to interrogatories, 52 Pa. Code §5.342(d), should be shortened from 10 days to 5 days.

Because of the expedited scheduling that should be accorded this hearing, the Prosecutory Staff believes that the Administrative Law Judge should enter an order adopting these modifications to the discovery rules.

Scheduling

Consistent with our support for pre-filed written expert testimony and allocation of the burden of proof, the Prosecutory Staff suggests the following schedule subject, of course, to the availability of the presiding Administrative Law Judge and other participants:


Receipt of Protestants' and OCA's Written Expert Testimony	July 31, 1991
Oral Direct Testimony and Cross Examination of Protestants	August 15, 1991
Cross Examination of Protestants' and OCA's Expert Witnesses	August 20-21, 1991
Receipt of PECO Written Testimony	August 28, 1991
Cross Examination of PECO Witnesses	September 17-18, 1991
Oral Rebuttal Testimony by Protestants' and OCA's Witnesses and Cross Exami- nation	September 23, 1991
Oral Surrebuttal Testimony by PECO Witnesses and Cross Examination	September 26, 1991

Initial Briefs due 20 days after the transcript of the hearing becomes available; Reply Briefs due 14 days thereafter.

The Prosecutory Staff believes that this schedule allows reasonable time for all participants to prepare and present written testimony in this proceeding and complies with Judge Palladino's May 24, 1991 order that a hearing be afforded the Protestants within 90 days of the date of her order. The Prosecutory Staff, therefore, requests that the Administrative Law Judge issue an order adopting a

schedule for the proceeding substantially similar to its proposed schedule.

Respectfully submitted,



Patricia Krise Burket
Assistant Counsel

Counsel for the Pennsylvania
Public Utility Commission Law
Bureau Prosecutory Staff

Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-2810

DATED: July 16, 1991

Exhibit A - PAUSE Brief dated May 20, 1991 in Robert Small,
et al. v. Pa. Public Utility Commission, No.
761 C.D. 1991, p. 4.

V. PETITIONERS SATISFY ALL APPLICABLE TESTS

To the extent that Virginia Jobbers and its rules do apply to a case where no hearing has been allowed, Petitioners will also suffer irreparable injury in being exposed to EMF without an opportunity for a hearing. If the Commission has attempted to require the attempt to prove that PECO will not suffer harm, such allocation of the burden of proof is inapplicable at this stage. The Court may avoid any harm to PECO by simply requiring that the Commissioner institute hearings at this time on an emergency basis. Nor will a stay requiring hearings prior to the Commission's decision, and allowing an opportunity for a further decision at the time the line is completed, affect the public interest. To the contrary, affording hearings at this time will advance the public interest in all respects, and will not harm any party.

As this Court said in PECO v. DER, and also in Nationwide v. Commonwealth, it is helpful to the public interest in all respects to accelerate the administrative process, and avoid constricting the public interest by such limitations. The Court can order the holding of hearings, and stay the PUC decision pending further order of the Court, and advance the public interest without harming anyone.

Emphasis added.

Exhibit B-1 - Order of Judge Madaline Palladino in Robert Small, et al. v. Pa.P.U.C. entered May 24, 1991 at 761 C.D. 1991.

Exhibit B-2 - Supplemental Order of Judge Madaline Palladino in Robert Small, et al. v. Pa.P.U.C. entered May 29, 1991 at 761 C.D. 1991.

ROBERT SMALL, FRANK ENGLISH, :
and DIANE P.S. KOERPER, et al.:
Petitioners :

IN THE COMMONWEALTH COURT
OF PENNSYLVANIA

v. :

PENNSYLVANIA PUBLIC UTILITY :
COMMISSION, :
Respondent, :

No. 761 C.D. 1991
Argued: May 22, 1991

BEFORE: HONORABLE MADALINE PALLADINO, Judge


MEMORANDUM OPINION AND ORDER

AND NOW, this 24th day of May 1991, because counsel for Petitioner, during argument on his motion, expressly requested a remand rather than a stay of the construction of the high tension electrical line in question and, additionally requested a hearing before the Public Utility Commission (PUC), this court will consider Petitioner's petition to stay as a petition to remand.

It is clear to the court that the letter notification process of 52 Pa. Code §57.72(d), under which Philadelphia Electric Company proceeded before the PUC, did not contemplate the fact matrix before this court in which an existing right-of-way, previously utilized for rail service, is put to a new use. The notice to entities owning property within the proposed right-of-way provided in 52 Pa. Code §57.72(d) is insufficient, where as here, it is clear that Petitioners, as neighboring property owners, will be affected by the new use of the right of way.¹ Notice to municipalities given pursuant to 52 Pa. Code

¹This court renders no opinion as to whether the landowners will be adversely affected by the reconductoring of the high tension electrical line.

§57.72(c)(11) does not provide the notice and opportunity to be heard to which Petitioners are entitled. This court concludes that Petitioners are entitled to a hearing on the question of whether they will be adversely affected by the reconductoring of the high tension electrical line at issue in this case. Consequently, this court orders this case remanded to the PUC to hold a hearing on this issue within 90 days from the date of this order.


MADALINE PALLADINO, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT SMALL et al., :
 :
 Petitioners :
 :
 v. :
 :
 PENNSYLVANIA PUBLIC UTILITY :
 COMMISSION, :
 Respondent : No. 761 C.D. 1991

PER CURIAM

ORDER

NOW, May 29, 1991, this court's order of May 24, 1991, in this matter is amended to reflect that jurisdiction is relinquished.

CERT.

MAY 30 1991

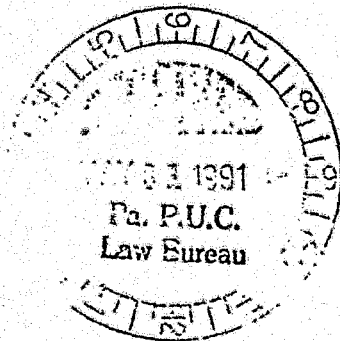


Exhibit C - Emergency Petition of Non-Noticed Property Owners to Intervene for Reopening and to Suspaned Approval, Commission Order entered June 14, 1991 at Docket A-110550,F.055.

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held June 14, 1991

Commissioners Present:

William H. Smith, Chairman
Joseph Rhodes, Jr., Vice-Chairman
Wendell F. Holland, Commissioner
David W. Rolka, Commissioner

Letter of Notification of Philadelphia
Electric Company relative to recon-
structing and rebuilding of the existing
138 kV line to operate as a Woodbourne-
Heaton 230 kV line in Montgomery and
Bucks Counties.

No. A-110550,F.055

ORDER

BY THE COMMISSION:

On September 14, 1990, Petitioners Robert Small, Frank English and Diane P.S. Koerper, et al., filed at the above docket an Emergency Petition of Non-Noticed Property Owners to Intervene for Reopening and to Suspend Approval (Emergency Petition) of a Commission order entered February 9, 1990. The February 9 order granted Philadelphia Electric Company (PECO) authority to reconstruct an abandoned Conrail 138 kV electric line as the Woodbourne-Heaton 230 kV line. Letter of Notification of Philadelphia Electric Company relative to reconstructing and rebuilding the existing line to operate as a Woodbourne-Heaton 230 kV line in Bucks and Montgomery Counties, A-110550,F.055. On March 8, 1991, the Commission issued an order denying the Emergency Petition.

On April 2, 1991, the Petitioners filed a Petition for Review with Commonwealth Court requesting that the Court 1) set aside the Commission order denying reopening and 2) remand the matter for hearing. On April 16, 1991, the Petitioners also filed with the Commonwealth Court a Petition for Stay Pending Review (Petition for Stay) in which the Petitioners requested the Court stay construction of the Woodbourne-Heaton line. On May 20, 1991, the Petitioners filed a Brief in Support of their Petition for Stay wherein they suggested that any harm to PECO could be avoided by requiring that the Commission institute hearings on an emergency basis, but they did not request remand hearings as relief. On May 21, 1991, the Commission filed an Answer to the Petition for Stay arguing that the Petitioners had not satisfied any of the criteria for a stay under Pa. P.U.C. v. Process Gas Consumers Group, 502 Pa. 545, 467 A.2d 805 (1993). Oral argument on the Petition for Stay was held before Commonwealth Court

Judge Madaline Palladino on May 22, 1991. At oral argument, Petitioners changed their request for relief and asked that the Judge remand the appeal to the Commission for hearing.

On May 24, 1991, the Commonwealth Court Judge issued an order remanding the case to the Commission to hold a hearing on the question of whether the Petitioners will be adversely affected by the reconductoring of the former Conrail line. The order further directed that this hearing be held within 90 days from the date of the remand order. On May 29, 1991, Judge Palladino issued an order supplementing her order of May 24, 1991 to reflect that jurisdiction over this matter was relinquished by Commonwealth Court.

On June 3, 1991, the Petitioners filed with the Commission a Petition for Hearing. In this petition, the Petitioners asked that a hearing be scheduled immediately; disclosed that they have already served discovery requests on PECO; and requested three days of hearings.

In compliance with the Judge's order issued May 24, 1991, the Commission directs that the record at Docket No. A-110550, F.055 be reopened so that the Petitioners can at a hearing introduce testimony and documentary evidence on the sole issue of whether the Petitioners will be adversely affected by the reconductoring of this former Conrail line as PECO's Woodbourne-Heaton 230 kV line. Accordingly, the Commission assigns this matter to Office of Administrative Law Judge and further directs that a hearing be scheduled no later than August 22, 1991 for the determination of the afore-mentioned issue.

We wish to emphasize that the scope of discovery and hearing on remand is to be limited to the issue as defined in Judge Palladino's order and herein. We also note that the number of days of hearing as well as the disposition of all discovery requests is left to the sound discretion of the Administrative Law Judge assigned to this proceeding; THEREFORE,

IT IS ORDERED:

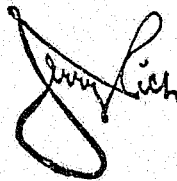
1. That pursuant to Judge Palladino's May 24, 1991 order as supplemented by order dated May 29, 1991 the record at Docket No. A-110550, F.055, be hereby reopened for hearing and determination of the sole issue of whether the Petitioners will be adversely affected by the reconductoring of this former Conrail transmission line;

2. That consistent with the relief granted in Paragraph No. 1 above, the Petition for Hearing filed June 3, 1991 is granted to the extent consistent with this order;

3. That the Office of Administrative Law Judge expeditiously schedule a hearing for not later than August 22, 1991 for the sole purpose of determining whether the Petitioners will be adversely affected by the reconductoring of the former Conrail transmission line by Philadelphia Electric Company;

4. That a copy of this order is served on all parties of record to the instant Commission transmission line siting proceeding as well as to all parties having participated before the Commonwealth Court in the appeal of our earlier order at this docket.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Jerry Rich". The signature is stylized with a large, looping initial "J" and a cursive "Rich".

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: June 14, 1991

ORDER ENTERED: June 14, 1991

Exhibit D - Statement of Vice-Chairman Joseph Rhodes, Jr.,
Public Meeting held June 14, 1991.

1 THE CHAIRMAN: The meeting of the Pennsylvania
2 Public Utility Commission of June 14, 1991, is now in
3 session. The first item on the agenda is the minutes of
4 April 25, 1991.

5 Commissioner Rolka, you are the editor?

6 COMMISSIONER ROLKA: I recommend they be approved as
7 submitted.

8 THE CHAIRMAN: Any objection?

9 (No response.)

10 THE CHAIRMAN: Without objection. The regular
11 agenda. Page 3, Cases of Special Interest, L-720 has been
12 postponed. ~~L-724~~, Vice Chairman Rhodes, you have a
13 statement?

14 COMMISSIONER RHODES: Thank you, Mr. Chairman. As
15 soon as I find it. Thank you, Mr. Chairman, I consider
16 this case to be very important, as it will play a crucial
17 role in determining this Commission's position on high
18 voltage electromagnetic fields, an issue that raises
19 critical public policy questions that could affect all
20 Pennsylvanians.

21 Given this case's importance, I would respectfully
22 encourage all affected parties, such as the Office of
23 Consumer Advocate, the Small Business Advocate, industry
24 representatives, the Office of Trial Staff, and other
25 Commonwealth agencies with specialized relevant expertise

1 like the Department of Environmental Resources, and the
2 Department of Health, to intervene and participate in this
3 proceeding.

4 As part of the hearing process of this reopened
5 Docket, I would like the following information provided
6 for the record.

7 1. Information regarding the expected level of
8 electromagnetic fields, at centerline and edge of
9 right-of-way based upon the design of the line employed by
10 the company.

11 2. Discussion of the line design employed and
12 whether mitigation of EMF has been maximized by the
13 company efforts. Thank you, Mr. Chairman.

14 THE CHAIRMAN: Thank you. I move the adoption of
15 L-724.

16 COMMISSIONER ROLKA: Second.

17 THE CHAIRMAN: Any objection?

18 (No response.)

19 THE CHAIRMAN: Without objection. I move the
20 adoption of ALJ-104.

21 COMMISSIONER ROLKA: Second.

22 THE CHAIRMAN: Any objection?

23 (No response.)

24 THE CHAIRMAN: Without objection. Page 4, the
25 Bureau of Safety and Compliance. I move the adoption of

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document on the parties listed below in the manner indicated in accordance with the requirements of 52 Pa. Code §1.54.

By First Class Mail and FAX

ALJ Herbert S. Smolen
Public Utility Commission
1302 Philadelphia State Office
Building
Broad and Spring Garden Streets
Philadelphia, PA 19130

By First Class Mail

Robert J. Sugarman, Esq.
Sugarman & Associates
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101 North Broad Street
Philadelphia, PA 19107

Tanya J. McCloskey, Esq.
Assistant Consumer Advocate
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

David Rosenbaum
Risk Analysis Corp.
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Paul R. Bonney, Esq.
Assistant General Counsel
Philadelphia Electric Co.
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Ward L. Smith, Esq.
Crowell & Moring
1001 Pennsylvania Avenue, NW
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Patricia Krise Burket
Patricia Krise Burket
Assistant Counsel

Prosecutory Staff for the
Pennsylvania Public Utility
Commission

P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-2810

DATED: July 16, 1991

ORIGINAL

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

AMW

July 16, 1991

IN REPLY PLEASE
REFER TO OUR FILE

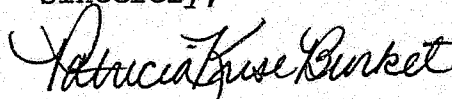
Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Letter of Notification of Philadelphia Electric
Company Relative to Reconstructing and Rebuilding
of the Existing 138 kV Line to Operate as a
Woodbourne-Heaton 230 kV Line in Montgomery and
Bucks Counties, Docket No. A-110550, F.055.

Dear Secretary Rich:

Enclosed for filing please find a Certificate of Service
that on July 16, 1991, the Prosecutory Staff served upon counsel
for Intervenors, and the other parties to the above captioned case,
Answers of the Prosecutory Staff to Request for Production of
Documents, dated May 31, 1991.

Sincerely,



Patricia Krise Burket
Assistant Counsel

cc: All parties of record (w/enclosure)
ALJ Smolen (w/o enclosure)

DOCUMENT
FOLDER

RECEIVED

JUL 16 1991

SECRETARYS OFFICE
Public Utility Commission



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

July 16, 1991

IN REPLY PLEASE
REFER TO OUR FILE

Robert J. Sugarman
Sugarman & Associates
16th Floor, City Place
101 North Broad Street
Philadelphia, PA 19107

Re: Letter of Notification of Philadelphia Electric
Company Relative to Reconstructing and Rebuilding
of the Existing 138 kV Line to Operate as a
Woodbourne-Heaton 230 kV Line in Montgomery and
Bucks Counties, Docket No. A-110550,F.055.

Dear Mr. Sugarman:

Enclosed are the responses of the Prosecutory Staff to
the Request for Production of Documents filed on May 31, 1991.

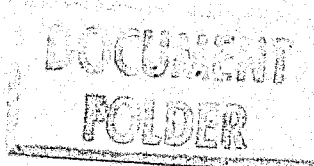
Copies have been served upon all parties of record as
shown on the attached Certificate of Service.

Sincerely,

Patricia Krise Burket
Assistant Counsel

Enclosure

cc: Jerry Rich
(w/o enc.; w/cert.)
Herbert S. Smolen, ALJ
(w/o enc.; w/cert.)
All parties of record
(w/enc.; w/cert.)



CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document on the parties listed below in the manner indicated:

By First Class Mail

Robert J. Sugarman, Esq.
Sugarman & Associates
16th Floor, City Place
101 North Broad Street
Philadelphia, PA 19107

JUL 16 1991

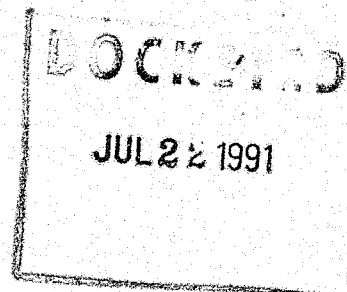
SECRETARY'S
Public Utility Co

Tanya J. McCloskey, Esq.
Assistant Consumer Advocate
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120



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Patricia Krise Burket
Assistant Counsel

Prosecutory Staff for the
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P.O. Box 3265
Harrisburg, PA 17105-3265
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DATED: July 16, 1991

SUGARMAN & ASSOCIATES

ATTORNEYS AT LAW
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215-751-9733
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ROBERT J. SUGARMAN
ALAN M. KAPLAN
MARCIA E. BERRY

DAVID A. ROBERTS
LEGAL ASSISTANT

AMH
ORIGINAL

RECEIVED

JUL 13 1991

SECRETARY'S OFFICE
Public Utility Commission

July 16, 1991

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17112

Re: Letter of Notification of Philadelphia
Electric Company Relative to Reconstructing
and Rebuilding of the Existing 138 kV Line
to Operate as a Woodbourne-Heaton 230 kV
Line in Montgomery and Bucks Counties;
Docket No. A-110550, F.o55

Dear Secretary Rich:

Enclosed for filing are Exhibits B and C that are to go along
with the Prehearing Memorandum which was sent yesterday with only
Exhibit A attached. We apologize for the state in which the earlier
document was sent.

Sincerely,

Nina Lalevic

Nina Lalevic
for Robert J. Sugarman

cc: All parties of record
ALJ Smolen

given, either by publication or personally; and petitioners have only recently learned of the line by observing construction preparation.

JUL 18 1991

SECRETARY'S OFFICE
Public Utility Commission

6. Had applicant properly filed and disseminated the foregoing and had petitioners been given notice as required by the rules, and had the matter proceeded to hearing petitioners would have participated fully in the proceedings as parties, and would have brought significant matters to the attention of the Commission, which matters were precluded from proceedings by the failure of the applicant to give notice to the persons actually affected by the proceeding, as required by the regulations.

7. The issues which petitioners would have presented, and now wish to present, to the Commission include the following:

(a) No justification has been proved for the nature, extent, and location of the proposed facility, including necessity for its existence, and necessity for refusing to over-build existing transmission lines connecting the same destinations, directly or indirectly, and petitioners believe and aver, that less dangerous alternatives are available, if the line is needed at all.

(b) If located as proposed, the transmission line would intrude on petitioners' property through invasion of air and create an acknowledged risk of severe health effects, including cancer and other mutagenic diseases, due to the electromagnetic fields (EMF). Although applicant PECO has acknowledged to the petitioners that such risk exists, and has

JUL 24 1991

Exhibit B

further stated that the determination of action to be taken in regard to such risk is a "societal" decision, applicant has nevertheless undertaken to preclude affected parties such as petitioners from that decision. The right of way is heavily developed with homes located close to the right of way, and formal and informal children's play areas.

(c) Although acknowledging that the risks from EMF cannot be excluded, and although it is known that because of this concern, aesthetics, interference with reception, and heightened potential for destructive fires, properties located in close proximity to such transmission lines have been substantially and adversely precluded from the normal sales market, and therefore that the proposed line would substantially depreciate petitioners' values, making it impossible for them to replace their homes, and thereby save themselves and their children from these effects, nevertheless, the applicant proceeded to initiate and seek final permission for the project, without affording an opportunity for petitioners, although affected property owners, to participate in the proceedings affecting their property rights and their health and that of their children.

8. Petitioners will also prove that the letter of notification procedure was improperly utilized by misstatement of the critical facts, specifically by misinforming the Commission that this line is a reconstruction of another line, whereas in fact, it is intended to construct PECO's first and only line on land in which PECO had previously had no interest or rights. In

PHILADELPHIA ELECTRIC COMPANY

LEGAL DEPARTMENT

2301 MARKET STREET, BOX 8699
PHILADELPHIA, PA 19101
(215) 841-5544 FAX: 568-3389

James W. Durham
Senior Vice President
and General Counsel

Eugene J. Bradley
Of Counsel

Bjarnie R. Anderson
Legal Administrator

Donald Blanken
Paul R. Bonney
Ellen M. Cavanaugh
Rudolph A. Chillemi
Edward J. Cullen, Jr.
Katherine K. Dodd
Aubra S. Gaston
Gregory Golazeski
E. C. Kirk Hall
J. Lindsay Johnston
Kimberly Lewis
Stephanie Whilton Lewis
T. Michael Mather
Mary R. McFall
Assistant General Counsel

May 16, 1991

Mr. Daniel R. Schuckers
Prothonotary
Commonwealth Court of Pennsylvania
Sixth Floor, South Office Building
Harrisburg, PA 17110

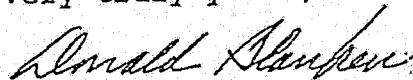
RECEIVED
JUL 18 1991
SECRETARY'S OFFICE
Public Utility Commission

Re: Robert Small, Frank English and Diane P.S. Koerper
and seventh other individuals, all nonnoticed
property owners v. Pennsylvania Public Utility
Commission - Docket No. 761 D.C. 1991

Dear Mr. Schuckers:

Enclosed for filing with the Court is an original and three copies of Philadelphia Electric Company's Memorandum of Law in the subject case.

Very truly yours,



Donald Blanken

DB:bmt
Enclosures

cc: John Povilaitis, Esquire
Patricia Krise Burket, Esquire
Irwin Popowsky, Esquire
Robert J. Sugarman, Esquire

Exhibit C

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT SMALL, FRANK ENGLISH, and :
DIANE P.S. KOERPER and seventy :
other individuals, all unnoticed :
property owners, :

NO. 761 C.D. 1991

vs. :

PHILADELPHIA ELECTRIC COMPANY :

MEMORANDUM OF LAW

History of the Case

By an Order issued on February 9, 1990, the Pennsylvania Public Utility Commission (hereinafter "PUC" or "Commission") approved Philadelphia Electric Company's (hereinafter "PECO") Letter of Notification to locate and construct a 230 KV electric transmission line, 12.8 miles long, within the right-of-way of Conrail's Trenton Cutoff Branch Freight Line. PECO purchased from Conrail an easement for the proposed line, as well as the existing railroad catenary structures consisting of, among other things, steel columns supporting an abandoned 138 KV electric transmission line. PECO's Letter of Notification described how the 230 KV line would utilize approximately 176 of the 236 existing steel columns. Approximately 10 structures would require replacement due to damage from train derailments and another 50 structures would be replaced because they cannot support the new line's mechanical load. Also, PECO expects to install approximately eight new structures to connect the transmission line to the substations at either end. PECO will

remove the existing conductors, insulators, crossarms, 6.6 KV feeder line, catenary support arm and all unnecessary guy wires. Conrail will continue to operate its trains on the two tracks located on the right-of-way.

Approval by the Commission was granted to PECO on February 9, 1990, and construction of the line commenced.

On September 14, 1990, petitioners filed a Petition to Intervene, to reopen the record and that construction of the line be suspended. Petitioners averred that they are affected property owners and were not served with notice of PECO's Letter of Notification. Petitioners stated that if the record were opened, they would address the following issues: whether the line would create a health risk due to electromagnetic fields (EMF) generated by the line and encroachment of these EMF into petitioners' air space, and whether the line would affect property values.

PECO filed an Answer to this petition on September 18, 1990. Subsequently the Office of Consumer Advocate (OCA) petitioned to intervene in support of the petition to reopen the record.

On March 8, 1991, the Commission entered its Order denying the petition to reopen the record and suspend construction. An appeal to this Court followed and also on or about April 29, 1991, petitioners filed a Petition for Stay Pending Review.

Petitioners also filed a Petition for Stay with the Commission, which was denied May 8, 1991.

Issue: Are petitioners entitled to a stay pending review in this case?

Argument

The criteria necessary to obtain a stay pending review is set forth in Virginia Petroleum Jobbers Assoc. v. F.P.C., 104 U.S. App. D.C. 106, 259 F.2d 921 (1958); Pa. PUC v. Process Gas Consumers Group, 502 Pa. 545, 467 A.2d 805 (1983); and in Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Circuit 1977).

"Under the Virginia Jobbers criteria a grant of a stay is warranted if:

1. The petitioner makes a strong showing that he is likely to prevail on the merits.
2. The petitioner has shown that without the requested relief, he will suffer irreparable injury.
3. The issuance of a stay will not substantially harm other interested parties in the proceedings.
4. The issuance of a stay will not adversely affect the public interest."

The application of these criteria were refined in Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.

The District of Columbia Circuit Court in refining Virginia Jobbers held:

"(t)hat under Virginia Petroleum Jobbers a court, when confronted with a case in which the other three factors strongly favor interim relief may exercise its discretion to grant a stay if the movant has made a substantial case on the merits."

Petitioners have not made a strong showing that they are likely to prevail on the merits. Petitioners state that they did not receive notice of the filing of the Letter of Notification, but they cite no regulation or rule which requires that they be served with such notice. It is clear that PECO followed the Commission's regulations in serving notice on the appropriate persons. In accordance with the regulations, 29 different public officials were served with notice of the filing, including all the local government officials in the municipalities through which the proposed line passes. Since the proposed line is almost entirely on railroad property, there are no persons owning property within the proposed right-of-way to whom notice must be served. (See 52 Pa. Code sec. 57.72(c)(4).

Petitioners primary purpose in requesting a stay is the allegation that the electromagnetic fields (EMF) created by the transmission line will cause adverse health effects. In the petition before this Court, petitioners attached, in support of their allegation of adverse health effects, what they characterized as a final draft U. S. Environmental Protection Agency report. Petitioners have mischaracterized this preliminary report as final and, more importantly, the preliminary report does not state that there is a causal connection between EMF from transmission lines and adverse health effects to humans. This report reiterates what all other studies conclude that the "situation indicates the need to continue to

evaluate the information from ongoing studies and to further evaluate the mechanisms of carcinogenic action and the characteristics of exposure that lead to these effects." A Notice of this report was printed in the Federal Register of December 18, 1990. A copy of this Notice is attached hereto as Exhibit "A".

Petitioners also attached a memorandum about a recent study on electric and magnetic fields and childhood leukemia. See Exhibit I to the Petition for Stay. This preliminary memorandum also raises the inconclusive nature of the information resulting from the study. These documents do not make a strong case for Petitioners. In fact, the documents confirm that, "there are insufficient data to determine whether or not a cause and effect relationship exists." Fed. Register, Dec. 18, 1990, page 51958.

In Addition, several states public service commissions have reviewed the reports and data resulting from various studies on this subject matter. The State of Maryland has recently extensively reviewed the medical evidence on this subject in connection with the construction of a transmission line and permitted the construction of the line. Re: Potomac Electric Power Company-Brighton Substation to High Ridge substation, Case No. 7004, Order of December 21, 1989; See also Re: Jersey Central Power and Light Company, 115 PUR 4th 542, Docket No. EE89020154, Order of July 12, 1990. (Copies of these decisions are attached.)

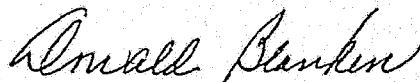
Petitioners do not offer any specifics or any reasons why there is irreparable harm to petitioners.

The issuance of a stay would cause substantial harm to PECO if the proposed line is delayed due to construction being stopped. Increased costs will be incurred by PECO due to the contractor being stopped and started up after a delay.

The issuance of a stay would cause substantial harm to the public because the reliability of electric service in the area served by the transmission line would be greatly impaired. If certain loading conditions occur before this proposed link is placed in service, voltage drops and blackouts could occur in the area served by the line. There is attached hereto as Exhibit II, the Letter of Notification filed with the Commission and served on the public officials. This Letter of Notification details why the proposed line is necessary.

Accordingly, petitioners have not met the criteria necessary for ordering a stay and the petition should therefore be denied.

Respectfully submitted,



Donald Blanken, Esquire
Counsel for
PHILADELPHIA ELECTRIC COMPANY
2301 Market Street
Philadelphia, PA 19101
(215) 841-4256

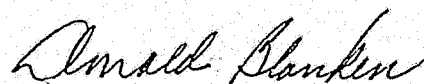
CERTIFICATE OF SERVICE

I certify that I have caused a copy of the foregoing Memorandum of Law to be served on the following by first class mail, postage prepaid, on this 16th day of May, 1991.

Robert J. Sugarman, Esquire
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101 N. Broad Street
Philadelphia, PA 19107

Irwin Popowsky, Esquire
Office of the Consumer Advocate
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Harrisburg, PA 17120

Patricia Krise Burket, Esquire
John F. Povilaitis, Esquire
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17120



Donald Blanken, Esquire

Date: May 16, 1991