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PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

LETTER OF NOTIFICATION OF
PECO RE: WOODBOURNE-HEATON
230 KV LINE

PUBLIC MEETING-
NOVEMBER 10, 1993
NOV-93-OSA-238*
DOCKET NO. A-110550F055

STATEMENT OF COMMISSIONER JOHN HANGER

In March, 1993, the Commission remanded the August, 1992 Initial Decision of ALJ Smolen for additional hearings. These hearings were limited to recent scientific evidence and comment concerning potentially adverse health effects which might result from exposure to electric and magnetic fields (EMF). Protestants have argued that energization of PECO's Woodbourne-Heaton 230 kV line could generate harmful health consequences. In the March, 1993 Order, the Commission also directed the ALJ to consider whether the Commission should adopt any standards for the width of the right of way in light of the findings concerning the potential health effects of EMF exposure.

The ALJ found that the record does not provide a current scientific basis for a finding that the EMF exposures generated by the power line are unsafe and that it is not possible at this time to set health-based standards for rights of way. PECO, the Office of the Consumer Advocate, the Law Bureau, and PP&L all agreed with the basic result as well, although each had somewhat different recommendations on how the Commission should proceed to develop a policy in the future.

This case is very troubling, because the issues involve the health of people. Protestants argue that there is reason to believe that they, their families, and children would be at increased risk of cancer and other health problems if this line is energized. Their health and safety is of vital concern.

This case is also very troubling, because the state of scientific knowledge and the resources of this agency, which do not include expertise about carcinogens or other public health threats, make it very hard to resolve questions which the scientific community itself is just beginning to ask. Put simply, this Commission does not have environmental or health expertise.

I urge other Departments of the State and Federal Government that do have such expertise to help decide, what, if any, health threats EMF exposure poses. Protestants and the public at large desire a definitive answer as soon as possible to the question of whether EMF exposure is a health threat. The PUC cannot give such a definitive answer one way or the other, and it is frustrating that our decision must focus on a "scientific" truth which

scientists admittedly have not found themselves.

Even though, in my view, this agency is ill-equipped to answer the questions that are at the heart of Protestants case, we must now render a decision. Despite this agency's limitations in this area, we cannot pass the buck.

I concur in the result reached today, because in my judgement the record in this case does not support a conclusion that energization of the line will create unhealthy conditions or that any alternative is preferable. I write a separate concurrence, because it does not fully reflect my reasoning or my remaining concerns.

As the Initial Decision clearly indicates, the result in this case is specifically limited to the facts and circumstances of the Woodbourne-Heaton line and the record in this proceeding. The Woodbourne-Heaton line is a 12.8 mile reconstruction of an existing 138kV line. It is located within an existing 60 foot wide utility right of way that is located within a wider Conrail right of way which ranges from 100 to 995 feet in width and averages 310 feet wide. Twelve out of the 238 poles of the line are located such that the utility right of way coincides with the edge of the Conrail right of way. The power line itself, which is deep within the Conrail right of way for most of its length, is about 30 feet from the nearest property line in its most outlying position. The remainder of the line is located between 40 and 740 feet from the nearest property line. The nearest residence is 125 feet from the center of the right of way.

EMF exposures vary by distance from the EMF source and the use of the line at any point in time. At the edge of the right of way, exposure will be less than 26 mg 90% of the time. At emergency maximum operating conditions, which is not expected to exceed 4 hours annually, EMF levels will be 70 mg at the edge of the right of way. EMF levels will be between 0.5mg and 19 mg at the edge of the Conrail right of way under normal operating conditions.

EMF levels fall rapidly as one moves further away from the EMF source. Consequently, the actual homes of the Protestants will in many cases have little or no exposure to EMF from this line and always significantly less than that experienced at the edge of the right of way.

These exposures must be kept in perspective. New York and Florida, the first two states to adopt specific EMF exposure regulations, require that exposures be below 200 mg and 150 mg respectively at the edge of the right of way. These limits are not based on health standards but on average exposures on comparable lines. The Woodbourne-Heaton line will create EMF levels far below these recommended maximums.

Additionally, the EMF exposures that will be created by the line are similar to many EMF exposures that residents will experience simply as a result of day-to-day living in their homes. For example, at 12 inches, the magnetic field from a television is 0.4 to 20 mg; from a microwave it is 40 to 80 mg; from a hair dryer it is 1 to 70 mg; from an electric range it is 4 to 40 mg. All of these exposures are dramatically higher at closer range and dramatically lower at greater distances. The Protestants, however, accurately point out that microwaves or hairdryers are not used 24 hours per day while the transmission line will operate continuously and cannot be avoided. Protestants' homes, as do all homes that are served by electric lines, do not have continuous EMF sources other than the transmission line.

While I hesitate to discuss cost when the primary concern is about health, cost cannot be ignored, especially when no authoritative health body in the United States has concluded that EMF poses a threat to health. Remedies to achieve lower EMF levels would be extremely expensive and would be paid for by all ratepayers. It would cost \$38.5 million and take two years to place the line underground. Protestants have proposed that PECO purchase all properties along the line, any portion of which would be exposed to magnetic field levels above 1 mg for more than 5% of the time. PECO has estimated that this would require a 500 foot right of way and would cost at least \$160 million.

These costs are enormous and would cause the price of electricity to skyrocket if such remedies were to be extended to all transmission and distribution lines. If appropriate medical and scientific bodies conclude that EMF does endanger health, such costs may have to be incurred and our whole existing way of life will have to be altered. A gain, the prospect of incurring these large costs is another reason why we all need an authoritative answer about EMF's health effects, if any, as soon as possible.

Thus, given that the record of current scientific understanding does not now, in my judgment, support a conclusion that the Woodbourne-Heaton EMF exposures are unsafe, I reluctantly accept the recommendation of the ALJ in this case. While I am deeply concerned about EMF exposure, I cannot now say that the EMF exposures that will result from this line are so fundamentally different than those that we encounter in everyday life that we should either spend large sums to achieve an uncertain result or refuse to energize the line.

The issues raised in this case are not limited to the facts of whether or not EMFs cause health problems. Fear of health problems and their impact on property values are realities that must be addressed as well. Some have suggested that the concerns of Protestants in this case should somehow be taken less seriously because they voluntarily chose to live near an existing power line and railroad right of way. Such suggestions are nonsensical.

Nobody knew a few years ago that EMFs would generate the health questions and controversies that now exist. Nearly all Protestants bought their homes before EMF exposure became the subject of wide public discussion.

Probably, because of the EMF issues, people are less willing to live near power lines and less willing to pay as much money for a similar home in a location without an adjacent power line. If it can be demonstrated that property values in fact decrease because of a line, such losses should be compensated. The regulated community must approach issues of compensation fairly and reasonably. The perception of potential adverse health effects of EMF are appropriate considerations in property appraisals in utility condemnation proceedings. See, In Re Appeal of Geisler, 622 A.2d 408 (Cmwlth Ct. 1993). Several other states have reached similar legal conclusions when this question has been decided by their courts.

Lastly, I note that these issues are far from resolved. The proposed rulemaking will require the participation of many different parties. As scientific evidence changes, it is possible that our siting standards will change dramatically or that wider rights of way will be found to be useless. Public education will continue. The effect on property values will both become more certain and vary over time. Certainly, however, this Commission must focus on this important issue for years to come.

November 10, 1993
DATED

John Hanger
JOHN HANGER, COMMISSIONER

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NOV 10 1993

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

LETTER OF NOTIFICATION OF
PHILADELPHIA ELECTRIC COMPANY
RELATIVE TO RECONDUCTORING AND
REBUILDING OF THE EXISTING
128 KV LINE TO OPERATE AS THE
WOODBOURNE-HEATON 230 KV LINE

Public Meeting
November 10, 1993
Docket No. A-110550F055
NOV-93-OSA-238*

RECEIVED
NOV 10 1993
U.S. CONTROL DIV.

STATEMENT OF COMMISSIONER JOSEPH RHODES, JR.

Before us for consideration is the July 23, 1993, Initial Decision of Administrative Law Judge ("ALJ") Herbert Smolen. The central issue of this decision is the effect of electromagnetic fields ("EMF") on human health. An extensive record was developed during which all parties were given more than ample opportunity to place on the record whatever evidence would support their positions. According to the ALJ, this record, when viewed in totality, establishes that there is no proven causal connection between EMF and adverse human health effects. I concur with the ALJ's findings.

If we decide to affirm the ALJ's central recommendation, the Commission still faces a difficult decision. We can pretend that this decision only has relevance for the instant case, the 13 miles of the Woodbourne-Heaton line, or we can let this decision stand as the current and controlling position of the Commission on this most troublesome issue. The Office of Trial Staff ("OTS") wants us to adopt the former position and other parties urge us to embrace the latter.

In many ways the path of least resistance beckons us to confine this finding to the thirteen miles of Woodbourne-Heaton. Such a conclusion seems to offer the Commission the best of all worlds. It is the politically correct decision. We would affirm that the on record examination of this alleged link between power line EMF and adverse health effects resulted in a negative result, but this negative result is confined to the four corners of this instant case. To those who assert a causal connection we would hold out the hope that this decision is confined to Woodbourne-Heaton. And to those who want us to find that no causal connection exists, we could answer that is exactly what we found in this case, but only in this case and no other. We could please everyone.

Unfortunately, the mission of this Commission is not to please but to reach judgement in the public interest. We cannot pass the buck; we cannot even pass it to ourselves. Two years ago we decided that we would make EMF policy with this case when we decided not to launch a generic investigation into this issue. That is water over the dam and we cannot turn back the clock. Therefore I support the position that a generic investigation into

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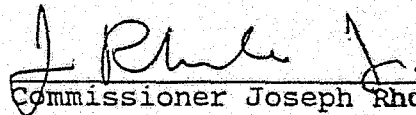
EMF effects and powerline regulations is not timely.

We, however, cannot seek refuge in the other extreme either. The electrons and photons just won't obey us. If the laws of physics dictate the negative finding on the question of EMF hazard for Woodbourne-Heaton, nothing we do today can confine those laws to this thirteen mile stretch of right-of-way. After review of the evidence of record the Judge found that there is no conclusive causal link between powerline EMF and health hazards. If this is true for Woodbourne-Heaton then it is certainly true for the rest of the Commonwealth. And if it is not true for the rest of the Commonwealth then we should not allow PECO to energize Woodbourne-Heaton.

Therefore, as long as the majority of this Commission finds it necessary to sustain the OTS exception on the "Limitations of the Findings and Conclusions" in this case, I must dissent on this result and concur in the remainder of the proposed order.

11-10-93

Date


Commissioner Joseph Rhodes, Jr.

X-CAL

PENNSYLVANIA PUBLIC UTILITY COMMISSION NOV 10 1993
Harrisburg, Pennsylvania 17105-3265

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Lastly, I note that these issues are far from resolved. The proposed rulemaking will require the participation of many different parties. As scientific evidence changes, it is possible that our siting standards will change dramatically or that wider rights of way will be found to be useless. Public education will continue. The effect on property values will both become more certain and vary over time. Certainly, however, this Commission must focus on this important issue for years to come.

November 10, 1993

DATED

John Hanger

JOHN HANGER, COMMISSIONER

Letter Notification of Philadelphia
Electric Company relative to
reconductoring and rebuilding of the
existing 128 kV line to operate as the
Woodbourne-Heaton 230 kV line.

A-110550F055

- NOTICE OF PETITION by Robert Smalls,
Edward Koerper, Dorothy English, et
al., at No. 2958 C.D. 1993,
Commonwealth Court of Pennsylvania,
from the order of the Commission dated
November 12, 1993, in the above-
captioned proceeding.

B-933472 Filed: December 13, 1993

DOCKETED

JAN 24 1994

DOCUMENT
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January 31, 1995

SUBJECT: Request to Close Cases

TO: Agnes Brewster, Supervisor
Docket Section
Office Services Division

FROM: *BBS*
Bruce Bigelow
Law Bureau

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INFO. CONTROL
P. D. C. DIV.

After review, we have determined that the following open cases have been completed and should be marked CLOSED:

- | | | |
|------------|------------|----------------------|
| P-00840508 | P-00840534 | P-00850002 |
| P-00850037 | P-00860112 | P-00860126 |
| P-00860139 | P-00870213 | P-00870217 |
| P-00870226 | P-00870236 | P-00880283 |
| P-00880284 | P-00880314 | P-00880333 |
| P-00880340 | P-00890353 | P-00890354 |
| P-00890395 | P-00900430 | P-00900431 |
| P-00900478 | P-00900494 | P-00910514 |
| P-00920567 | P-00920570 | P-00920591 |
| P-00920618 | P-00920631 | P-00920635 |
| P-00930690 | P-00930733 | P-00930737 |
| P-00940757 | P-00940769 | P-00940819 |
| P-00940906 | Z-08695223 | <u>A-110550F0055</u> |

Should you have any questions concerning the above, please contact me at 7-6173.

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FEB 06 1995

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File In A-110550 F055 B 933472 PKB

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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ROBERT SMALLS, EDWARD KOERPER, :
and DOROTHY ENGLISH, ET AL., :
Petitioners :
v. :

KJR

APR 07 1995

PENNSYLVANIA PUBLIC UTILITY :
COMMISSION, :
Respondent :

No. 2958 C.D. 1993

PA P.U.C. :
LAW BUREAU

ARGUED: February 6, 1993

DOCKETED

SEP 9 1996

BEFORE:

HONORABLE JAMES GARDNER COLINS, President Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE CHARLES A. LORD, Senior Judge

DOCKETED

OPINION NOT REPORTED DOCUMENT

MAY 13 1995

MEMORANDUM OPINION
BY SENIOR JUDGE LORD

FOLDER

FILED: April 3, 1995

DORIS REYNOLDS

Robert Smalls, Edward Koerper, Dorothy English, et alia (petitioners) petition for review of a Pennsylvania Public Utility Commission (PUC) order which, on remand, adopted an Administrative Law Judge's (ALJ) decision denying their exceptions. In its order denying exceptions, the PUC confirmed its earlier approval of PECO Energy's (PECO) letter of notification to construct a high voltage power line. PECO and the Office of Consumer Advocate intervene.

In November 1989, PECO filed a letter of notification pursuant to PUC regulations¹ to reconstruct as the "Woodbourne-Heaton" 230

¹Under 52 Pa. Code §57.72(d)(1), a letter of notification may be filed in lieu of the regular siting application process for, inter alia, a high voltage line on which the voltage is proposed to be increased above its present levels or for a line which is to be reconducted or reconstructed, so long as the size, character, design or configuration of it does not substantially alter the right-of-way.

52 Pa. Code §57.72(d)(4)(i) enumerates the required contents of a letter of notification by reference to certain of the requirements of a siting application, §57.72(c)(1) through (3), (5) and (6). Pertinent to this decision among those requirements are a general statement of the need for the line, §57.72(c)(5) and a

kV line a former 138 kV transmission line, located along the rail line known as the "Trenton Cut-off Branch" freight line. In February 1990, the PUC approved the letter of notification.

In September 1990, the petitioners, who live along the railroad corridor, filed an emergency petition to intervene, alleging they did not receive notice of the proposed reconstruction of the transmission line. They petitioned to reopen the record and to suspend approval of the line reconstruction. The Office of Consumer Advocate (OCA), which intervened in this matter, supported their petition. By order dated March 8, 1991, the PUC denied the emergency petition. In April of that year, the petitioners filed with this Court a petition for review of the PUC's order as well as a petition for stay pending review. Judge Palladino then heard argument on the petition for stay. Due to the request, at that hearing, by petitioners' counsel for a remand to the PUC for a hearing, Judge Palladino deemed the petition for stay a petition to remand and ordered a remand on May 24, 1991.

In the memorandum and order remanding, Judge Palladino stated:

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

statement of the safety considerations to be incorporated into the design, construction, and maintenance of the line, §57.72(c)(6). §57.72(d)(4)(iii) also requires that the letter of notification be accompanied by evidence to show that the project's size, character, design and configuration will not substantially alter the right-of-way.

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. Notice to municipalities given pursuant to 52 Pa. Code §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.

(Commonwealth Court order of 5/24/91). (Footnote omitted).

In June 1991, the PUC, on remand, ordered the record reopened in this proceeding to consider whether petitioners would be adversely affected by PECO's reconductoring of the line to higher power. The PUC Law Bureau then entered its appearance in the proceedings. A hearing was held on August 15, 1991. Ten additional days of hearings were held, the last of which took place on February 7, 1992. After briefing schedules were completed, the ALJ rendered his initial decision on July 29, 1992. This decision denied the petitioners' challenge to the line inasmuch as it sought a conclusion that EMF exposure leads to adverse effects on human health, and sustained the protest inasmuch as it sought a conclusion that energizing the line would cause adverse land use impacts because of the fear of potential adverse health effects. The ALJ recommended that "pending consideration by the Commission of the recommended adoption and implementation of EMF standards...energization of the Woodbourne-Heaton line should be temporarily delayed until the further Order of the Commission."

Exceptions were filed by all parties.

On consideration of these exceptions, the PUC ordered a remand to the ALJ to take evidence on "all studies of the health effects of magnetic fields" currently available and on "what, if any, standards should exist for right-of-way width" on this line in light of findings regarding health effects. (PUC order of 3/26/93).

Hearings were then held in late May and early June of 1993, and the ALJ, after considering the scientific evidence from both the first round of hearings and the more recent studies produced at the 1993 hearings, issued another decision in which he found that "the record evidence...in this remanded proceeding, when viewed in its totality, does not support a finding or conclusion that there is a causal connection between exposure to EMFs and adverse human health effects because of the continued inconclusiveness of the scientific research and studies." He therefore recommended that no "right-of-way width health-based standard should be developed or adopted for the Woodbourne-Heaton 230 kV line at this time." (ALJ's decision, July 23, 1993) and further recommended adoption of the PUC's February 9, 1990 order approving PECO's letter of notification. The parties filed exceptions and reply exceptions. The PUC adopted the ALJ's supplemental decision on November 12, 1993. In December 1993, the Petitioners filed a petition for review of that order, which petition is now before us for disposition.² The OCA has filed a notice of intervention.

²This Court extended the briefing schedule at the request first of the petitioners and then of the PUC.

The petitioners raise the following issues. 1) Whether the PUC obeyed this Court's May 24, 1991 remand order to hold hearings, though it did not on remand take evidence on PECO's need for the high voltage line or on alternatives to constructing it; 2) whether failure to give notice and an opportunity to be heard to abutting landowners within the range of substantial alleviation of electromagnetic fields is a denial of due process; 3) whether the PUC abused its discretion and demonstrated its prejudice, thereby denying due process, by employing arbitrary and unreasonable procedural devices against the petitioners, by limiting evidence, and by restricting the proceedings over its own trial staff's objections. The petitioners also ask this Court to award full relief (that is, damages for deprivation of property and reimbursement of costs for past and future participation in these proceedings) against the PUC and/or PECO due to federal and state due process violations.

The OCA as intervenor argues that the PUC committed an error of law in limiting the scope of the hearings since the letter of notification procedure was not properly used in this case, where PECO proposed what Judge Palladino recognized as a "new" use, substantially altering the right-of-way. The OCA also submits that the PUC erred as a matter of law in treating its previous order as binding on petitioners as to the issues of need and alternative sitings, since this Court stated that the letter of notification regulations were inadequate as to notice to petitioners.

On the first issue the petitioners raise, they maintain that the PUC ignored this Court's remand order by limiting the hearings on remand to the single issue of adverse impact, thereby preventing the balancing of that impact against PECO's need for the project. The petitioners point out that, pursuant to 57 Pa. Code §57.72(d)(4)(i), one of the criteria for approval of the letter of notification is a statement of need for the reconducted or reconstructed line. They argue that Judge Palladino invalidated the entire previous proceedings in her order of May 24, 1991 and directed the PUC to consider PECO's proposal anew. The PUC was therefore at least required, when faced with evidence that led the ALJ to find adverse land use impacts, to evaluate all the criteria of the letter of notification approval, including need for the line, in light of any adverse effect. While that order might be subject to the interpretation the petitioners accord it, reference to the petitioners' original petition for review in this Court, and the accompanying petition for stay which Judge Palladino heard, compels a different conclusion. In that petition, the petitioners complained that they received no notice of the original proceedings; that they were entitled to notice; that the content of PECO's letter of notification was misleading and failed to disclose that PECO's proposal would substantially alter the right-of-way; that petitioners were denied due process of law and were prejudiced by the PUC's procedures; and that the PUC arbitrarily and illegally refused to hear the petitioners' contention that the HV line would create a substantial risk of injury due to the generation of

electromagnetic fields. Nowhere is there an allegation that PECO had no need for the line or that reasonable alternatives to it existed, and nowhere in this petition do petitioners ask for a hearing on need or reasonable alternatives. That order stated this Court's conclusion "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" and directed that a hearing "on this issue" be held within ninety days.

Moreover, there is nothing in the record to indicate that the petitioners or the OCA sought reconsideration of Judge Palladino's order. Nor does the record reveal a request for clarification of that order. Since the PUC held hearings at Judge Palladino's express direction, the petitioners or the OCA could have returned to the Court with such a request or could have asked for similar relief if they believed her order was not being followed. We therefore hold that the PUC was not required by Judge Palladino's order of May 24, 1991 to conduct hearings on these questions.

Next, the petitioners argue that the PUC's actions from the outset of PECO's letter of notification and throughout the proceedings demonstrated the PUC's prejudice against their position and denied them the due process of law to which they are entitled as abutting property owners. We cannot agree. Insofar as they argue they were denied adequate notice, it is our judgment that this problem was raised before Judge Palladino and fully resolved by her order. In their petition for review, the petitioners

asserted that the PUC arbitrarily and capriciously "denied due process of law in refusing to grant them a hearing on their allegations" (petition for review at No. 761 C.D. 1991, paragraph 4.c.). They alleged that the PUC refused to hear their contention "that the line would entail the creation of a substantial risk of injury to the petitioners, in that it will generate electromagnetic fields (EMF)" and that the Commission, without benefit of hearing, "purported to decide the issue based on the [PUC] majority's view...and no opportunity for cross examination or evidence was allowed, although the issue was concededly a significant one, which was new and novel to the proceedings" (petition for review at No. 761 C.D. 1991, paragraph 4.d.). They asked that we set aside the PUC order "and remand the matter for hearings, as requested." Without expressly setting aside the PUC order, Judge Palladino required the PUC to conduct additional hearings "as requested."

The petitioners cite several other examples of the PUC's bias, among them that the PUC allowed its counsel "to function as an advocate of the [u]tility"; that it failed to investigate the dangers of EMF's adequately; that it characterized in an exaggerated fashion the petitioners' proposals to have PECO compensate them; and that it refused its trial staff's request for adequate time to obtain expert testimony. (petitioners' brief, p. 15). However, the record does not reveal evidence to support a conclusion that the PUC abused its discretion or denied the petitioners the process that was due them. That the PUC's law bureau held the same position as that of PECO on many of the

questions considered is not determinative of whether bias existed, and the petitioners cite no evidence in the record to establish that the PUC or its staff acted in consort with the utility. The ALJ and, indeed, each commissioner, both in the majority and those dissenting, acknowledged the current inconclusiveness of the "science" on the questions of potential dangers of EMF's. We have reviewed the record, the ALJ's recommended decision and the PUC opinion and order. It is our judgment that the petitioners were given an adequate opportunity to adduce the scientific evidence as it exists today, and we do not believe that the four months given to the PUC's trial staff in which to provide testimony on the adverse health effects of EMF's was inadequate or prejudicial to the petitioners' case. We are unconvinced that the PUC's actions constituted a denial of due process.

As to the arguments advanced by the OCA, we note here that it was an intervenor before the PUC and has intervened in this petition for review as well. It is self-evident, therefore, that it too is bound by our interpretation of what this Court's previous order required. However, the argument might plausibly be made that the parties were misled by that order, which, we agree, is susceptible to contradictory interpretations. Consequently, we address the OCA's argument that the PUC was in error in deciding that the letter of notification process was appropriate to this project.

In that regard, we find the OCA's position unconvincing. We note that PUC regulations expressly state that a letter of

notification may be appropriate for a proposed increase in voltage along a line. 52 Pa. Code §57.72(d)(1)(iv). Thus, a change in voltage does not per se constitute a substantial alteration of the right-of-way. The regulations also require that the letter of notification must contain evidence to show that the size, character, design and configuration of the proposed line do not substantially alter the right-of-way. 52 Pa. Code §57.72(d)(4)(iii). While those regulations do not prohibit the PUC from finding, on examination of that evidence, that an increase in voltage will result in a substantial alteration, in this case, the PUC was satisfied that no such alteration occurred. The OCA does not argue that PECO failed to adhere to the letter of notification procedures; nor does it argue that the regulations themselves are constitutionally infirm or otherwise invalid. It argues only that the letter of notification procedure should not have been used. The OCA advanced this argument before the PUC in its statement supporting the petitioners' emergency petition to intervene. It was ably answered by the PUC in its order denying that petition.

Also in support of their request to reopen the instant proceeding, the Petitioners allege that they would prove that PECO had erroneously used the letter of notification procedure in this case because of PECO's misstatement of critical facts. The Petitioners argue that PECO was not reconstructing this line because it had never constructed a line on this property before....

The Commission, however, was fully apprised of the circumstances surrounding PECO's reconstruction of this line. PECO stated in its Letter of Notification that it proposed to rebuild and reconductor an abandoned railroad 138kV transmission line. It stated that it purchased the Conrail right-of-way and the existing structures which had supported the line and would use 176 of the 236 existing structures in the rebuilt line.

. . .

Because PECO intended to reconductor or rebuild an existing high voltage transmission line, PECO's use of the letter of notification procedure was not erroneous. That the line must travel along 0.06 mile section of new right-of-way (which was not part of the original Conrail line) to avoid conflicts with the use of an airport runway does not substantially alter the right-of-way of the original line so as to preclude PECO's use of a letter of notification in this proceeding.

However, in its statement, the OCA argues that the difference between the proposed 230 kV line and zero voltage, currently the voltage of the abandoned Conrail line, represents a substantial change in the right-of-way which should have warranted PECO filing an application for this line. We disagree. Although the Conrail transmission line has not been recently in use and has been at zero voltage for this period of time, it originally operated at 138 kV. Thus, the Petitioners cannot rely on the expectation or the presumption that the voltage on this transmission line would remain at zero indefinitely. As reflected in the Commission's prior order approving PECO's Letter of Notification, the increase from 138 kV, the original operating voltage of the Conrail line to 230 kV, the voltage for the proposed PECO line, was deemed not to have significantly altered the original Conrail right-of-way. Under the circumstances, both PECO's use of the letter of notification and the Commission's approval thereof are factually supportable.

Finally, it is important to note that Commission regulations do not require that the high voltage transmission line be one that was owned or used by the electric utility which is proposing the reconstruction. Therefore, PECO's not previously owning the Conrail transmission line it now proposes to rebuild has no effect on PECO's ability to proceed under the Commission regulations governing letters of notification.

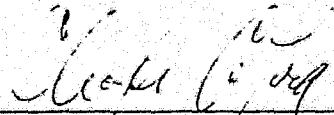
With regard to the issue of whether the PUC committed an error of law in limiting the remand proceedings after Judge Palladino's order, accepting as proven the criterion of need, we note, again, that the order addressed for purposes of remand only the issue of adverse health effects. Because the petitioners did not plead the

issue of need, it is only logical to conclude that the Judge did not remand for consideration of that question. In any case, as PECO explains, a simple comparison of 52 Pa. Code §57.72(c)(5) [relating to the form and content of a siting application] and §57.72(d)(4)(i) [relating to a letter of notification] reveals that PECO would have had to submit with a siting application the same information on the issue of need for the line which it in fact submitted with its letter notification. While the OCA argues that the petitioners should have had an opportunity to challenge PECO's assertions through development of a record, as we have said, the issue was not raised when the petition for review was first brought to this Court.

Finally, as to the petitioners' request that we grant relief in the form of monetary damages and reimbursement of counsel fees and costs in these proceedings, we note here again that the petitioners have not established a denial of due process and we have not found that the PUC is required to engage in additional hearings requiring the petitioners to prosecute their case further. Insofar as the petitioners seek compensation for a diminution in the value of their properties based on the ALJ's finding of adverse land use impact due to reasonable fear of EMF potential health effects, since damages have not at this point been established by way of any action petitioners have brought, we leave for another day the determination that they are entitled to compensation, in eminent domain or otherwise. See Feingold v. Bell of Pennsylvania, 477 Pa. 1, 383 A.2d 791 (1977) (PUC has no power to award damages

for breach of contract with public utility); DiSanto v. Dauphin Consolidated Water Supply Company, 291 Pa. Superior Ct. 440, 436 A.2d 197 (1981) (Commission has no power to award damages in tort action against public utility); West Penn Power Company v. Pennsylvania Public Utility Company, 104 Pa. Commonwealth Ct. 21, 521 A.2d 75 (1987).

We have reviewed the record, the PUC's actions, and its decision in this case against the backdrop of the allegations contained in the petitioners' petition for review and supporting briefs, as well as the challenges raised by the OCA. We perceive no abuse of discretion, bias or denial of due process and we conclude that the PUC has committed no error of law or violation of its regulations. Accordingly, we affirm the decision of the PUC.



CHARLES A. LORD, Senior Judge

B-733472

PB

Filed in A-110550 F055

SUGARMAN & ASSOCIATES
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100 NORTH 17TH STREET
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ROBERT J. SUGARMAN
ALAN M. KAPLAN

June 30, 1995

^{KJR}
DOCKETED
SEP 9 1996

Supreme Court of Pennsylvania
Office of the Prothonotary
Room 468 City Hall
Philadelphia, PA 19107

Re: Robert Smalls, Edward Koerper and
Dorothy English, et al. v. Pennsylvania Public
Utility Commission
No. 2958 C.D. 1993

Dear Sir/Madam:

Enclosed is an original and eight copies of a Petition
for Allowance of Appeal in the within matter, together with the
filing fee.

**DOCUMENT
FOLDER**

Sincerely,

Robert J. Sugarmann/nsn
Robert J. Sugarmann

RJS/nsn

Enclosure

cc: All counsel

cc:\wp51\sandy\smalls\spnct-ltr.630

DOCKETED

SEP 03 1995

DORIS REYNOLDS

RECEIVED

JUL 03 1995

PA P.U.C.
LAW BUREAU

IN THE SUPREME COURT OF PENNSYLVANIA

NO.

ROBERT SMALLS, EDWARD KOERPER,
and DOROTHY ENGLISH, ET AL.,

Petitioners

v.

PENNSYLVANIA PUBLIC UTILITY COMMISSION,

Respondent

PETITION FOR ALLOWANCE OF APPEAL
FROM THE ORDER OF THE COMMONWEALTH COURT
AT NO. 2958 C.D. 1993 AFFIRMING PA.P.U.C.
AT NO. A-110550F055

ROBERT J. SUGARMAN
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COUNSEL FOR PETITIONERS

Date: June 30, 1995

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ROBERT J. SUGARMAN
ALAN M. KAPLAN

~~B 4-33472~~
PB
Filed In A-110550F
055

July 13, 1995

^{KJL}
DOCKETED
SEP 9 1996

Supreme Court of Pennsylvania
Office of the Prothonotary
Room 468 City Hall
Philadelphia, PA 19107

Re: Robert Smalls, Edward Koerper and
Dorothy English, et al. v. Pennsylvania Public
Utility Commission
No. 2958 C.D. 1993

Dear Sir/Madam:

Enclosed is an original and eight copies of a Petition
for Allowance of Appeal in the within matter, together with the
filing fee.

Sincerely,

Robert J. Sugarman

RJS/nsn

Enclosure

cc: All counsel

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**DOCUMENT
FOLDER**

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JUL 18 1995

PA P.U.C.
LAW BUREAU

IN THE SUPREME COURT OF PENNSYLVANIA

NO.

ROBERT SMALLS, EDWARD KOERPER,
and DOROTHY ENGLISH, ET AL.,

Petitioners

v.

PENNSYLVANIA PUBLIC UTILITY COMMISSION,

Respondent

PUBLIC UTILITY COMMISSION'S ORDER

ENTERED NOVEMBER 12, 1993

NO. A-110550F055

PETITION FOR ALLOWANCE OF APPEAL

FROM THE ORDER OF THE COMMONWEALTH COURT

AT NO. 2958 C.D.-1993 AFFIRMING PA.P.U.C.

AT NO. A-110550F055

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JUL 18 1995

PA P.U.C.
LAW BUREAU

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PHILADELPHIA, PA 19103
(215) 864-2500
COUNSEL FOR PETITIONERS

Date: July 13, 1995



FILE IN A110550F0055

Supreme Court of Pennsylvania

JOHN W. PERSON, ESQ.
DEPUTY PROTHONOTARY

PATRICIA JOHNSON
CHIEF CLERK

Eastern District

468 CITY HALL
PHILADELPHIA, PA 19107
(215) 560-6370

February 26, 1997

DOCUMENT FOLDER

Robert J. Sugarman, Esquire
100 N. 17th Street
7th Floor, Robert Morris Building
Philadelphia, PA 19103

Re: ROBERT SMALLS, EDWARD KOERPER, and DOROTHY ENGLISH, et al.
v. PENNSYLVANIA PUBLIC UTILITY COMMISSION
No. 0531 E.D. Allocatur Docket 1995

Dear Petitioner:

This is to advise you that the attached order has been entered on the Petition for Allowance of Appeal filed in the above captioned matter.

Very truly yours,

Office of the Prothonotary
Supreme Court of Pennsylvania

/ bec
c: ; Agency
Public Utility Commission; A-110550F055
Paul R. Bonney, Esquire*
Tanya J. McCloskey, Esquire
Patricia Krise Burket, Esq.
Charles Hoffman, Esquire
Jesse Dillon, Esquire

DOCKETED ^{et}
MAR 23 1997

DOCKETED
MAR 28 1997

PA P.U.C. LAW BUREAU

FEB 28 1997

PA P.U.C.
LAW BUREAU

ERM

IN THE SUPREME COURT OF PENNSYLVANIA

ROBERT SMALLS, EDWARD KOERPER,
and DOROTHY ENGLISH, ET AL.,

Petitioners

v.

PENNSYLVANIA PUBLIC UTILITY
COMMISSION,

Respondent

No. 531 Eastern District
Allocatur Docket 1995

Petition for Allowance of
Appeal from the Commonwealth
Court

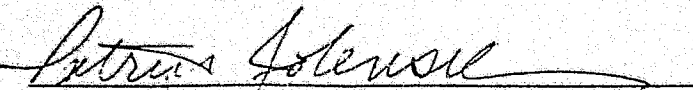
ORDER

PER CURIAM

AND NOW, this 26th day of February, 1997, the Petition for Allowance of Appeal is denied.

Madame Justice Newman did not participate in the consideration or decision of this matter.

TRUE COPY FROM THE RECORD
ATTEST: February 25, 1997


PATRICIA JOHNSON
Chief Clerk
Supreme Court of Pennsylvania
Eastern District