



- (c) The Law Bureau recommends adoption of an order which denies the petition.
- 

CONTENT OF MOTION: (Continued)

Vice-Chairman Rhodes moved that the Commission initiate an investigation into the possible health effects of EMF, possible remediation steps, and the responsibility of utilities to provide customers with information, including the provision of field or frequency measurements; and that the Office of Administrative Law Judge conduct this investigation.

No second.

Motion fails for lack of a second.

STATEMENT/MOTION OF CHAIRMAN WILLIAM H. SMITH

RE: EMERGENCY PETITION OF NON-NOTICED  
PROPERTY OWNERS TO INTERVENE FOR  
REOPENING AND TO SUSPEND APPROVAL  
A-110550F.055  
L-704\*

Philadelphia Electric Company (PECO) filed its Letter of Notification to reconductor and reconstruct an existing but abandoned 138KV Transmission line for 230KV operation with the Commission on November 21, 1989. Consistent with our regulations, copies of PECO's letter were served on all property owners within the proposed right-of-way, over 29 public officials including those in the governing bodies of Bucks and Montgomery Counties and the municipalities through which the line passes, as well as the planning bodies of each municipality. Several state agencies were also served as required by the Commission's regulations. No protests to PECO's plan were filed with the Commission.

Accordingly, based upon an analysis of the plan and the recommendation of our Bureau of Conservation, Economics and Energy Planning, the Commission approved PECO's unprotested plan on February 1, 1990 (Order entered February 9, 1990). The \$20.1 million project was scheduled to begin in the Spring of 1990 with an in-service date of the Spring of 1991.

On September 14, 1990, an Emergency Petition to Intervene, to Reopen the Record, and to Suspend our prior Approval of this project was filed by members of PAUSE. At the heart of this Petition is the issue of whether the line will create a health risk because of the electromagnetic fields (EMF) generated by the line, although other matters also are raised.

I do not believe that reopening the record and remanding the case for further hearing, particularly with regard to the issue of EMFs, will lead to any resolution of that issue at this time.

The subject of EMFs and the possible detriment they pose to human health has been, is being, and will be studied on a regional and worldwide basis by numerous groups for some time to come, as it should be. One such study undertaken by the National Cancer Institute of childhood leukemia will assess the role of several factors, including EMF. I have listened to EMF presentations at regulatory conferences, read papers written by experts and many news articles on this subject.

While some of the studies tend to suggest that there may be cause for concern and the need for further study, other studies have found that no health hazard exists. Just about all of the studies conclude there is no conclusive proof that there is a causal connection between EMFs and adverse health effects on humans. I believe these observations are also consistent with the recently publicized Review Draft of the U.S. Environmental Protection Agency's Evaluation of the Potential Carcinogenicity of Electromagnetic Fields, a comprehensive review of over 40 existing scientific studies and tests. Included in its summary in the Federal Register (December 18, 1990) is the observation that "There are insufficient data to determine whether or not a cause and effect relationship exists."

The Congressional Office of Technology Assessment (OTA) reportedly has indicated that if EMF does ultimately turn out to be a risk to human health, utility distribution/transmission lines may not be the greatest cause of any potential hazard. Home wiring circuits, lighting fixtures, normal household appliances (toasters, vacuum cleaners, electric ranges, mixers, can openers, blenders, clock radios, black and white TV's, shavers, etc.), and electric blankets create EMFs, and the OTA concluded that these other items (as well as industrial and office workplace exposure) could play a greater role than electric transmission lines in any possible public health problem. A recently made public study at the University of Southern California tends to support this conclusion. Appliances can generate EMFs even higher than those emitted by transmission lines but, in most cases, fall off rapidly with distance and generally do not produce constant exposure.

Further, the experts haven't as yet been able to establish "safe" standards of exposure (dosage/intensity/time duration) to guide us in any remediation because they have not yet determined what threshold levels, if any, are dangerous. Some of the experts say biological effects of EMFs may even be detrimental at lower intensities rather than higher ones. The OTA reportedly has said, on this issue, that reducing the intensities of fields to which people are exposed might even make things worse. That is, simply lowering EMF strength may not reduce any possible risks that may exist.

While experts encourage utilities to design, site and erect new transmission lines so that they avoid residential exposure, and to widen transmission line right-of-ways, and to control the use of land along them, some do not believe the findings to date justify spending millions of dollars, tearing out, rerouting, and rebuilding old lines. I agree that transmission line design and siting must be such that the potential to harm humans is minimized or eliminated if that is possible.

The question then becomes what should we do?

- As precautionary measures, I believe that Pennsylvania's electric utilities have a clear duty to exercise what one team of experts described as a policy of "prudent avoidance" in the design and siting of power lines.

- Qualified health care professionals, utilities and others must continue and intensify the study of this issue until a definite answer is found before embarking on a costly, drastic revision to the electric industry's method of preparing to meet our ever growing demand for energy.

- Utilities and others must continue research on and utilize available engineering options that can reduce the strength of and lessen exposure to EMFs from transmission/distribution lines.

- Where economically and otherwise feasible, for example, the use of taller poles and some undergrounding of lines should be considered, along with wider rights-of-way.

- Utilities should develop programs to provide relevant information to customers as it becomes available, including field and frequency measurements.

- The P.U.C. staff must review our regulations governing all of these areas to recommend changes to assist in minimizing any potential EMF hazard, as well as our "notice" requirements.

- Our staff has advised us that the American National Standards Institute (ANSI) will be issuing guidelines for occupational and residential exposure to EMF in April or May of 1991, and these guidelines should afford the Commission additional guidance in whatever regulatory measures it deems necessary to undertake to address this issue.

The Report of the Pennsylvania House Conservation Committee's Study of Electro Magnetic Fields Pursuant to House Resolution 38 (November 30, 1990) reaches similar conclusions. The Committee's report states that "Because the scientific community does not indicate a clear causal connection between electromagnetic fields and both cancer and leukemia, it appears to be premature for Pennsylvania to label electromagnetic fields as health hazards without further study." Further, the report finds that "Additional technical research should be conducted before any action, including any regulatory action, is taken." The report recognizes "the wide scope and far-reaching implications of this problem" and recommends "additional study by the federal government or the international community." The report concludes that "While the existence of electromagnetic fields affecting cells is not in question, whether they pose health risks to humans or not remains unknown" and it

directs the Department of Environmental Resources and the Department of Health to continue to research relevant literature. Other departments are to monitor and remain current with all fields of research. Finally, the report concludes that "At this point, it is the sense of the Conservation Committee that any action beyond research is premature."

Accordingly, I move the adoption of L-704.

March 5, 1991

Date

W<sup>H</sup> H. Smith

William H. Smith  
Chairman

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Harrisburg, Pennsylvania 17120

PUBLIC MEETING - MARCH 6, 1991

EMERGENCY PETITION OF NON-NOTICED  
PROPERTY OWNERS TO INTERVENE FOR  
REOPENING AND TO SUSPEND APPROVAL

A-110550F.055  
L-704\*

STATEMENT OF COMMISSIONER WENDELL F. HOLLAND

I support the Chairman's Motion and the staff report and would like to note a few things for the record.

First, I am concerned about the environmental and health effects posed by EMF. Evidence of my concern was shown just last week at the winter meetings of the NARUC. As a member of NARUC's Committee on Electricity, I seconded a motion in support of a \$25 million, three-year study into the possible health effects of EMF. The motion, which was ultimately adopted by the full NARUC, further provided that NARUC and three electric utility trade associations - namely, the American Public Power Association, the Edison Electric Institute and the National Rural Electric Cooperative Association - support a joint research effort to be "undertaken by highly respected independent research institutions that have a proven ability to conduct health-related research." (Resolution on EMF Research, Resolution Paragraph, NARUC No. 9-1991, p. 21).

Second, along with four members of my staff, I conducted a site visit to the proposed line directly within the right-of-way of PECO's line construction in order to gain a greater appreciation of the overall environment.

Finally, as a former Judge, I am compelled to pay particular attention to relevant precedent. I note that in previous transmission line siting cases where the potential threat of EMFs was an issue, this Commission considered "immaterial" broad allegations regarding possible adverse health effects from transmission line construction, as opposed to site specific studies or more concrete evidence. Bethel Township, Docket No. A-110550F049, Mimeo p. 14 (Order entered May 16, 1990); see also East Goshen Township, Docket No. A-00110550F022, Mimeo pp. 4-5 (Order entered September 6, 1989). Moreover, the utility Commissions in Maryland and New Jersey--our neighbors to the south and east--have permitted construction of transmission lines after extensively reviewing the medical evidence relative to the alleged health hazards associated with EMFs. Re Potomac Electric Power Company - Brighton Substation to High Ridge Substation, Docket No. 7004 (Order of December 21, 1989); Re Jersey Central Power and Light Company, 115 PUR 4th 542, Docket No. EE 89020154 (Order of July 12, 1990).

For these reasons, I support the Chairman's Motion to Deny the Petition for Stay and Rehearing. I would, however, grant standing to the petitioners to participate in the GPU/Duquesne Light siting application to further explore issues pertaining to possible health risks associated with EMF exposure.

3/6/91  
Date

Wendell F. Holland  
WENDELL F. HOLLAND  
Commissioner

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Harrisburg, Pennsylvania 17120

EMERGENCY PETITION OF NON-NOTICED  
PROPERTY OWNERS TO INTERVENE  
FOR REOPENING AND TO SUSPEND  
APPROVAL

PUBLIC MEETING -  
MARCH 6, 1991  
FEB-91-L-704\*  
DOCKET NO. A-110550, F.055

DISSENTING OPINION OF COMMISSIONER DAVID W. ROLKA

The threshold issue in this proceeding is whether the Petitioners have raised new and novel issues not previously considered, and therefore, warranting reconsideration of the Commission's prior order approving Philadelphia Electric Company's (PECO) construction of the 230 kv line in question. Petitioners have met this standard by raising several new and novel arguments not previously considered, and consequently, I must dissent from the Commission's denial of this Petition. However, I do not believe that Petitioners have met the standard for a stay, and therefore, accept the Commission's disposition of this issue at this time, pending a hearing on the merits.

First, the issue of the safety effect of electromagnetic fields (EMF) is a new and novel issue. It was not an issue previously considered by the Commission in initially approving PECO's application. Petitioners contend that given the opportunity, they would create a record on this issue to enable the Commission to meaningfully evaluate this concern. I support Petitioners' right to a hearing, as it is incumbent upon the Commission to make a determination on this issue only after giving interested parties the opportunity to create a record on this issue.

While I recognize that differing opinions about the issue exist in the scientific community, those opinions are largely irrelevant at this point in time. It is premature for the Commission to express any opinion on EMF until it studies the issue in an on-the-record proceeding. The references to scientific and other literature on the EMF subject are really in the nature of official or judicial notice of those documents. However, under our regulations, parties who may be adversely affected by facts which are noticed "shall have the opportunity upon timely request to show that the facts are not properly noticed or that alternative facts should be noticed." 52 Pa. Code §5.408. A hearing on the Petition would provide such an opportunity.

Similarly, citations to decisions of other jurisdictional regulatory agencies are interesting in the sense that these other agencies based their decisions on an extensive record developed in each proceeding. It is ironic that these decisions of other states' regulatory agencies are being relied on

to support the denial of a hearing to the instant Petitioners. Further, since the issuance of those agencies' decisions, more information on the EMF question has been circulated in the scientific and public domains. This information deserves to be carefully considered in evaluating the EMF question; without a record proceeding, there is no formal vehicle for evaluating this information.

On the EMF issue, I want to raise one last point. The Commission's order addresses this issue only as it relates to Petitioners' request for a stay. The EMF question is only cursorily addressed as it relates to the request for reopening of the record, even though it clearly constitutes a new and novel argument.

The second new and novel issue raised by Petitioners which supports the Commission's reconsideration of its earlier order relates to the letter of notification procedure utilized by PECO to obtain PUC approval of the power line construction. Petitioners claim that they have a property interest that is affected by the PUC's approval of the power line construction, and therefore, should have received actual notice of the filing of the application. The operative PUC regulations on this issue are 52 Pa. Code § 57.72(c)(4) and (11), and 52 Pa. Code § 57.75(i). Both regulations require that actual notice of an application relating to siting or eminent domain be given to owners of property within the proposed right-of-way and officials of local communities.

The reasonableness of our notice regulations has been brought into question by Petitioners. It is impossible to evaluate whether our notice regulations are sufficient without also evaluating the EMF issue. If it turns out that EMF does create a safety concern, then the Commission must decide how far from the right-of-way does that safety concern extend. In other words, EMF may ultimately be determined to be a safety concern for more than just the property owners within the right-of-way. If so, our regulations may be unreasonable in not providing sufficient notice requirements to potential harmed persons. However, this determination cannot be made without also examining the EMF issue on the record.

Petitioners and OCA also raise a third new and novel argument in asserting that the letter of notification procedure may not have been appropriately used by PECO. In initially approving PECO's application for the power line construction, the Commission found that the letter of notification procedure was appropriate because the proposed project "will not substantially alter the existing ROW." However, this factual predicate is challenged by Petitioners and OCA in that the prior electric line on the railroad right-of-way had been abandoned, according to PECO's own admission. Moving from zero power to 230 kv may constitute a substantial alteration of the right-of-way, and raises a significant factual

issue that deserves a hearing. I do not believe that this Commission can conclusively rule, without taking testimony on this issue, that the power level of the abandoned electric line previously existing in the railroad right-of-way, 138 kv, is the appropriate gauge to measure whether the proposed powering of the electric line at 230 kv is a significant alteration of the existing right-of-way.

Last, the Commission's order makes much of the fact that 29 local officials were given actual notice of PECO's letter of notification, and no objections were raised. Since the filing of the instant Petition, several of those local governing bodies have written to the Commission to request that the Commission consider the public interest issues raised by the Petitioners. These officials have noted that at the time of their respective receipt of the letter of notification, they had no reason to believe that the residents could not protect their own interests in this matter. The filing of the Petition obviously has raised some concerns by some of those officials.

In conclusion, Petitioners have met the standard of raising new and novel issues that compel reconsideration of our earlier order. Petitioners raise numerous factual issues that warrant a hearing prior to disposition of the Petition on its merits.

March 6, 1991  
DATED

David W. Rolka  
DAVID W. ROLKA, COMMISSIONER

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Harrisburg, Pennsylvania 17120

Emergency Petition of Non-Noticed  
Property Owners to Intervene for  
Reopening and to Suspend Approval  
Docket No. A-110550F055

Public Meeting  
March 6, 1991  
L-704

STATEMENT/MOTION OF COMMISSIONER JOSEPH RHODES, JR.

Before us is a Petition filed on September 14, 1990 by Robert Small, Frank English, Diane P.S. Koerper, et al. who are members of the non-profit corporation Parents Against an Unsafe Environment (PAUSE). Petitioners are residents and property owners living mainly in Montgomery and Bucks Counties near the Philadelphia Electric Company's (PECO) proposed Woodbourne-Heaton 230 KV line. This line is now under construction.

Petitioners essentially seek an order that would do two things. It would reopen the Commission's proceeding held on PECO's Letter of Notification to construct the Woodbourne-Heaton line and it would stay further construction pending hearing.

The Commission authorized PECO on February 9, 1990 to begin work on the Woodbourne-Heaton 230 KV line. This line previously had been a 138 KV railroad transmission line. It had not been energized for many years.

Petitioners principal basis for the relief sought is that allegedly operation of Woodbourne-Heaton 230 KV line would threaten their health and safety as a result of electromagnetic fields (EMF) emitted by the line. Furthermore, Petitioners argue that the Commission did not consider the possible EMF health consequences that could result from operation of the Woodbourne-Heaton 230 KV line during its earlier proceeding. Given a hearing, petitioners assert that they would submit evidence on possible EMF dangers produced by operation of the Woodbourne-Heaton 230 KV line.

It is often said that "hard cases make bad law." I think this is a hard case and I hope we don't make bad law today. In my opinion this is a hard case because the substance of this pleading involves an issue of enormous implication for the people and the electric utility industry of this Commonwealth. Precisely because of the magnitude of these implications I believe it behooves us to separate those implications from the pleading itself. We must not allow our feelings about those implications to color the justice that we serve up today.

First let us consider the matter of the rehearing of the case we decided last year. A rehearing should be granted if: (1) the Commission has jurisdiction over the subject presented to it for review; (2) the petitioners' pleadings raise "new and novel arguments;" and (3) the substance of the petitioners'

novel arguments;" and (3) the substance of the petitioners' pleadings is not on its face frivolous.

At the broadest level the Legislature has directed that every public utility shall furnish and maintain safe service and facilities for its patrons, employees and the public. 66 Pa.C.S.A. 1501. Operating under this grant of statutory authority, the Commission has promulgated regulations governing the siting and construction of electric transmission lines. 52 Pa. Code 57.71 et seq. Indeed, the Commission's regulations require utilities to file a statement of the safety issues associated with the proposed transmission line. 52 Pa. Code 57.72(c)(6).

Since the instant petition raises an issue about the safety of the service and facility that PECO is planning at the Woodbourne-Heaton line and questions of transmission line safety are expressly within the jurisdiction of the Commission, the Commission has jurisdiction to determine whether the planned Woodbourne-Heaton line may pose an EMF danger to petitioners. Indeed, I believe the Commission has jurisdiction over the EMF issue to the extent that a public utility service or facility is alleged to be the source of EMF. Such facilities include not only transmission lines but also distribution lines and wiring to the meter or service box. I wish to also note that the Department of Environmental Resources believes that it does not have concurrent jurisdiction with the Commission over the potential EMF danger posed by transmission lines.

Petitions for Reopening or Reconsideration are appropriate when used to "raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part." Duick v. Pennsylvania Gas and Water Company, 56 Pa. P.U.C. 553 (1982). The Commission has said a Petition for Reconsideration should offer "new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission." Id. Additionally a petition to reopen the record can be treated as a petition for reconsideration if parties offer "newly discovered evidence" that "was not in existence, or was not discoverable through the exercise of the due diligence" at the time of the original proceeding. Id.

My review of the record of the proceeding that culminated in the February 9, 1990 order indicates that the Commission did not consider the question of whether the Woodbourne-Heaton 230 KV line would produce EMF exposure that would endanger persons living near the line. Indeed, as far as I know, the Commission has never formally examined the possible safety consequences of EMF associated with transmission and distribution lines as distinguished from control facilities. I, therefore, believe

that petitioner's argument that the Woodbourne-Heaton line poses a threat to health and safety from EMF exposure does constitute a "new and novel argument" that meets this Commission's standard for reconsideration of its February 9, 1990 order.

I also believe that since the February 9, 1990 order, important new evidence, including an Electric Power Research Institute preliminary report of its study conducted by the University of Southern California, concerning the possible effects of EMF has become available. This new evidence provides another basis for reconsideration.

Finally, do the arguments the petitioners raise appear frivolous on their face? I think all would agree that the petition passes this test. The topic of the potential hazards associated with EMF has received considerable international attention of late and virtually no one dismisses the subject as frivolous. The extensive discussion of the topic contained in the Chairman's statement underscores this point.

The Chairman's statement, however, raises another issue central to the petition before us. The weightiness test, the question of whether the arguments raised are "frivolous" on their face, is by design a slight test, an "at a glance" test. The reason for this is that the petition for rehearing cannot and should not be required to be a substitute for the full hearing requested.

The petitioners are seeking a forum to lay before this Commission all the evidence they can muster to sway this Commission. Of course other parties would have an equal opportunity to rebut the petitioners evidence and to place evidence of their own on the record. That is the heart of our system.

It is injudicious for us to rule on the substance of the EMF issue without there being a record before us. We Commissioners may have varying degrees of familiarity with this subject and undoubtedly such personal knowledge, however gleaned, would play a role in formulating our final decision on the matter. At this stage of the case, however, the only issue of substance that we should be deciding is do the arguments presented pass the "frivolous on its face" test. The substantive test to get through the door should not be a weighty one.

In summary on the matter of the request for a rehearing, I believe the petitioners have met the standard of our precedent. We have jurisdiction; they have raised "novel" arguments; and the arguments they raise are not frivolous on their face. I believe this Commission should reopen the proceedings in this case for the limited purpose of formally considering the Petitioners EMF claims.

The Petitioners also ask for a stay. Given that petitioners have not yet been given an opportunity to present evidence in support of a stay, I believe that petitioners' request for a stay is premature and petitioners plainly have not now met the requirements for a stay. See Pennsylvania Public Utility Commission v. Process Gas Consumers Group, 502 Pa. 545, 467 A.2d 805 (1983).

I support assigning this case to the Office of Administrative Law Judges for hearing and taking of additional evidence. An ALJ hearing would provide all parties an opportunity to be fully heard and to produce a record on the EMF health effects, if any, associated with the Woodbourne-Heaton line. Petitioners would be entitled to move for a stay at any point from the assigned ALJ if they have evidence that meets the standards for issuance of a stay.

At this juncture, I need to state a general consideration. I believe the questions presented by EMF could be a major public policy issue that confronts every community in this country. The stakes are large and include possible serious health effects and enormous costs that could significantly increase the price of electricity.

Consequently, I believe the Commission would be well advised to now open a generic investigation into EMF. A generic investigation would allow for a thorough review of the evidence and its implications for the entire Commonwealth. It also would be an efficient administrative tool for allocating the Commission's resources compared to the alternative of opening a new EMF case virtually every time a transmission line case comes to the Commission.

Moreover, a generic investigation may present a better forum to involve other state agencies like the Department of Health and Department of Environmental Resources that may have unique expertise that would help reaching a sound and reasonable decision on EMF's safety. My belief that a generic investigation would be a wise course of action is apparently shared by the California Public Utility Commission which announced on January 21, 1991 that it and the California Department of Health were starting an investigation into EMF and possible remediation steps. The investigation is scheduled to be completed sometime during 1992-1993. Interestingly, the California PUC's decision to investigate EMF was supported by many of that state's utilities.

THEREFORE, I MOVE:

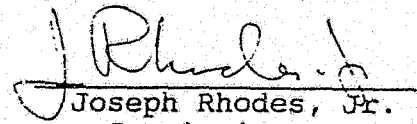
1. That the Commission initiate an investigation into the possible health effects of EMF, possible remediation steps, and the responsibility of utilities to provide customers

with information, including the provision of field or frequency measurements;

2. That the Office of Administrative Law Judge conduct this investigation;
3. That the Law Bureau be assigned as prosecutorial staff in the investigation;
4. That petitioner's petition for reopening is granted for the limited purpose of taking additional evidence on the EMF health effects, if any, of the Woodbourne-Heaton line;
5. That this case be remanded to the Office of ALJ for further hearings;
6. That the OSA draft the appropriate order that is consistent with this motion.

3-6-91

Date

  
Joseph Rhodes, Jr.  
Commissioner



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

March 8, 1991

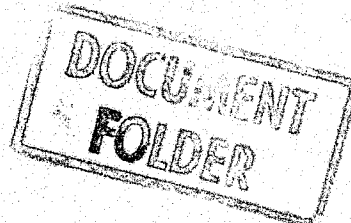
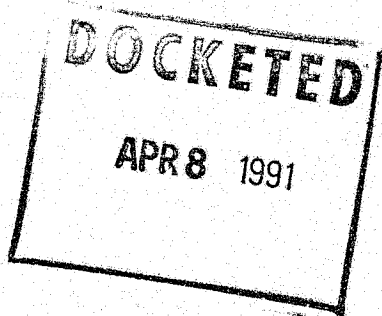
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IN REPLY PLEASE  
REFER TO OUR FILE

A-110550, F.055

Donald Blanken, Assistant General Counsel  
Philadelphia Electric Company  
2301 Market Street - P.O. Box 8699  
Philadelphia, PA 19101

Emergency Petition of Non-Noticed Property Owners to Intervene For Reopening  
and to Suspend Approval



To Whom It May Concern:

This is to advise you that the Commission at Public Meeting held  
March 6, 1991 adopted an Order in connection with the above entitled proceeding.

A copy of the Order is enclosed for your records.

Very truly yours,

Jerry Rich, Secretary

JZ  
Encls.  
Certified Mail  
Receipt Requested

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120

Public Meeting Held March 6, 1991

Commissioners Present:

William H. Smith, Chairman  
Joseph Rhodes, Jr., Vice-Chairman, dissenting  
Frank Fischl  
Wendell F. Holland  
David W. Rolka, dissenting (Opinion attached)

DUPLICATE RECORD:  
ORIGINAL CERTIFIED  
TO COMMONWEALTH COURT

Emergency Petition of Non-Noticed Property  
Owners to Intervene For Reopening and  
To Suspend Approval.

No. A-110550,F.055

O R D E R

BY THE COMMISSION:

On September 14, 1990, Petitioners Robert Small, Frank English and Diane P.S. Koerper, et al.,<sup>1</sup> filed to intervene in the above-captioned docket involving the siting application of Philadelphia Electric Company relative to reconductoring and rebuilding an existing 138 kV line to operate as the Woodbourne-Heaton 230 kV line in Montgomery and Bucks County.<sup>2</sup> The Petitioners also requested that the record be reopened in this matter and that Commission approval for reconstruction of the line be suspended.

In support of the petition, Petitioners aver that they are affected property owners, that they did not receive actual notice of PECO's letter of notification, and that their property rights would be damaged by the reconstruction. Petitioners also aver that had they the opportunity to intervene in this matter, they would have presented the following issues: whether the proposed line was needed; whether the line would create a health risk because of the intrusion of electromagnetic fields (EMF) generated by the line on Petitioners' property through encroachment on their airspace; and whether the proposed line would negatively affect

<sup>1/</sup> Petitioners aver that they are members of a Pennsylvania non-profit corporation, Parents Against an Unsafe Environment (PAUSE).

<sup>2/</sup> The Commission granted PECO approval to rebuild this line by order entered February 9, 1990.

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aesthetics, would cause interference with television or radio reception, would heighten the potential for destructive fires, and would depreciate their property values. The Petitioners also allege that they would prove that the letter of notification procedure was erroneously used in this case because of PECO's misstatement of critical facts; specifically, the Petitioners allege that this line is not being rebuilt and that this proposed line, in fact, was PECO's first and only line to be constructed on this land. Petitioners also allege that the proposed line violates local zoning ordinances and that reconstruction of the line constitutes "inverse condemnation,"<sup>3/</sup> by taking Petitioners' property without due process. The Petitioners conclude by stating that they have contacted PECO, and PECO has talked to them about their concerns, but that PECO "has wholly refused to consider any means of satisfaction, specifically including withholding further construction activities", pending the Commission's action reopening the proceeding. The Petitioners request that the Commission allow them to intervene in the proceeding, reopen the proceeding and suspend PECO's authority to proceed with reconstruction of the line.

On September 18, 1990, PECO filed an Answer to the petition requesting that it be denied. PECO's answer denies that the Petitioners own property rights which will be affected by construction of the 230 kV transmission line because none of the Petitioners own property within the transmission line right-of-way. PECO also avers that it clearly and accurately stated the facts as it advised the Commission that it proposed to rebuild and reconductor an abandoned railroad 138 kV transmission line. PECO explains that it purchased the structures used to support the 138,000 volt line which had de-energized conductors in place. PECO's answer also disputes the fact that reconstruction of the transmission line will interfere with any of property rights of the Petitioners, wherever they are located. PECO avers that the Petitioners were not entitled to actual notice of the Letter of Notification filing under 52 Pa. Code §57.72(c)(4) because they did not own property within the proposed right-of-way. PECO also notes in its answer that notice was given to over 25 public officials including those in the governing bodies of Bucks and Montgomery Counties and all municipalities through which the line passed, as well as the planning bodies of each municipality. PECO states that copies of the Letter of Notification were filed with municipal officials not so much for the purposes of local zoning law, but to comply with Commission regulations. PECO avers that several state agencies were also served in accordance with Commission regulations.

In answer to the issues which Petitioners allege that they would have addressed at hearing, PECO replies that (a) the necessity for this line has been described in PECO's Letter of Notification; (b) that the

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<sup>3/</sup> Inverse condemnation is defined as "a cause of action against a government agency to recover the value of property taken by the agency, though no formal exercise of the power of eminent domain has been completed." Black's Law Dictionary 424 (5th ed. abridged 1983).

Commission has the expertise to address any issue involving the risk of health hazard alleged to be caused by electromagnetic fields produced by transmission lines; and (c) that the Commission has plenary jurisdiction over the safety of the proposed line and from its expertise in the area is thoroughly versed on all aspects of safety related to transmission lines. PECO also avers that any material presented concerning the reduction of Petitioners' property values by the reconstruction of this line is outside the Commission's jurisdiction as is the issue of "inverse condemnation." PECO then states in its answer that PECO has attempted to answer the Petitioners' questions regarding construction of the transmission line at public meetings.

PECO also argues that the Petitioners have not alleged any new evidence that they would present (if given the opportunity to do so), but have merely made the typical allegations or concerns regarding safety, aesthetics, interferences with reception, potential for fires, reduction of property values and health effects. These allegations, PECO continues, have been made time and time again in all transmission line cases, and there is nothing new in the Petitioners' offer to present these issues.

PECO further argues that if there is an improper "taking" of property rights, the courts are available to decide this matter and that the proceeding on PECO's Chapter 57 siting application should not be reopened nor should construction of the line be halted based upon this allegation.

PECO states that its use of the Conrail right-of-way and structures which carried 138 kV transmission facilities in the past is a natural use of the corridor methodology which this Commission has approved in the past. In fact, PECO states that these corridors are natural highways for PECO's transmission lines and that PECO has hundreds of miles of transmission lines along the rail corridors in its territory. PECO argues that in its highly urbanized territory, new transmission line corridors are a thing of the past and it must look to railroad corridors to deliver the bulk of its power to substations which will be in turn carried in distribution lines on the streets and highways to homes. Without the ability for PECO to use railroad right-of-ways to carry the bulk of its electric power, PECO concludes that the public's electric service would be placed in serious jeopardy. For these reasons, PECO requests that the Petitioners' petition to intervene, reopen and suspend should be denied.

On December 27, 1990, the Petitioners filed a letter dated December 19, 1990 which purportedly supports their petition.<sup>4/</sup> In the letter, the Petitioners restate their allegation that PECO mischaracterized the line as a reconstruction and enlargement when it was instead new line. The letter also alleges that PECO was not accurate in its representations as to the extent of the new right-of-way. Specifically, the letter continues that:

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<sup>4/</sup> Although this letter was not verified as required by 52 Pa. Code §1.36, we will, nevertheless, consider the letter's allegations so that we can more efficiently dispose of this petition.

[t]he right-of-way departs from the Conrail right-of-way and proceeds several hundred feet north perpendicular to the right-of-way on totally new right-of-way. It then turns another right angle to the last and proceeds at least 900 feet on totally new right-of-way. In doing so, the line passes within 40 feet of an employee occupied building.

Letter dated December 19, 1990, p. 1.

The letter also expresses concern over what the petitioners perceive as a redoubling of PECO's efforts to complete the line and states that this push is inconsistent with the "preapproval approach [for transmission lines] underlying Commission regulations" (letter dated December 19, 1990, p. 2). The letter directs, without comment, the Commission's attention to the report issued by the Environmental Protection Agency on electromagnetic risk.

On January 3, 1991, the Office of Consumer Advocate (OCA) filed a Notice of Intervention and a statement in support of the emergency petition. In its statement, the OCA takes no position on the merits of the petition, nor on the Petitioners' claims with respect to the potential dangers of increased exposure to EMF, but does support the Petitioners' procedural request for a hearing to air their concerns. However, the OCA does argue that the difference between 230 kV, which is the voltage for PECO's proposed Woodbourne-Heaton line and zero voltage, which is currently the voltage of the abandoned Conrail line, represents a substantial change in the right-of-way which should have resulted in the Commission rejecting PECO's letter of notification and requiring PECO to file an application for the line. 52 Pa. Code 57.72(d)(5). As OCA's argument goes, had PECO been required to file an application, it would have been required to publish notice of the hearing in the local newspaper and Petitioners would have had notice of the hearing so that they could have voiced their concerns.

On January 4, 1991, the Board of Commissioners of Upper Moreland Township, Montgomery County, filed a letter dated December 27, 1990 requesting that the Commission reconsider its decision granting the Letter of Notification for the Woodbourne-Heaton line. Its request in this matter was prompted by a speech which was presented to them a week earlier by a representative of PAUSE (Letter dated January 4, 1991, p. 1).

On January 2, 1991, PECO filed an answer in response to the Petitioners' supplemental letter in which the Company explained that it had described the Woodbourne-Heaton project as clearly as it could "to the P.U.C. and all the municipalities through which it traverses" (PECO's answer, dated January 2, 1991, p. 1). PECO explains that its Letter of Notification

described all of the abandoned railroad facilities to be removed from the supporting structures and the new facilities to be installed by PECO

and disclosed that

it had purchased property (about two acres) which lay between its Woodbourne Substation and the railroad and that this property would be used to divert the line from the railroad to the substation

PECO's answer, dated January 2, 1991, p. 1.

On January 10, 1991, PECO filed its reply to OCA's statement in support of the Petitioners' request for a hearing in this matter. In its reply, PECO follows-up on OCA's argument that had the Commission required PECO to go through the application process for this line, the Petitioners would have had general notice via newspaper publication of the line and further remarks that it would seem that OCA preferred general notice via newspaper publication over the actual notice which PECO gave to all municipalities through which the line passes. In fact, PECO states, it served notices on three different public officials in each township which the line was to traverse--the Township Manager, the Chairman of the Board of Supervisors and the Chairman of the Planning Commission of Lower Southampton Township, Upper Southampton Township, Middletown Township, Upper Moreland Township, Lower Moreland Township and Northampton Township. Additionally, PECO avers that copies of the Letter of Notification were sent to four different public officials in the "Borough" of Langhorne--the Mayor, Council President, Borough Secretary and the Chairperson of the Planning Commission. PECO also states that public officials in the Counties of Bucks and Montgomery as well as four state officials -- the Secretary of the Department of Environmental Resources, the Secretary of the Department of Transportation, the Chairperson of the Pennsylvania Historical and Museum Commission and an official of the Pennsylvania Department of Property and Supplies--were served with a copy of PECO's Letter of Notification. In total, PECO avers that it served a copy of the Letter of Notification on 29 different public officials who are charged with protecting the health, safety and welfare of the citizens of Pennsylvania and no protests were received. PECO argues that service on 29 public officials is sufficient notice of this project.

In further response to OCA's argument that the public was not given notice, PECO states that the Commission's regulations at 52 Pa. Code §57.72(c)(4) require notice only to those persons owning property within the right-of-way regardless of whether there is an application or a letter of notification proceeding involved. Even if it had filed a siting application, PECO argues, it would not need to serve the Petitioners with a copy of the application because they own no property within the right-of-

way; PECO had acquired all the property within the proposed right-of-way before filing its Letter of Notification. PECO then argues that the filing of a protest is the only thing that would ensure a hearing, 52 Pa. Code §57.75(h), and that actual service on 29 public officials did not result in a protest which would be grounds to hold a hearing. PECO finally argues that the Commission, which has jurisdiction over the safety of electric transmission lines, adequately considered all elements of safety in approving the Letter of Notification for the Woodbourne-Heaton 230 kV line, and concludes that OCA has presented no basis for reopening the record in this proceeding to conduct hearings.

Reopening and Reconsideration of a Commission final order is governed by Section 703(g) of the Public Utility Code, 66 Pa. C.S. §703(g), which reads in part:

- (g) Rescission and amendment of orders. -- The commission may, at any time, after notice and an opportunity to be heard as provided in this chapter, rescind or amend any order made by it.

Under Section 703(g), the Commission's power to

grant a petition for reconsideration is discretionary and mere disagreement with a commission decision is insufficient reason to grant reconsideration; rather, factors such as a change in circumstances or newly discovered evidence unavailable at the initial determination may be relevant in determining whether to grant the petition for reconsideration and the commission may also consider whether the petition addresses new and novel arguments previously overlooked.

Kea v. Peoples Natural Gas Company, 60 Pa. PUC 215, 216 (1985).

In disposing of the instant controversy, the Commission believes that it should first address the "due process" issue raised by the Petitioners to determine if reconsideration of this decision, and reopening of this case, is warranted. In their petition, the Petitioners alleged that they are affected property owners but they were not served with a copy of PECO's Letter of Notification and did not have notice of the Commission proceedings. Although the Petitioners admit they do not own property within the right-of-way, they nevertheless base this claim of being affected property owners on ownership of air space adjacent to the vertical dimensions of the railroad right-of-way acquired by PECO for this project.

Commission regulations at 52 Pa. Code §57.74(d)(3) require service of copies of a letter of notification on those persons designated

under 52 Pa. Code §57.75(c)(4). This regulation refers to 52 Pa. Code §57.72(c)(4) which directs service of such documents on ". . . persons, corporations and other entities of record owning property within the proposed right-of-way." Because the Petitioners do not own property in the railroad right-of-way acquired by PECO, PECO was not required to serve a copy of its application upon them.

As to Petitioners' claim involving air space, Petitioners assert that they have a property interest as follows in the property to be occupied by PECO's facility:

fee simple title to a vertical portion of the right-of-way proposed to be used, as to all individual petitioners, ownership of the air space intended to be occupied by the proposed facility for dispersion of electromagnetic waves; and ownership of air space adjacent to the proposed transmission lines, which said petitioners have used for the growth of tall trees in their air space outside the vertical dimensions of the proposed right-of-way.

Petition p. 2, para. 7.

The Commission does not believe that the Petitioners' ownership of air space adjacent to the right-of-way requires PECO to serve each claimed individual adjacent property owner with a copy of its Letter of Notification.

Regarding the Petitioners' claim of ownership of additional air space over the vertical portion of the right-of-way, the Commission is perplexed. While it is true that the Petitioners can assert a valid property interest in the air space above boundaries of their property<sup>5/</sup>, and that under Pennsylvania state law air rights may be severable from surface ownership, 68 P.S. §801,<sup>6/</sup> the Commission cannot imagine a basis

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<sup>5/</sup> As recognized by the United States Supreme Court in United States v. Causby, 328 U.S. 256, 264, 66 S.Ct. 1062, 90 L.Ed. 1206 (1946), "[t]he land owner owns at least as much of the space above the ground as he can occupy or use in connection with the land." See also, Hinman v. Pacific Air Transport, 84 F.2d 755 (9th Cir. 1936).

<sup>6/</sup> §801. Conveyance and transfer  
Estates, rights and interest in air space above the surface of the ground in the Commonwealth, whether or not contiguous to the surface of the ground, may be validly conveyed or otherwise transferred to a person or persons other than the owner or owners of the surface below.  
Section 1 of the Act of August 14, 1963, P.L. 871, 68 P.S. §801.

for the Petitioners' claim to fee simple title to air space above PECO's right-of-way. The air space above the right-of-way must clearly belong to PECO unless the air rights were expressly severed from the surface rights at the time of the creation of Conrail's right-of-way and we have no indication that this was so. Accordingly, the Petitioners do not own property, either in the air or at the surface, in the proposed transmission line's right-of-way, and PECO was not required under Commission regulations to provide a copy of its Letter of Notification to the Petitioners. Therefore, Petitioners' claim of the denial of due process is invalid and does not support their request to reopen this record.

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. In its letter supplementing its petition, the Petitioners also allege that PECO was not accurate in its representation regarding the extent of the new right-of-way it had to acquire for the line.

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 138 kV 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.

In its Letter of Notification, PECO also stated that:

Woodbourne Substation property abuts the north property line of Conrail's Trenton Cut-Off Branch. Just west of the substation and abutting the railroad property on the south side is Buehl Field Airport. Existing railroad structures cannot be used in this area due to the required height limitations near the airport runway.

PECO has purchased a two (2) acre vacant, irregular shaped property which separates the substation property from the railroad. This property will be used to divert the line from the railroad into the substation prior to reaching the approach to runway 24 at Buehl Field. This will greatly reduce or eliminate conflict with the runway.

PECO's Letter of Notification, p. 5.

In its Letter of Notification, PECO also discloses that the two acre parcel of land will contain a 0.06 mile section of the line (PECO's Letter of Notification, p. 3). Under the circumstances, PECO did not misrepresent the route of the right-of-way for its proposed line.

Furthermore, in its letter of notification, PECO stated that it was proceeding pursuant to Sections 57.72(d)(1)(iv) and 57.72(d)(1)(v) of the Commission's regulations. Section 57.72(d)(1)(iv) provides that the letter of notification procedure may be used where

[a] line for which the voltage is proposed to be increased above its present levels, so long as the size, character, design or configuration of the proposed line does not substantially alter the right of way

52 Pa. Code §57.72(d)(1)(iv) (emphasis added).

Section 57.72(d)(1)(v) provides that the letter of notification procedure may also be used where

an HV line which is to be reconducted or reconstructed so long as the size, character, design or configuration of the proposed HV line does not substantially alter the right of way.

52 Pa. Code §57.72(d)(1)(v). (emphasis added).

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 (Order entered February 9, 1990 at

A-110550,F.055, p. 3). 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.<sup>7/</sup> 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.

Petitioners also allege that the proposed line violates local zoning ordinances. However, public utilities facilities such as reservoirs, electric transmission lines, etc., are not subject to local zoning ordinances; only public utility buildings are.<sup>8/</sup> Upper St. Clair v. Delaware and Hudson Railway Company, 19 Pa. Commonwealth Ct. 59, 339 A.2d 155 (1975). Therefore, the Petitioners allegation concerning PECO's noncompliance with local zoning laws is meritless.

In their petition, the Petitioners do not raise any new evidence not discoverable at the time of initial Commission consideration of PECO's letter of notification, nor do they claim changed circumstances which would support a request to reopen the record. Instead, they assert that had they been given the opportunity to participate in a hearing on PECO's Letter of Notification, they would have raised the following issues: the need for<sup>9/</sup> the line, public health and safety aspects of the line, and aesthetics.

In considering the approval of siting applications or letters of notification, Commission regulations at 52 Pa. Code §§72.1, et seq., require the Commission to consider the issues raised by the Petitioners as

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<sup>7/</sup> For that matter, Commission regulations do not require that the line to be reconstructed be used for the purpose of providing utility service to the public. In this case, however, this line was previously owned and operated by Conrail and for many purposes, railroads, including Conrail, are classified as public utilities under 66 Pa. C.S. §102.

<sup>8/</sup> Moreover, under the "Pennsylvania Municipalities Planning Code," 53 P.S. §§10101, et seq., public utility buildings may be exempted from local zoning laws on a finding of public necessity by the Commission. 53 P.S. §10619.

<sup>9/</sup> 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 and does not support their request to reopen the record.

well as other environmental factors. In its order on PECO's Letter of Notification, the Commission considered public need for the proposed line, and we stated that the proposed line would "provide a second source of 230 kV supply for both the Woodbourne and Linton substations, thus preventing line overloads and low voltage conditions in the event of an outage of the Buckingham-Linton 230 kV line segment." Order entered February 9, 1990 at A-110550,F.55, p. 2. The Commission's order also stated that the need for this back-up line was precipitated by the area's high load growth which also required the expansion of distribution facilities as well as the construction of new distribution facilities. Id. at pp. 2-3. As to safety of the line, the Commission noted that the line would be designed, constructed and maintained in accordance with the National Electric Safety Code and that minimum standards would be met or exceeded. Id., p. 3.

Aesthetics and environmental impact of the proposed 230 kV were also considered by the Commission in finding that the existing utility right-of-way was not significantly altered by PECO's reconstruction of Conrail's 138 kV line.

Analysis of the foregoing detail reveals that in this case, PECO proposes to utilize an existing utility corridor on which there is erected an existing (but now abandoned) 138 kV transmission line as a common corridor for the proposed 230 kV transmission line. Consequently, the rebuilding and reconductoring of the existing 138 kV transmission line into a single circuit 230 kV transmission line utilizing most of the existing support structures will not alter the existing right-of-way. Moreover, the now-abandoned railroad electrification is more than 50 years old, and most of the industrial and residential properties adjacent to the railroad right-of-way were constructed with the railroad transmission line and catenary system already in place, implying at least some acceptance thereof.

Id., p. 3.

The issues which the Petitioners would allegedly have raised if they had been given the opportunity have already been considered by the Commission in approving PECO's Letter of Notification on the Woodbourne-Heaton 230 kV line. Therefore, Petitioners have not raised any new or novel arguments which have not been considered by this Commission in this proceeding or any other proceeding on electric transmission lines. Although the Petitioners also allege a need to address EMF issues not heretofore expressly considered by the Commission in approving the PECO Letter of Notification, as we will discuss below, this issue is inappropriate and does not present significant basis upon which to reopen the siting proceeding.

Because the Petitioners have failed to prove sufficient grounds for reopening the record in this case, their petition must be denied. As we have denied the Petitioners' request to reopen this proceeding, it is unnecessary to address their request to intervene. However,<sup>10/</sup> it is important that we rule on Petitioners' request for a stay.

In Pennsylvania Public Utility Commission v. Process Gas Consumers Group, 502 Pa. 545, 467 A.2d 805 (1983), the Supreme Court of Pennsylvania held that the standards for the issuance of a stay are those set forth in Virginia Petroleum Jobbers Assoc. v. Federal Power Commission, 104 U.S. App. D.C. 106, 259 F.2d 921 (1958), as refined in Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977). Under the Virginia Jobbers criteria, the 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 harm other interested parties in the proceeding;
4. The issuance of a stay will not adversely affect the public interest.

The first criteria, whether applicant is likely to prevail on the merits, is not really applicable in matters being decided by a governmental agency since it may be presumed that this Commission correctly decided the case, and that if appealed, the Commission would succeed on the merits. Furthermore, as already explained, PECO has proven need for this line and did not improperly use the letter of notification procedure.

The second prong of the test is that the Petitioners must show that unless PECO is ordered to halt construction (pending whatever legal action the Petitioners deem is appropriate to take), the Petitioners will suffer irreparable harm. While it is true that the Petitioners did not

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<sup>10/</sup> We granted PECO authority to construct this line on February 9, 1990, and this authority has not yet been revoked. Thus, under the circumstances, PECO's continued construction of the line is not inconsistent with "the preapproval approach" of our regulations as was contended by the Petitioners in their supplemental letter.

specifically identify the harm they will suffer if their request to halt construction would not be granted, the Petitioners<sup>11/</sup> did raise questions about the risks of electromagnetic forces (EMF).

Although the Commission has not independently investigated the issue of EMF, it is well apprised of current scientific thought on this subject. We, therefore, cannot agree with the Petitioners' conclusion that EMF from high voltage transmission lines represents an acknowledged health risk.<sup>12/</sup> The overwhelming consensus in the technical community, after review of available epidemiological and scientific studies, is that there is no conclusive evidence of the adverse health effects associated with EMF from electric transmission lines.<sup>13/</sup>

As to the EPA report on EMF and cancer mentioned in the Petitioner's supplemental letter,<sup>14/</sup> the report is merely a preliminary draft, informally released to the public as a result of its being reviewed by the Nonionizing Electric and Magnetic Fields Subcommittee of the Science Advisory Board's Radiation Advisory Committee (55 Fed. Reg. 51957). This preliminary draft does not represent the EPA's final position or policy on EMF as a potential carcinogen, *Id.*, and cannot be used to support the Petitioners' claim about the adverse health risk created by EMF from transmission lines. Therefore, the Petitioners have not shown that they will suffer irreparable harm if construction of the PECO's Woodbourne-Heaton 230 kV line is not halted.

<sup>11/</sup> 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.

<sup>12/</sup> Two recent comprehensive articles on the biological effects of EMF support the Commission's position of the inconclusiveness of these effects. Fitzgerald, Morgan, and Nair, "Electromagnetic Fields: the jury's still out", *IEEE Spectrum*, August 1990, at 22; and Harunuzzaman, "Overview of Scientific Research on Electromagnetic Fields and Human Health", *NRRI Quarterly Bulletin*, V. II, No. 3, at 247.

<sup>13/</sup> The Conservation Committee of the House of Representatives also reached this conclusion after reviewing available scientific and epidemiological studies and testimony received at a public hearing. The Committee, which was advised by staff members from the Department of Environmental Resources and the Health Department, issued a report on November 30, 1990 which stated that it appeared "to be premature for Pennsylvania to label electromagnetic fields as health hazards without further study." (Report of the House Conservation Committee Study of Electromagnetic Fields Pursuant to House Resolution 38, p. 15).

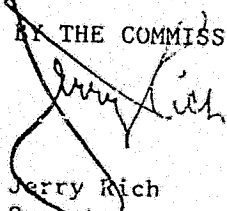
<sup>14/</sup> U.S. Environmental Protection Agency, "Evaluation of the Potential Carcinogenicity of Electromagnetic Fields," External Review Draft, EPA/600/6-9/005B, October 1990.

As to the third and fourth prongs of the Virginia Jobbers test, the Commission has already found public need for the reconstruction of the old Conrail electric line. Thus it would be inconceivable that halting construction of this line would not adversely affect PECO (an interested party in this proceeding) or the public interest.

The Commission appreciates the Petitioners' concerns about the possible adverse health affects that have been attributed to EMF exposure in some studies and understands their collective desire to express these concerns. However, the Commission also recognizes that this issue is currently unresolvable and that more study on EMF is needed. We do not see the economy of reopening a proceeding on a letter of notification which substantially complies with our regulations on electric transmission line siting for the sole purpose of investigating what is at this time an unresolvable issue; THEREFORE,

IT IS ORDERED: That the Petitioners' Emergency Petition to Intervene, For Reopening and to Suspend Approval be and is hereby denied.

BY THE COMMISSION,

  
Jerry Rich  
Secretary

(SEAL)

ORDER ADOPTED: March 6, 1991

ORDER ENTERED: **MAR 8** 1991

SUGARMAN & ASSOCIATES

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ORIGINAL  
NVL

RECEIVED

MAR 8 - 1991

SECRETARY'S OFFICE  
Public Utility Commission

April 4, 1991

Mr. Jerry Rich, Secretary  
Pennsylvania Public Utility  
Commission  
Room G-18, North Office Building  
Harrisburg, PA 17120

Re: Application No. A-110550 F055

Dear Mr. Rich:

On behalf of the petitioners for rehearing in the above matter, I enclose an application to suspend construction during consideration of the appeal, and request that it be presented to the Commission immediately. I will assume that inaction for seven days will constitute an effective denial, for purposes of making a similar application to the Commonwealth Court.

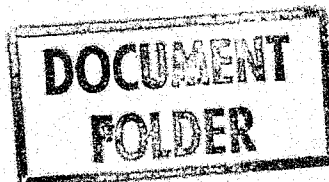
Sincerely,

  
Robert J. Sugarman

RJS:td

cc: Donald Blanken, Esquire  
Irwin Popowsky, Esquire  
Tanya J. McCloskey, Esquire

pldngs91\PUC.001



BEFORE THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

RECEIVED

APR 8 - 1991

SECRETARY'S OFFICE  
Public Utility Commission

DOCKETED

APR 10 1991

IN RE: PHILADELPHIA ELECTRIC :  
COMPANY, :

NO. A-110550 F055  
:

DOCUMENT  
FOLDER

PETITION OF SMALL ET AL.  
FOR STAY PENDING APPEAL

Pursuant to the provisions of the Public Utility Code and Rule 1731 of the Pennsylvania Rules of Appellate Procedure, Petitioners Request that the Commission enter an order terminating construction of the Trenton Cut-off Line Transmission Line pending resolution of their appeal by the Commonwealth Court, and aver as the basis thereof the following:

1. This commission denied the petition to reopen by three to two vote on March 6, 1991 in a proceeding in which petitioners had no prior notice of the original proceedings, and sought reopening in order to address the several issues including loss of value and health effects, arising from the construction of the line.

2. Petitioners pointed out the changes in the facility which should have disqualified it from the letter of notification approach.

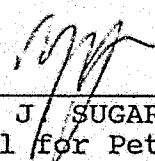
3. In denying the Petition, the Commission majority gave no reason to believe that temporary suspension of construction would have any significant adverse effect and no such reason has been presented to the Commission.

4. Suspension of construction during consideration of

petitioners appeal by the Commonwealth Court will avoid the potential for loss to the ratepayers or the shareholders of the utility should the petition be granted, and the prospect of visiting such loss directly or indirectly on the ratepayers is a significant potential loss.

5. Petitioners have a substantial chance of prevailing in the Commonwealth Court, as indicated by the dissenting opinions of two commissioners.

WHEREFORE, petitioners pray that the Commission issue an order vacating the approval of the letter of notification pending appeal in the Commonwealth Court, and directing the utility to cease construction during that time.

  
\_\_\_\_\_  
ROBERT J. SUGARMAN  
Counsel for Petitioners

OF COUNSEL:

SUGARMAN & ASSOCIATES  
16th Floor, City Place  
101 N. Broad Street  
Philadelphia, PA 19107  
(215) 751-9733  
pldngs91\pause.003

CERTIFICATE OF SERVICE

I, Robert J. Sugarman, certify that I have mailed a copy of the foregoing Petition by first class mail postage pre-paid to the following:

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

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

Irwin Popowsky, Esquire  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Dated: 4/5/91

  
\_\_\_\_\_  
ROBERT J. SUGARMAN

NVL

Application of Philadelphia Electric Co.

A-110550F.055

-NOTICE OF PETITION by ROBERT SMALL,  
et al., at No. 761 C.D. 1991,  
Commonwealth Court of Pennsylvania,  
from the order of the Commission dated  
March 8, 1991, in the above-captioned  
proceeding.

B-913347

Date filed: 4/4/91

DOCKETED  
APR 11 1991

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INDEXED

# PHILADELPHIA ELECTRIC COMPANY

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Stephanie Whillon Lewis  
T. Michael Mather  
Mary R. McFall  
Assistant General Counsel

April 12, 1991

**RECEIVED**

APR 15 1991

SECRETARY'S OFFICE  
Public Utility Commission

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

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

Dear Mr. Rich:

Enclosed herewith for filing with the Commission is an original and two copies of the Reply of Philadelphia Electric Company to Petition of Small Et Al. For Stay Pending Appeal in the subject matter.

A copy of this Reply has been served upon the parties of record.

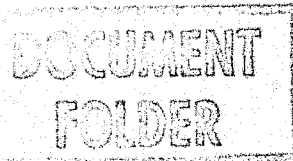
Very truly yours,

*Donald Blanken*

Donald Blanken

DB:bmt  
Enclosures (3)

cc: Robert J. Sugarman, Esquire  
Irwin Popowsky, Esquire  
Tanya J. McCloskey, Esquire  
Patricia Krise Burket, Esquire



BEFORE THE  
PENNSYLVANIA 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.:

Docket No.  
A-110550F055

RECEIVED

APR 15 1991

SECRETARY'S OFFICE  
Public Utility Commission

DOCKETED

APR 24 1991

REPLY OF PHILADELPHIA ELECTRIC COMPANY TO  
PETITION OF SMALL ET AL. FOR STAY PENDING APPEAL

NOW COMES, Philadelphia Electric Company (hereinafter "PECO") by its attorney, Donald Blanken, Esquire, and replies to Petitioners' request to your Honorable Commission for a stay of construction pending appeal. In support of said reply, PECO states as follows:

1. This proceeding involves the Commission's electric transmission line siting regulations (52 Pa. Code 57.71, et seq.). Under these regulations, PECO sought approval to locate and construct a 230 KV transmission line on abandoned railroad electric transmission and catenary structures which are located along an active double-track railroad operated by Consolidated Rail Corporation. Since PECO's transmission line was to be constructed almost entirely on the railroad right-of-way, the Letter of Notification procedure under Section 57.72(d) of the siting regulations was followed.

DOCUMENT  
FILED

2. Petitioners were not served with notice of the filing because the siting regulations do not require that Petitioners be served with such notice. See 52 Pa. Code Section 57.72 (c)(4). The regulations do require that all local municipalities through which the proposed line will pass be served with notice. This was done by serving over 25 public officials in these municipalities, as well as several officials of the Commonwealth of Pennsylvania.

3. PECO's Letter of Notification set forth the need for this transmission line and the allegations of such need are incorporated herein as a reply to Petitioners' assertion that a temporary suspension of construction would not have any significant adverse effect.

4. Suspension of construction during consideration of an appeal to the Commonwealth is not necessary to avoid any loss to the ratepayers because the ratepayers are not charged for the cost of constructing the line until it is put into service.

5. Petitioners do not have a substantial chance of prevailing before the Commonwealth Court because there is no merit to Petitioners' contentions. PECO followed all appropriate regulations in notifying parties and presenting the facts necessary for the Commission to issue its order approving the location and construction of the transmission line.

WHEREFORE, Philadelphia Electric Company prays that your Honorable Commission issue an order denying Petitioners' request for a stay of construction pending appeal

*Donald Blanken*

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DONALD BLANKEN, ESQUIRE  
Counsel for  
PHILADELPHIA ELECTRIC COMPANY  
2301 Market Street  
Philadelphia, PA 19101

CERTIFICATE OF SERVICE

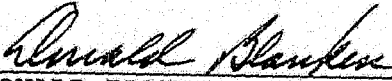
I, Donald Blanken, hereby certify that on this 12th day of April, 1991, that I mailed a copy of the foregoing Reply to Petition of Small Et Al. for Stay Pending Appeal by first class mail, postage prepaid to the following:

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

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

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

  
\_\_\_\_\_  
DONALD BLANKEN, ESQUIRE  
Counsel for  
PHILADELPHIA ELECTRIC COMPANY