

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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MAY 10 1993

Public Utility Commission
SECRETARY'S BUREAU
Information Control Division

LETTER NOTIFICATION OF PHILADELPHIA
ELECTRIC COMPANY RELATIVE TO
RECONDUCTORING AND REBUILDING OF THE
EXISTING 138KV LINE TO OPERATE AS THE
WOODBOURNE-HEATON 230KV LINE

:
:
:
:
:

Docket Number

A-110550F055

ORDER

By letter dated May 3, 1993 served upon all parties in this proceeding, Philadelphia Electric Company requested, for the reasons therein set forth, that each party, as part of the in-hand exchange scheduled for May 12, 1993, state in detail, through the direct testimony of a witness already identified or a formal position statement:

- (1) the party's position, if any, regarding each of the two remanded issues -- and with respect to right-of-way width standards, what particular standard, if any, the party believes is appropriate (including the specific miligauss level and/or width in feet) and what mitigative measures, if any, the party believes should be undertaken; and
- (2) the facts relied upon for the position taken.

To date, no party has objected and indeed Pennsylvania Power & Light Company has affirmatively indicated its intention to comply.

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THEREFORE,

IT IS ORDERED:

1. That, notwithstanding anything to the contrary which may be contained in the Prehearing Conference Order, all parties, by May 12, 1993, either through a witness already identified, or by a formal written position statement, respond to the items set forth above with copies to all parties and to the Administrative Law Judge.

May 6, 1993

Date

Herbert Smolen

HERBERT SMOLEN
Administrative Law Judge

URGENT
FAX COMMUNICATOR
2 sheets
717-787-5813

JUL 13 1992

PLEASE DELIVER TO: Mr. David Rolka

Mr. David Rolka
Chairman
Public Utility Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17120

July 13, 1992

**DOCUMENT
FOLDER**

Subject: PECO 230,000 Volt Woodburne Transmission Line
Reference: Testing Of Line - Week Of July 13, 1992
Per Attached Article

A-110550/F0055

Dear Mr. Rolaka;

In reference to the attached news article from the Courier Times, Sunday issue - July 12th, we wish to register our complaint and disapproval of the testing of the 230,000 volt Woodburne Transmission line.

We know of many other persons that disapprove and believe it is premature of PECO to energize this line, even for a test, in advance of Judge Smolen's decision.

Sincerely,

William J. Harley
Barbara J. Harley

William & Barbara Harley
1660 Bonnie Brae Drive
Huntingdon Valley, Pa.
19006-1304

Phone: 215-355-2989
FAX: 215-355-1445

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JUL 17 1992

Public Utility Commission
SECRETARY'S BUREAU
Information Control Division

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JUL 17 1992

Public Utility Commission
SECRETARY'S BUREAU
Information Control Division

Activists want the buzz on PE transmission line test

By David Josar
 Courier Times Staff Writer
 BUCKS COUNTY

The Philadelphia Electric Co. has declined to disclose exactly when next week it will test the Woodbourne-Heaton transmission line, which has some local residents concerned.

"I would like to know when the test is being conducted because there's a good possibility I would leave my house," said Karen Dalrymple, a Langhorne

resident whose Valley View Road property abuts the transmission line route. "I don't want to take the health risk."

PE spokesman Bill Jones would only say Friday that the electric company will test the line for six hours some time next week. "There are no specifics," he said.

Even though court action claiming health concerns has delayed the startup of the line, Jones said the test will not be a hazard. "We have over 3,000 miles of transmission lines, and

no one has ever reported a problem," Jones said.

The \$20.1 million line runs from a substation in Lower Moreland to one in Middletown.

Feasterville area residents, united as Parents Against Unsafe Environment, have halted the long-term activation of the 12.8-mile, 230,000-volt transmission line by forcing an administrative court judge to hear arguments that it may be a health hazard.

The decision from that judge,

expected in August, would be one of the first in the United States to address the issue of how public policy should address the effects of electromagnetic fields, which are caused by electric current and surround power lines and appliances. Some studies have determined that magnetic fields, harder to shield than electric fields, may promote the growth of cancer cells.

Dalrymple, a member of PAUSE, said at least one neighbor and other PAUSE members

are considering leaving their homes during the test.

"I don't even know how they can consider starting it up, when there's a court order halting them from doing it," said Dalrymple. "I just don't trust (PE)."

According to John Frazier, spokesman for the Public Utilities Commission, PE has contacted both the administrative judge and Robert Sugarman, PAUSE's attorney, about the test startup.

"No one has complained that we have heard," Frazier said.

Frazier said there are no regulations forcing PE to disclose exactly when it will test the line.

PE said the line will be "de-energized" following the test. The test is needed so the power line could be used in emergencies, something Dalrymple criticizes.

"I've lived here 20 years, and there's never been an emergency," she said.



COMMONWEALTH OF PENNSYLVANIA
 PENNSYLVANIA PUBLIC UTILITY COMMISSION
 P. O. BOX 3265, HARRISBURG, Pa. 17120
 May 11, 1993

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MAY 11 1993

Public Utility Commission
 SECRETARY'S BUREAU
 Information Control Division

John G. Alford, Secretary
 Pa. Public Utility Commission
 Post Office Box 3265
 Harrisburg, PA 17105-3265

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

A-110550F055

Dear Secretary Alford:

Enclosed please find an original and three (3)
 copies of the Petition of the Office of Trial Staff for
 Reconsideration of Opinion and Order Entered March 26,
 1993 for filing in the above-docketed proceeding. Copies
 are being served on all interested persons.

Sincerely,

Charles F. Hoffman
 Charles F. Hoffman
 Chief Prosecutor
 Office of Trial Staff

**DOCUMENT
 FOLDER**

CFH:em

Enclosure

cc: Hon. David W. Rolka, Chairman
 Hon. Joseph Rhodes, Jr., Vice Chairman
 Hon. John M. Quain, Commissioner
 Hon. John Hanger, Commissioner
 Cheryl Walker Davis, Director - OSA
 John Povilaitis, Chief Counsel - Law Bureau
 Parties of Record

ORIGINAL RECEIVED

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MAY 11 1993

Public Utility Commission
SECRETARY'S BUREAU
Information Control Division

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

Docket No.
A-110550F055

DOCKETED
MAY 18 1993

PETITION
OF THE OFFICE OF TRIAL STAFF FOR
RECONSIDERATION
OF
OPINION AND ORDER ENTERED MARCH 26, 1993

AND NOW, to wit, this 11th day of May, 1993, comes the OFFICE OF TRIAL STAFF (OTS) of the PENNSYLVANIA PUBLIC UTILITY COMMISSION and makes the within Petition, pursuant to 66 Pa. C.S. §703(g), for Reconsideration of the Commission's Opinion and Order entered March 26, 1993 in the above-captioned matter, averring in support thereof as follows:

1. As required by statute, 66 Pa. C.S. §306(b), OTS is responsible for developing, challenging, and representing all matters in the public interest on the record of the above-captioned proceeding, and, when OTS is directed to intervene in such a proceeding it must do so in protection of the public interest.

2. In the Opinion and Order sought for reconsideration, OTS did not seek leave to participate, but

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never-the-less, the Commission granted such leave, nunc pro tunc.

3. In addition, the Commission directed the presiding officer, the Honorable Herbert Smolen, Esquire, to issue a supplemental decision within 120 days of the entry date of the Opinion and Order sought for reconsideration, or no later than July 24, 1993 (which, by cause of being a Saturday, computes to Monday, July 26, 1993).

4. OTS requests the Commission reconsider the time-limit contained in the Commission's March 26, 1993 Opinion and Order. As shall appear infra., OTS believes that the 120-day time limit for action by the presiding officer is insufficient for OTS to protect the public interest and develop, challenge, and represent all matters in the public interest on the record in this case of high contention and public report.

5. OTS requests the Commission reconsider the time limit imposed due to the very severe handicap it places upon OTS' ability to present and develop a meaningful record on behalf of the public interest in the case at bar. The 120-day time limit allows only 90 days for record development before the presiding officer must begin writing his supplemental decision. Even in the abstract, this time limit is patently insufficient for parties to any contested, on-the-record, proceeding before an Administrative Law Judge to identify and retain qualified expert witnesses to testify for credible

record developmsent. For example, in the GPU-DQE siting application(A-110300F051), OTS required seven (7) weeks to identify and retain a qualified expert willing to testify on the EMF effects issue in a manner which challenges industry assertions.^{1/} In the case at bar, OTS was fortunate to be able, almost immediately, to tentatively secure the services of one of the witnesses who is already testifying on OTS's behalf in the GPU-DQE case. It was also fortuitous for OTS that this witness, Dr. Milham (an epidemiologist who will testify regarding the health effects of EMF exposure), is generally available during the time frame set forth for the conduct of this case. Notwithstanding that fact, it will not be possible to secure approval of a contract with Dr. Milham for his services for a period of several weeks. OTS has pursued the contracting process with all diligence, but has been unsuccessful in expediting the process. A chronology of OTS activities in that regard is set forth below:

1. OTS received notice of the Commission's March 26, 1993 Order on that same Friday afternoon. At approximately 5:00 P.M. OTS Attorney Kandace F. Melillo contacted Dr. Milham by telephone and secured his agreement to testify for OTS in this case.

^{1/} Many qualified experts are unwilling to testify because they perceive that either their current sources of income will be jeopardized (grants, fellowships, etc.), or, that the development of their future careers will be adversely affected. The necessary consequence is that it is exceedingly difficult to identify and retain an expert of like stature and qualifications as those willing to testify in support of industry assertions.

2. A hurriedly arranged telephonic prehearing conference was held on the following Wednesday morning, March 31, 1993. At that prehearing conference, various issues were discussed and resolved which dictated the scope of the testimony OTS would request from Dr. Milham, as well as the extent of the support services we would require from him.
3. On April 8, 1993, after extensive consultation with appropriate Commission employees, a four page letter was sent to Dr. Milham setting forth in detail the scope of his duties, the fees he would be paid, and the expenses for which he would be reimbursed.
4. Due to the fact that Dr. Milham was involved in two other cases during the month of April which involved giving EMF testimony and travel, his letter indicating formal agreement to testify on behalf of OTS was not received until April 21, 1993.
5. On April 23, 1993, OTS forwarded through normal channels, a request to obtain Dr. Milham as an expert witness on a sole-source basis. Attached to the request was an addendum to the contract which would allow Dr. Milham to begin working prior to the final approval of the contract (final approval takes approximately 4-6 weeks). The Addendum procedure is routinely practiced by the OCA on contracts for expert witnesses, and, OTS had secured from OCA a copy of the standard form Addendum which their office uses successfully.
6. At 9:30 am on April 29, 1993, OTS was contacted and told that the Comptroller would not accept the Addendum to begin to work early. The contract request will now have to go through the normal stages of approval, and it will take approximately 4-6 weeks before the contract is final. Until that time Dr. Milham cannot do any work for OTS.

Since OTS cannot secure the services of an expert witness for at least several weeks from this date, and the expert cannot legally begin work until he is under contract, it is impossible for OTS to participate in this proceeding in any meaningful way. To begin with, the ALJ's unrealistic expedited schedule calls for the filing of OTS testimony on May 12, 1993. This date cannot be met. OTS cannot file testimony on May 12, 1993, because it will not yet have a witness to provide such testimony. Furthermore, when OTS does have an expert witness under contract, it will be necessary for the expert witness to familiarize himself with the record already established in these proceedings, and to prepare direct testimony on the issues set forth in the Commission's remand order. A reasonable time period must be provided for this to take place. In addition, a reasonable time period must be allocated for discovery, cross-examination, preparation of rebuttal and surrebuttal testimony, further cross-examination, briefs, reply briefs, and the writing of the ALJ's decision. The 120-day period required by the Commission for the conduct of this case is totally inadequate.

6. Given the devastating effect of the Commission's expedited schedule on OTS's ability to participate in any meaningful way in the instant remand, one might expect to find a compelling reason for the imposition of such a schedule on this case. There is no such compelling reason disclosed in the Commission's order. Ironically, however, if this case is

expedited it will certainly be decided prior to the GPU-DQE siting case. The GPU-DQE siting case is one of the largest cases ever to come before the PUC. The utilities have already presented testimony of thirteen witnesses, including three in the area of EMF and related possible health effects. Numerous additional witnesses will be presented by other parties as well as by the utilities on rebuttal. Many of these witnesses will testify on EMF and EMF health effects. The GPU-DQE case involves at least 13 active parties who generally oppose some part of the application. In short, the GPU-DQE case will provide the Commission with an extensive and thorough record which rigorously explores the issues involved. ALJ Smolen originally suggested a moratorium on building high voltage lines until standards could be developed. The Commission apparently has decided to approach the question of standards on a case-by-case basis, rather than by a generic proceeding. It should be obvious that the first case decided will largely dictate what such standards will be. Given that fact, the Commission should not expedite the case at bar with the result that it becomes the landmark Pennsylvania PUC case on EMF's, EMF health effects, and EMF standards.

7. OTS also requests the Commission reconsider its March 26, 1993 Opinion and Order for the purposes of (1) clearly setting forth the burden of proof in this proceeding, and, (2) correcting a misconception which

affected the rights of the parties on prior remand of this case.

8. The Commission's March 8, 1991 denial of the Emergency Petition of Non-Noticed Property Owners gave rise to an appeal to the Commonwealth Court. By Memorandum Opinion and Order of May 24, 1991, the Commonwealth Court criticized the letter-of-notification procedure whereby the Woodbourne-Heaton case had proceeded before the Commission, stating (in not uncertain terms) that:

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 [footnote omitted]. 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."

No. 761 C.D. 1991, May 24, 1991 Memorandum Opinion and Order.

The Commission reacted to the Commonwealth Court's remand in its Order entered June 14, 1991, not by recognizing the Commonwealth Court's due process criticism of the letter-of-notification procedure, but rather by directing a hearing in which the Petitioners were tasked with the burden of proof:

"The Commission directs ... that the Petitioners can ... introduce testimony and documentary evidence [as to] whether the Petitioners will be adversely affected..."

June 14, 1991 Commission Order, p. 2.

Directing a hearing in which Petitioners were tasked with going forward with the evidence completely ignored the Commonwealth Court's criticism that the letter-of-notification process is deficient and inappropriate in the present proceeding.

It is clear from a reading of 52 Pa. Code §57.72(d) that the letter-of-notification procedure is an exception to the application process set forth in 52 Pa. Code §§57.71-59.76 which can be utilized when at least one of a list of certain conditions are met. These conditions are enumerated in §57.72(d)(1)(i)-(vi). In addition, various parties must be served with notice (for the obvious purpose of permitting them to oppose the letter-of-notification process and thereby require a full-blown application process complete with hearings). In fact, §57.72(5) states that "If the Commission does not approve the letter of notification, its order shall direct the applicant to comply with the application process". In the instant case, the Petitioners were not given notice of the letter-of-notification because they were not owners of property within the right-of-way. The Commonwealth Court, recognizing that "it is clear that Petitioners as neighboring property owners, will be affected by the new use of the right-of-way", held that Petitioners had a property right which entitled them to notice and an opportunity to be heard. Had Petitioners not apparently agreed at oral argument to a remand for the purpose of a hearing on health effects, the Court would

no doubt have required a full-blown application proceeding after it concluded that Petitioners had a right to notice and an opportunity to be heard. In this regard, it should be recognized that the Commission's regulations contemplate either an application process with hearings or a letter of notification process in lieu thereof. The regulations do not appear to contemplate a hybrid where there is a hearing on a letter-of-notification. Nevertheless, the instant proceeding was permitted to evolve into this unauthorized hybrid. It is well-settled law that the applicant has the burden of proof in any application proceeding before the Public Utility Commission. If this proceeding were called an application, there could be no question that PECO has the burden of proof vis-a-vis the health effects of EMF. Apparently, because it is called a letter-of-notification the burden has been shifted to the opponents of the applicant. This makes no sense in logic or in law.

Taking his lead from the Commission's June 14, 1991 narrow construction of the Commonwealth Court's May 24, 1991 criticism and remand, the presiding officer, the Honorable Herbert Smolen, Esquire, clearly assigned the burden of proof to Petitioners. As the argument developed, PECO and the Commission's Law Bureau sided together on the adverse effects burden of proof issue, and, OCA and Petitioners took the opposite stance that the burden lay with PECO. Resolving this argument in favor of the discredited letter of notification

process, the presiding officer ruled (in an Order emanating from a telephonic Pre-hearing Conference on July 11, 1991) that:

"... PECO only has the burden of proof as to those items required to be submitted ... under 52 Pa. Code §57.72(d)(4) ... the Administrative Law Judge will not impose any greater burden of proof upon PECO ... with scope and issue limited ... [PECO] shall have the burden of proof and of going forward with the evidence with ... issues relating to safety which were required by ... 52 Pa. Code §57.72(d)(4) to have been ... in the Letter of Notification ... PECO's burden at hearing is no less and/or no greater than is required under the Letter Notification process ... Thereafter ... Petitioners/Protestants, and all other parties asserting similar claims, shall have the burden of proof and of going forward with the evidence in connection with ... alleged adverse effects ... and particularly those regarding health effects from EMF."

ALJ Smolen's July , 1991 Order, pp. 3-4.

These interpretations, first the Commission's in its remand Order which inspired ALJ Smolen, and then ALJ Smolen's, completely ignored the Commonwealth Court's criticism that proceeding through a letter of notification process in the Woodbourne-Heaton case violated due process and was inappropriate to the due process requirements to be afforded Petitioners. Under this flawed reformulation of the remand, Petitioners in the first remand were required to prove that there were adverse health affects rather than PECO being required to prove (as GPU and DQE must do in A-110300F051 and as PP&L must do in A-110500F0172) that their proposal does not

produce adverse health effects. This reformulation continues to affect the current remand in that the ALJ (as evidenced by on the record discussions and rulings during, and the schedule emanating from, the March 31, 1993 telephonic Pre-Hearing Conference) continues to view the case as one in which the public interest parties and the intervenor parties have a burden of proving: (1) whether EMF produces adverse health affects, and (2) whether EMF produces adverse land use effects.

9. OTS believes that the proper resolution of this proceeding's failure to conform with the Commonwealth Court's criticism of the letter notification process in this instance, is for the Commission to direct that PECO shall have both the initial burden of proof and the burden of going forward with the evidence with respect to the EMF health issue and the EMF mitigation standards issue. This assignment to PECO would negate the current illogical circumstance of assigning the burden of record development on this most important national issue to those parties least able to afford the costs involved. An expanded schedule, as requested hereinabove, would also facilitate the reassignment of the burden of proof proposed herein.

10. In addition, the Commission's March 26, 1993 Order discusses the subject of whether EMF fear is rational, Order p. 19:

"... we cannot conclude as does the Law Bureau, that Protestant's concern, if not fear, is unfounded. We shall accept ... the reasonableness of Protestant's fear

concerning potential adverse health effects from EMF, generally, and to a lesser degree their fear of EMF from the subject line."

March 26, 1993 Order, p. 19.

OTS believes that the Commission's remand should also include consideration of the recent Commonwealth Court Decision in another PECO case (which has become a final ruling in light of PECO's failure to file an appeal):

"... environmental and safety apprehensions affect the valuation of property ... We agree with the statement of the federal district court in United States v. Easement and Right-of-Way, 249 F.Supp. 747, 750 (W.D. Kentucky, 1965):
'Apprehension of injuries to person or property by the presence of power lines on the property may be taken into consideration insofar as the line affects the market value of the land ... the apprehension of such danger constitutes an element of damage."

In Re: PECO Taking of Land of Geisler et ux.,
No. 2125 C.D. 1988, Opinion and Order
dated March 5, 1993

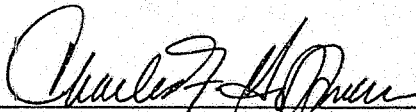
The subject of EMF fear and apprehension, and the reaction of market forces to such fear and apprehension, is germane to a thorough understanding of the harm that EMF might do, and, the mitigation which should result. The exclusionary view has already been repudiated by ALJ Meehan in the GPU/DQE proceeding, but was only partially avoided in the first remand of the present proceeding. OTS believes that the Commission should clearly instruct that the second remand should address and develop the Commonwealth Court's standard that EMF fear and apprehension are proper considerations, that the fear is not

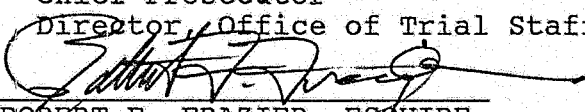
therefore irrational, and that economic consequences requiring mitigation may flow from market reactions to such fear.

WHEREFORE, OTS respectfully requests the Commission reconsider its March 26, 1993 Remand Order:

- (1) to expand indefinitely the time limit set for the proceeding, or, in the alternative to assure that the time limit is sufficiently expanded to accommodate the needs of the public interest parties and to avoid the possibility of an order in this case being used to collaterally attack the developing records in the GPU/DQE, Hoffman-Minooka (PP&L), and other transmission line cases;
- (2) to direct the burden of proof in the remanded proceeding to conform to an application proceeding instead of a letter notification proceeding to address the Commonwealth Court's stated criticism; and,
- (3) to direct that the remanded proceeding shall also develop a record to address the Commonwealth Court's recently announced standard with respect to EMF fear.

Respectfully submitted,


CHARLES F. HOFFMAN, ESQUIRE
Chief Prosecutor
Director, Office of Trial Staff


ROBERT F. FRAZIER, ESQUIRE
Senior Prosecutor, OTS
of the
PENNSYLVANIA PUBLIC UTILITY
COMMISSION

210 North Office Building
Harrisburg, PA 17120
(717) 787-4886

Dated: May 11, 1993

CERTIFICATE OF SERVICE

I hereby certify that I am serving, this day, the foregoing document(s), either personally, by FAX and/or by first class mail upon the persons listed below:

Paul R. Bonney, Esquire
Philadelphia Electric Company
2301 Market Street
Post Office Box 8699
Philadelphia, PA 19101

Honorable Roy Reinard
Post Office Box 5
Main Capitol Building
Harrisburg, PA 17120

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

Brian L. Mook, Twp. Manager
Township of Upper Moreland
117 Park Avenue
Willow Grove, PA 19090

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

Kathleen R. Chiolan, Manager
Dennis O'Brien, Chairman
Lower Southampton Township
1500 Desire Avenue
Feasterville, PA 19047

Joseph M. Seborowski, Chairman
Lower Southampton Township
Planning Commission
1500 Desire Avenue
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Robert M. Bellagrino, Twp. Manager
David Shafter
Jerry S. Goldman
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Pa. PUC Law Bureau
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Arundhati Khanwalkar, Esquire
Jesse A. Dillon, Esquire
Pennsylvania Power & Light Company
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Allentown, PA 18101-1179

Ward L. Smith
Tom Watson
c/o Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

J. D. Cossel
C. W. Wogan
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Catherine Anne Porter, Esquire
Schneider & Porter
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Langhorne, PA 19047

Charles Esaylian, Chairman
Lower Moreland Township
Planning Commission
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Huntingdon Valley, PA 19066

Andrew L. Warren
Chairman of Commissioners
County of Bucks
Main and Court Streets
Doylestown, PA 18901

Robert E. Moore, Exec. Director
County of Bucks
Planning Commission
Almshouse Road
Weshaminymanor Center
Doylestown, PA 18901

CERTIFICATE OF SERVICE (Con't)

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

Arthur A. Davis, Secretary
Pa. Dept. of Environmental
Resources
Bureau of Environmental Planning
16th Fl., Market St. State
Office Building
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Harrisburg, PA 17120

Kathy Horwalt, Council President
Borough of Langhorne
114 East Maple Avenue
Langhorne, PA 19047

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

Howard Yerusalem, P.E., Secretary
Pa. Department of Transportation
Room 1200
Transportation & Safety Building
Harrisburg, PA 17120

Vivian Piasecki, Chairman
Pa. Historical & Museum Commission
Post Office Box 1026
Harrisburg, PA 17120

Clark Weitz, Chairman
Middletown Twp. Planning Commission
2140 Trenton Road
Levittown, PA 19056

W. Edwin Ogden, Esquire
Jeffrey A. Franklin, Esquire
Ryan, Russell & McConaghy
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John Hocker, Leasing Rep.
Dept. of General Services
Bureau of Real Estate
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Harrisburg, PA 17105

D. Bruce Townsend, Twp. Manager
Northampton Township
55 Township Road
Richboro, PA 18954

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

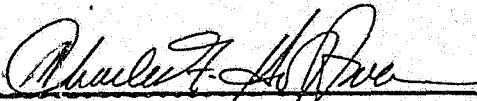
Jerry S. Goldman, Chairman
Upper Southampton Township
Planning Commission
939 Street Road
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Middletown Township
Planning Commission
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Levittown, PA 19056

Alison D. White, Twp. Manager
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Robert J. Sugarman, Esquire
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100 North 17th Street
Philadelphia, PA 19103



Charles F. Hoffman
Chief Prosecutor
Office of Trial Staff

Pennsylvania Public Utility Commission

Dated: May 11, 1993

A-110550F055



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

May 19, 1993

IN REPLY PLEASE
REFER TO OUR FILE

RECEIVED
JUN 01 1993

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

SECRETARY'S BUREAU
Information Control Division

Re: Letter of Notification of Philadelphia Electric Company
Relative to Reconductoring and Rebuilding of the Existing
138 KV Line to Operate as the Woodbourne-Heaton 230 KV
Line, in Montgomery and Bucks Counties
Docket No. A-110550F055

Dear Judge Smolen:

This is in response to two letters filed by Ward L. Smith, Esquire in the above-captioned matter. The first such letter is dated May 12, 1993 and the second, in the nature of a Hearing Motion pursuant to 52 Pa. Code §§ 5.103 (a) and (b), is dated May 14, 1993. OTS will address each of these letters in turn.

The May 12, 1993 letter is a somewhat gratuitous document which occupies itself primarily with non-issues. For example, Mr. Smith attempts to attach significance to the term "in lieu of" as used in the OTS letter of that date in which we explained to the ALJ and the parties that OTS could not file testimony because it had not yet secured the services of an expert witness. He states that the "OTS" letter is not and cannot be 'in lieu of' the information you ordered all parties to exchange." However, the exact significance of this semantical analysis is not made clear.

If Mr. Smith is suggesting that the letter cannot be viewed as direct testimony and entered into evidence at a hearing, OTS would certainly agree.

If Mr. Smith is suggesting that the letter is not a position statement, OTS would likewise agree.

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If Mr. Smith is suggesting that the letter does not, in and of itself, absolve OTS from the requirement to file testimony or a position statement, OTS likewise agrees.

The OTS letter of May 12, 1993, was merely a courtesy to the ALJ and the parties of record, explaining that there would be no testimony or position statement forthcoming on that date from OTS. The reasons for this were set forth in a Petition for Reconsideration filed with the Commission on May 11, and incorporated by reference into the May 12 letter.

Mr. Smith's letter implies that OTS may be requesting some form of relief from Your Honor by stating: ". . . it is not clear what relief, if any, the OTS letter seeks of you . . ." OTS regrets any confusion our letter may have caused, but as Your Honor undoubtedly realizes, the OTS letter of May 12 seeks no relief from you.

Mr. Smith's letter of May 14, 1993, recites that the ALJ had ordered all parties to state their positions to other parties on May 12, 1993, either by the filing of testimony or a position statement. That ALJ Order, presumably issued pursuant to 52 Pa. Code §5.103(d), was signed on May 6, 1993, and faxed to OTS on May 6, 1993, at 3:32 p.m. The relief contained in Your Honor's Order was requested by Counsel for PECO in a letter dated May 3, 1993, which was received by OTS by fax at 12:31 p.m. on May 3, 1993, while the undersigned was in Pittsburgh attending hearings through May 5, 1993. The thrust of PECO's letter was to request the ALJ to issue an order to parties not filing testimony requiring them to file a formal position statement.

OTS hereby objects to Your Honor's denial, to the parties who might have opposed such request, of the time allocated by 52 Pa. Code §5.103(c) for response to Hearing Motions and letters in the nature of Hearing Motions. OTS also objects to Your Honor's failure to inform the parties that Your Honor intended to waive the regulations and establish a different time period for response. PECO had no right to immediate ALJ action on a Hearing Motion or a letter in the nature of a Hearing Motion which it filed with the ALJ at the eleventh hour.

In any event, OTS does not consider the ALJ order to apply to its situation. OTS does not intend to participate in this case without the benefit of expert testimony. If the Commission does not issue a ruling on the OTS Petition filed on May 11, 1993 which permits OTS a fair opportunity to represent the public interest, OTS intends to pursue withdrawal from this case.

The PECO letter of Friday, May 14, 1993, which was faxed to OTS on Monday, May 17, 1993, at 9:43 a.m., stated as follows:

PECO therefore respectfully requests that you issue an Order specifically directing the OTS, by Tuesday, May 18 at 9 a.m., to provide to the other parties the formal position statement required by your May 6 Order, notwithstanding the fact that it has filed no testimony, and notwithstanding the fact that it has filed a Petition for Reconsideration with the Commission.

Apparently emboldened by its success in obtaining Your Honor's May 6, 1993 Order in 3 days, in derogation of the requirements of 52 Pa. Code §5.103, PECO has now reduced the time frame for Your Honor's immediate response to its latest request to 23 hours and 17 minutes. My telephone call to you on the morning of May 18, 1993, has resulted in Your Honor's deferral of the issuance of an Order until I have had an opportunity to respond.

This is not the kind of law practice that should be condoned by Your Honor or the Commission. Counsel could have faxed the May 14, 1993, letter to OTS on that same Friday. Counsel could have telephoned OTS to alert us to the existence of the letter. Rather, Counsel appears to have orchestrated this matter to give OTS virtually no opportunity to respond. In the process, Counsel for PECO is requesting Your Honor to disregard and violate Commission procedural regulations and deny due process to OTS, by railroading an Order through in less than one day. OTS strenuously objects to this procedure.

There is no excuse for this conduct, and it should not be condoned. OTS wishes to put PECO and Your Honor on notice that it intends to assert its due process rights in this proceeding and does not agree to any abbreviated time periods established unilaterally in response to PECO demands in the future. OTS expects to be afforded the full time periods set forth in 52 Pa. Code §5.103 and other Commission regulations appropriate to specific instances, unless such time periods are modified by the ALJ after reasonable consideration of the due process rights of the opposing parties, and after reasonable notice to OTS and the other parties regarding the establishment of time periods at variance with existing regulations.

In closing, OTS requests that Your Honor deny the relief requested by PECO in its May 14, 1993 letter for the reasons set forth above.

Very truly yours,

Charles F. Hoffman

Charles F. Hoffman
Chief Prosecutor
Office of Trial Staff

CFH:em:pae
cc: Parties of Record

CERTIFICATE OF SERVICE

I hereby certify that I am serving, this day, the foregoing document(s), either personally, by FAX and/or by first class mail upon the persons listed below:

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Philadelphia Electric Company
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Post Office Box 8699
Philadelphia, PA 19101

Honorable Roy Reinard
Post Office Box 5
Main Capitol Building
Harrisburg, PA 17120

Tanya J. McCloskey, Assistant
Consumer Advocate
Irwin Popowsky, Consumer Advocate
Office of Consumer Advocate
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Walter C. Evans, Township Planner
Northampton Township
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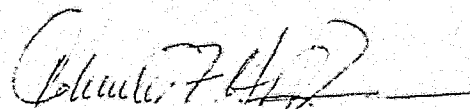
Jerry S. Goldman, Chairman
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Philadelphia, PA 19103



Charles F. Hoffman
Chief Prosecutor
Office of Trial Staff

Pennsylvania Public Utility Commission

Dated: May 19, 1993

A-110550F055



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

ORIGINAL

June 2, 1993

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IN REPLY PLEASE
REFER TO OUR FILE

John G. Alford, Secretary
Pa. Public Utility Commission
Post Office Box 3265
Harrisburg, PA 17105-3265

SECRETARY'S BUREAU
Information Control Division

In re: Letter Notification of Philadelphia
Electric Company Relative to
Reconstructing and Rebuilding of
The Existing 138 kV Line to Operate
as the Woodbourne-Heaton 230 kV Line
Docket No. A-110550F055

Dear Secretary Alford:

Enclosed, please find an original and three (3)
copies of the Office of Trial Staff's Petition For Permission
To File Response To Answer Of the Philadelphia Electric
Company, and Proposed Response, for filing in the above-
captioned proceeding. Copies of the Petition and Response
are being served on all active parties of record.

Yours, very truly,

Robert F. Frazier, Esquire
Senior Prosecutor
Office of Trial Staff

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Enclosures

RFF:gdp

cc: (w/encl.)

Hon. David W. Rolka, Chairman
Hon. Joseph Rhodes, Jr., Vice Chairman
Hon. John M. Quain, Commissioner
Hon. John Hanger, Commissioner
Hon. Herbert S. Smolen, ALJ
Cheryl Walker Davis, Director - OSA
John J. Povilaitis, Chief Counsel - Law Bureau
Parties of Record

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Letter of Notification of :
Philadelphia Electric Company :
Relative to Reconstructing :
and Rebuilding of the : Docket No.
Existing 138 kV Line to : A-110550F055
Operate as the Woodbourne- :
Heaton 230 kV Line in :
Montgomery and Bucks Counties :

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PETITION
OF OFFICE OF TRIAL STAFF FOR
PERMISSION TO FILE RESPONSE TO ANSWER
OF PHILADELPHIA ELECTRIC COMPANY
AND
RESPONSE

AND NOW, to wit, this second (2nd) day of June, 1993, comes the Office of Trial Staff (OTS) of the Pennsylvania Public Utility Commission (PUC or Commission), by and through its attorneys, Charles F. Hoffman, Esquire, Chief Prosecutor, and Robert F. Frazier, Esquire, Senior Prosecutor, and files the within Petition for Permission to File a Response to the May 24, 1993 Answer of Philadelphia Electric Company (PECO) to OTS' May 11, 1993 Petition for Reconsideration, and, pending approval of OTS' Petition herein, an attached Response of OTS, averring in support thereof as follows:

1. The within Petition is filed pursuant to 52 Pa. Code §5.41(a), and, requests permission for OTS to file a further Response to PECO's May 24, 1993 Answer to OTS' May 11, 1993 Petition for Reconsideration because further Responses to Answers (except Replies to Answers Seeking Affirmative Relief, 52 Pa.

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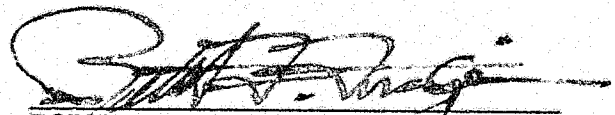
Code §5.63) are neither expressly authorized nor expressly forbidden by the Commission's Rules of Administrative Practice and Procedure.

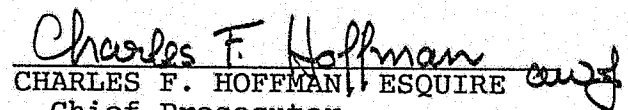
2. Because of serious inaccuracies, mischaracterizations, and misstatements contained in PECO's May 24, 1993 Answer to OTS' May 11, 1993 Petition for Reconsideration, further Response is required to correct the record upon which the Commission will base its decision with respect to the relief requested by OTS' May 11, 1993 Petition for Reconsideration.

3. Pending approval of the within OTS Petition, the following OTS Response, which speaks for itself, is herewith included.

WHEREFORE, OTS hereby requests the Commission grant the within OTS Petition and consider the arguments contained in the following OTS Response.

Respectfully submitted,


ROBERT F. FRAZIER, ESQUIRE
Senior Prosecutor


CHARLES F. HOFFMAN, ESQUIRE
Chief Prosecutor

Office of Trial Staff
210 North Office Building
Harrisburg, PA 17120

(717) 787-4886

Dated: June 2, 1993

RESPONSE
OF THE OFFICE OF TRIAL STAFF TO
THE ANSWER OF PHILADELPHIA ELECTRIC COMPANY
TO OTS' PETITION FOR RECONSIDERATION

1. The within Response corrects serious inaccuracies, mischaracterizations, and misstatements contained in PECO's May 24, 1993 Answer to OTS' May 11, 1993 Petition for Reconsideration, and, is filed pursuant to, and pending, permission from the Commission to so respond (as requested by the foregoing OTS Petition for Permission to File Response).

2. PECO opposes the OTS May 11, 1993 Petition in three respects: (1) that the Commission should "reject" the OTS request to expand the 120-day time limit for the remanded proceedings, (2) that the Commission should "disregard" the OTS request that the burden of proof be re-examined, and, (3) that the Commission should "reject" the OTS request that the remanded proceedings also address the effect, if any, of the recent Geisler decision. PECO has utilized hyperbolae, exaggeration, misstatements, mischaracterizations, and inaccuracies throughout its May 24, 1993 Answer, and, has chosen language which betrays its contempt for the public interest and for OTS' efforts to represent the public interest. Irrespective of this pattern, the within Proposed Response shall address PECO's opposition, ad seriatim, in the following paragraphs.

3. PECO's opposition to the OTS request to expand the 120-day time limit for these remanded proceedings is presented in

five particulars: (1) that the OTS May 11, 1993 Petition was untimely filed, (2) that the OTS Petition does not meet the Duick standard for granting reconsideration, (3) that OTS was not diligent in pursuing retention of its witness, (4) that OTS participation through its witness "will add little, if any, value to this case," and, (5) that expanding the time limit would harm the public interest. OTS believes that PECO's arguments are bizarre at best, and, disingenuous at worst, as shall appear hereinbelow.

4. In a purported effort to put the OTS petition into perspective, PECO Answer pp. 1-2, PECO announces that "Trial Staff did not participate -- or even request the opportunity to participate -- in any of these proceedings." In so doing, PECO injects itself into an internal matter of how cases are assigned between the Law Bureau and the OTS at the Commission. The Public Utility Code mandates that OTS represent the public interest in certain types of cases before the PUC. In all other types of cases the Law Bureau normally represents the public interest unless the Commission directs OTS to do so. Normally, OTS is neither assigned by the Commission nor does OTS seek assignment to transmission siting proceedings. However, due to controversial public reports regarding the Law Bureau's alleged predisposition in the GPU/DQE siting proceeding, A-110300F051, OTS was directed by the Commission to prosecute on behalf of the public interest in that case. Consistent with an apparent predisposition in favor of electric utility applicants' in

transmission line siting cases, the Law Bureau also has consistently opposed the protestant parties in the within proceeding, and, has consistently allied itself with PECO's application. It was this lack of protection of what OTS views as the public interest which led OTS to file its September 8, 1992 Exceptions to the July 29, 1992 Initial Decision of ALJ Smolen issued August 19, 1992. OTS did not foresee a further remand in light of ALJ Smolen's primary recommendation (that the Commission delay approval of PECO's application pending the adoption of standards for EMF avoidance), and, consequently did not seek to participate further in proceedings which appeared to be concluded. On its own motion, the Commission granted OTS leave to participate, nunc pro tunc, when the Commission decided upon a further remand. PECO's criticism, that OTS' non-participation at any time previous in some way detracts from OTS' valid scheduling concerns now that it is participating, is completely disingenuous and totally without merit.

The Timeliness of Filing of the May 11, 1993 OTS Petition

5. PECO argues that the May 11, 1993 OTS Petition was untimely filed, and, recites its version of the more recent procedural history of the within proceedings, PECO Answer pp. 2-4. PECO assigns to OTS the fifteen days between the time the Commission adopted its remand Order on March 11, 1993 and the time the Commission entered its remand Order on March 26, 1993. PECO charges, in effect, that OTS should have commenced its efforts to secure an expert witness before OTS had in-hand the

Commission's Order. However, PECO fails to mention that OTS could not have been aware until it received the Commission's Order that OTS had been granted leave to participate, nunc pro tunc, on behalf of the public interest. In fact, a review of the Transcript for the Meeting of March 11, 1993, and of Chairman Rolka's Motion (the only document distributed that day) discloses that absolutely no reference was made at that time to the provision in the Commission's subsequent, March 26, 1993, order which contained the grant of leave to OTS to participate, nunc pro tunc. PECO's computations, running throughout its May 24, 1993 argument, that OTS should be charged with delay from March 11, 1993 are therefore completely without foundation and meritless.

6. PECO is correct that OTS referred to the need to expand the 120-day time limit on a number of occasions during the March 31, 1993 telephonic Pre-Hearing Conference conducted by ALJ Smolen. PECO fails to acknowledge, however, that the ALJ refused to initiate any action to have the Commission correct the patently insufficient time period given to the parties to litigate the case, Tr. 40-41, 54-59, 66-67. Rather than apply to the Commission for additional time, ALJ Smolen chose to resolve the scheduling problem without any effort to protect OTS from substantial prejudice. The following is illustrative:

"MR. HOFFMAN: Mr. Hoffman for OTS. I have just had [PECO's] prehearing memorandum handed to me . . . I have not been able to read it in the middle of this purported -- well, in the middle of this conference call. I think we should have a real prehearing

conference, Your Honor. It is obvious that there are a lot of issues here that need to be thrashed out.

JUDGE SMOLEN: I believe this is a real prehearing conference.

MR. FRAZIER: In person with time to respond.

JUDGE SMOLEN: There is no time with respect to a prehearing conference. We are discussing the issues here, the procedural issues. Not necessarily merits issue. That is for the testimony.

Tr. 38-39.

...

MR. HOFFMAN: Your Honor, OTS. We cannot -- I am going to tell you this unequivocally -- we cannot file testimony on April 21, 1993.

JUDGE SMOLEN: I didn't say April 21. This is what PECO suggested.

MR. HOFFMAN: We are in the transmission line case having EMF hearings over that period of time. There is no way that we can contract for and get testimony in 22 days, period.

JUDGE SMOLEN: Wait. You are assuming that we adopt the schedule presented by PECO.

MR. HOFFMAN: Then I will assume we won't and I won't have any problems.

JUDGE SMOLEN: Don't assume anything. And you may have problems. But that is a problem of OTS. You have to recognize we have a remand order that is a mandate by the Commission that we have to do something in 120 days.

MR. HOFFMAN: Your Honor, I think you should give some serious thought to presenting something back to the Commission to straighten this proceeding out so that the Constitution is being followed and people are given due process. There is no reason for railroading this case through the way [PECO is] doing it. And I think it has got to be brought to [the Commission's] attention.

JUDGE SMOLEN: Mr. Hoffman, you're now an intervenor nunc pro tunc. So you have to do whatever you want to. I don't know of a judge going back to the Commission telling the Commission that they are wrong, unless it is in a recommended decision or in a[n] initial decision. But you are a party nunc pro tunc, as you have argued. You do what you have to do."

Tr. 40-41.

Judge Smolen could have endeavored to correct this situation in accordance with Pa. C.S. §331(e), which provides, in pertinent part:

"A presiding officer may certify to the Commission ... any material question arising in the course of a proceeding, where he finds it necessary to do so to prevent substantial prejudice to any party ... The presiding officer ... may thereafter stay the proceeding if necessary to protect the substantial rights of any of the parties therein."

66 Pa. C.S. §331(e).^{1/}

A similar situation was properly dealt with by ALJ Schnierle in the Bell "Caller*ID" proceeding, R-891200 et seq. The procedural history contained in Judge Schnierle's Recommended Decision issued September 22, 1989 is illustrative of what a judge can do in such a circumstance:

"... The Commission further directed that a recommended decision was to be issued within 90 days of the date of entry of the Commission's opinion and order ... A prehearing conference was held on this matter

^{1/} NOTE: A similar procedure for submittal of a material question to the Commission to "prevent prejudice," inter alia, is made available to presiding officers by the provisions of 52 Pa. Code §5.305.

on April 14, 1989. Subsequently, at the request of the presiding officer and of several of the parties, the Commission, on April 20, 1989, extended the time period for the filing of a recommended decision to 180 days after the date of entry of the Commission's opinion and order ..."

ALJ Schnierle's September 22, 1989 R.D. pp. 3-4.

After his initial determination that he would not take this matter back to the Commission, ALJ Smolen appears to have turned a deaf ear to OTS' further remonstrances. The following is illustrative:

"MR. HOFFMAN: Your Honor, did you want to hear OTS' position?

JUDGE SMOLEN: You might as well spread it on the record.

MR. HOFFMAN: Our position would be to do this the way cases are almost invariably done here. I think in this case the burden of proof should be assigned the Applicant, the Applicant should put on its case, the other parties should put on their case afterwards and then there should be a rebuttal-surrebuttal round. We cannot possibly adhere to this schedule that is being proposed here. We don't have --

JUDGE SMOLEN: We don't have any dates proposed yet, other than that proposed by PECO.

MR. HOFFMAN: Your Honor, obviously your decision, which apparently has been made already, requires us to be ready --

JUDGE SMOLEN: I have not made any determination at all.

MR. HOFFMAN: All right. Then if you do agree with the Applicant's suggestion we will be required to file testimony at the same time that the earliest testimony is filed.

JUDGE SMOLEN: That's not the Applicant's suggestion ... That is my suggestion in order to speed up this case because of the time frame.

Tr. 54-55.

...

MR. HOFFMAN: My point is that we don't have a witness under contract unlike, I suppose, everybody else. So we are not going to be able to have a witness under contract and have direct testimony prepared on the kind of schedule that you are obviously contemplating.

JUDGE SMOLEN: Well, you're a mindreader, then, If you are a mindreader like that, Mr. Hoffman, maybe you can mindread my ultimate decision in this case. I haven't proposed any time schedule yet.

MR. HOFFMAN: Your Honor, you have never tried to obtain expert witnesses as a member of Trial Staff.

JUDGE SMOLEN: I have been a practicing attorney for many, many, many years, probably more than Mr. Hoffman.

MR. HOFFMAN: Not in the OTS.

JUDGE SMOLEN: No, but in the city solicitor's office of the City of Philadelphia, and I have faced the same kinds of problem and it is a logistical problem in your office and that really should not ... bind the Administrative Law Judge or the presiding officer in a particular case as to how scheduling of a case should be, particularly where we have a time frame. Had there been no time frame in this case, the 120 days, we wouldn't have a problem.

MR. HOFFMAN: The time frame is wrong.

JUDGE SMOLEN: Well, then, take an action. Take a recommendation. Do what you have to do.

MR. HOFFMAN: Let the record show it is not a logistical problem in my office. It has to do with the Attorney General. It has to do with the comptroller. It has to do with all the processes that have to be gone through before we can contract for an expert witness. And we can't pay him for the work that he does before the contract is final. We just found that out in the transmission line case.^{2/}

JUDGE SMOLEN: Weren't those facts known to you when the motion of -- I don't know who it was, the Chairman, or Commissioner Rhodes, when the motion was made for OSA to prepare such an order as they did on remand for 120 days? Weren't all those facts known to you? Should not they have been transmitted to the Commission at that particular time before this opinion and order was adopted to bring those facts to the attention of the Commission?

MR. HOFFMAN: [To] the best of my knowledge, Your Honor, there was nothing said about us being a party to this case at public meeting. It came as a complete shock to me when I got a phone call from Mr. Bonney, I think it was last Friday [March 26, 1993]. I had not even seen the order which was circulated that day because I was in hearings all day. So I had no ability to anticipate this.

MR. FRAZIER: Any prior knowledge would have been ex parte."

Tr. 55-57.

Apparently, Judge Smolen believed that he had no power to request additional time from the Commission when it became apparent at a pre-hearing conference that a case couldn't be scheduled without

^{2/} The reference is to the Comptroller's rejection of invoices requesting payment for work performed prior to a contract start date where no "start work early" addendum was sought. This knowledge is not the same as that learned on April 29, 1993.

creating substantial prejudice to a party's rights. Apparently, Judge Smolen believed that he must overlook OTS' remonstrances in order to maintain a schedule which he believed he had no power to comment upon to the Commission. Apparently, Judge Smolen believed that OTS, similar to an advisory bureau (e.g. OSA or the Law Bureau), interacts with the Commission between the adoption date and the entry date of Commission orders. Apparently, Judge Smolen believed that OTS must have learned of the Commission's grant of leave to participate in the within proceeding on March 11, 1993, and, that OTS should have been communicating with the Commission about its problems from that date through Judge Smolen's telephonic Pre-Hearing Conference on March 31, 1993. Apparently, PECO believes the same things, PECO Answer p.2. In point of fact, none of these assumptions are true.

ALJs do have statutory authority to re-apply to the Commission when a party's substantial rights are threatened and, ALJs have exercised this discretion to protect party's substantial rights. The Commission's public remarks (and Chairman Rolka's Motion) of March 11, 1993 do not disclose any intention of the Commission to grant leave for the participation of OTS. OTS does not, and should not, be interacting with the Commission between the adoption date and the entry date of an order; that would be a prohibited ex parte communication. Likewise, the Commission does not solicit advice from OTS at any time, and, certainly not prior to the entry date of one of its orders. Both ALJ Smolen and PECO are mistaken in many

particulars. OTS should not be held accountable for any culpability or lack of due diligence for the fifteen days between March 11, 1993 and March 26, 1993.

OTS first had an opportunity to carefully examine the Commission's Order on Monday, March 29, 1993 -- two days before the ALJ's scheduling of the March 31, 1993 telephonic Pre-Hearing Conference. And, OTS first received PECO's Pre-Hearing Memorandum by FAX after the start of that conference call because PECO had previously FAXED it to 717-787-6641 (the BCS's facsimile machine) rather than to 717-772-2677 (the OTS' facsimile machine), Tr. 5.

Clearly, PECO's version of the meaning of the March 31, 1993 Pre-Hearing Conference Transcript, as contained in PECO's May 24, 1993 Answer to OTS' May 11, 1993 Petition, is at best deficient, and, at worst disingenuous. And, it proved crucial that only PECO had an opportunity to present a proposed schedule on March 31, 1993 to ALJ Smolen. The following is illustrative:

"JUDGE SMOLEN: Well, we have to really have dates certain for this. And I started to work with PECO's suggested dates, not necessarily what is to the left of the date, but just using their dates. Their first date for testimony they have, Mr. Bonney has, is April 21. Now, that is only three weeks.

MR. SUGARMAN: Your Honor, there is no way I can meet that.

MS. McCLOSKEY: This is the OCA. There is no way I can meet that either

JUDGE SMOLEN: Well, give me some -- 45 days, really, you know, you are losing a quarter of the case, more than a quarter of the time period.

MS. McCLOSKEY: Your Honor, as I said -- this is Tanya McCloskey for OCA -- I was only able to contact my consultant this morning and due to other commitments that he has throughout the month of April for testimony filing dates and hearing dates the earliest date he thought he could file any testimony was May 12.

MR. HOFFMAN: May 12. And he's under contract.

MS. McCLOSKEY: He is not under contract yet either.

JUDGE SMOLEN: Mr. Hoffman is laughing. We are all laughing because we are really pressured. It's not a pressure on any one particular person here. It is a pressure on all the parties.

Tr. 60-61.

...

JUDGE SMOLEN: ... All I am trying to do is focus everyone on dates within the time frame we have now. If the time frame somehow is changed by further order of the Commission we can revisit this ... I'm only trying to work it out within this time frame ... if there is another time frame which the Commission affords us, we will look at this again and try to work it out some other way giving parties more time. But this is what we have and we have to live in it. And there is nothing I can do. I am not a magician. I have to live with the order that is in front of me. And I think we all do.

MR. HOFFMAN: Your Honor, could I suggest that we adjourn this hearing and maybe resume tomorrow afternoon at two o'clock --

JUDGE SMOLEN: No. I am going to be in Harrisburg Thursday and Friday on a rate case, a fully litigated rate case, which I have going on at the same time as this."

Tr. 62-63.

It is apparent from this exchange that the May 12, 1993 testimony due date (upon which ALJ Smolen ultimately fastened in

his April 9, 1993 Pre-Hearing Conference Order) was a date which OTS could not meet, and, which was no more than the earliest surmised by OCA for its purposes. In addition, the witness to which OCA referred was the same witness OCA had used in the first phase of the case. (As has been noted in OTS' May 11, 1993 Petition, an important distinction between OTS' contract approval process and OCA's is the refusal of OTS' comptroller to allow start of work prior to the letting of a contract.) After a Pre-Hearing Conference lasting almost two hours (which did not produce a schedule) during which OTS consistently advised the ALJ of the substantial prejudice which would be visited upon OTS under the time frames the ALJ insisted upon, it is unfortunate that ALJ Smolen did not appear to be aware of his authority to re-apply to the Commission to protect a party's substantial rights and to prevent prejudice. PECO's criticism of OTS, in light of the onus shifted to OTS, is entirely without merit, and should, in fairness, be rejected.

7. Similarly, PECO conveniently omits the exchange of memos between OTS and PECO (into which ALJ Smolen was copied) between March 31, 1993 and April 9, 1993. OTS authored four memos (dated April 2, 6, 7, and 8, 1993) in an effort to obtain some consideration for the filing of its testimony later than the May 12, 1993 date (when the OCA surmised it could file, at the earliest). Ultimately, OTS was not afforded even six days additional time by the ALJ for its testimony due date. PECO charges that OTS "withheld its [May 11, 1993] Petition until the

eleventh hour," PECO Answer p.3, when it well knows that OTS was engaged from March 31, 1993 through April 9, 1993 attempting to persuade the ALJ to adopt a schedule which took more concerns than simply those of the OCA into consideration. Meanwhile, OTS was making every effort to expedite a contract for obtaining an expert witness. It was only a few days before the filing of OTS' May 11, 1993 Petition that OTS learned that the PUC's comptroller would not approve the "start work early" addendum for OTS' contract (see May 11, 1993 OTS Petition pp. 3-4 for the chronology of this critical period). As soon as OTS learned, on April 29, 1993, that it could not authorize its proposed expert to start work without a contract, OTS undertook to prepare its Petition for Reconsideration. In light of all of the circumstances, the filing of OTS' Petition on May 11, 1993, before any testimony was due, was appropriately diligent.

8. PECO makes the incredible statement that granting OTS' May 11, 1993 Petition will prejudice those parties who "have revealed their positions to the Trial Staff." When one considers the vast majority of Commission cases involve the utility presenting a case in support of its application or tariff filing prior to any other party being required to file testimony, PECO should be no stranger to "revealing its position to the Trial Staff." This argument is totally nonsensical.

9. PECO charges, PECO Answer p.4, that OTS "could have avoided ... yet another round of evidentiary hearings ... at some point in the future ... by filing its Petition early in this

proceeding so that minor adjustment to the schedule could have accommodated [OTS's] concerns." This statement not only mischaracterizes the true magnitude of OTS' concerns, it is also internally inconsistent. OTS has repeatedly remonstrated, to ALJ Smolen on March 31, 1993, during the March 31 - April 9, 1993 exchange of scheduling memos, in its letters of May 12 and 19, 1993 to ALJ Smolen, and in its May 11, 1993 Petition to the Commission, that the prejudice visited upon OTS by the ALJ's attempt to force the 120-day schedule, was anything but "minor," PECO Answer p.4. And, PECO is inconsistent when it complains of "prejudice," "disrupt[ion]," and the "difficulty" of "yet another round of ... hearings," which would be occasioned by granting OTS' Petition, while positing that granting OTS' Petition earlier in the proceeding would only have required "minor adjustments," PECO Answer p.4. These statements are simply absurd, and, they are disingenuous when one learns that PECO would not agree to allow OTS six additional days to file its testimony (or until May 18, 1993) when OTS requested it during the March 31 - April 9, 1993 exchange of scheduling memos. PECO's arguments not only lack merit but they are unworthy in the distortions they offer.

The Duick Standard for Reconsideration

10. PECO posits that the OTS May 11, 1993 Petition fails the standard for reconsideration under 66 Pa. C.S. §703(g) announced in Duick et al. v. PG&W, 56 Pa. P.U.C. 553 (December 17, 1982), PECO Answer pp. 4-5. PECO correctly identifies the standard as requiring "new and novel arguments, not previously

heard or considerations which appear to have been overlooked or not addressed by the Commission," Duick, supra. at 559. However, without any basis in fact, PECO presents the following rationale: (1) "When the Commission granted the present remand, surely it was aware of the procurement process its own Office of Trial Staff must follow," and, (2) "the Trial Staff's arguments are not 'new and novel,' nor do they appear to have been 'overlooked' by the Commission." Irrespective of PECO's assertions, that the Commission is unaware of OTS' procurement problems is obvious. Why else would the Commission permit OTS to intervene in a proceeding and then knowingly expedite the proceeding to make it impossible for OTS to meaningfully participate? As for the requirement for "new and novel arguments, "every argument relating to the 120-day expedited schedule is new and novel, since the Commission imposed this requirement for the first time in its March 26, 1993 Order. Furthermore, any argument relating to due process concerns of OTS could not have been made prior to the March 26, 1993 Order sought to be reconsidered, as OTS was not a party to the proceedings prior to that Order. That PECO knows this to be true is amply demonstrated by the clear import of PECO's March 26, 1993 telephone call to OTS, Tr. 57.

Therefore, all OTS due process arguments must be new and novel, a fortiori. Duick also notes that a time-limited petition for reopening of a record (under 66 Pa. C.S. §703[f]) may be deemed a time-unlimited petition for reconsideration (under 66 Pa. C.S. §703[g]) if "newly discovered evidence was not in existence" at

some prior time, Duick, supra. at 559. PECO is completely silent about OTS' discovery, quite unexpectedly on April 29, 1993, that the PUC comptroller would not approve an addendum which would allow an OTS outside expert to commence work prior to his formal contracting. This fact alone was so decisive and destructive as to render any hope of somehow conforming to the 120-day schedule entirely moot and completely unattainable. This "new evidence," combined with the overall novel situation in which OTS and the Commission find themselves are factors which render PECO's arguments regarding the Duick case erroneous and meritless.

OTS' Diligence in Pursuing Retention of its Witness

11. For the reasons set forth at length hereinabove, and in OTS' May 11, 1993 Petition, it should be patently obvious that PECO's assertion that "the Trial Staff did not pursue the retention of its witness with diligence under the circumstances of this case," is meritless and not founded in fact. On May 27, 1993, OTS was informed that its contract with Dr. Milham had been approved. Therefore, it took a total of 34 days to obtain the approvals which were outside the control of OTS, and, this time period was the result of a review which OTS understands to have been expedited. The time period from March 26, 1993 to May 12, 1993, the day the ALJ ordered testimony to be filed in this case, was 47 days. This time period was then, and has proved to be, simply inadequate.

OTS Participation Through its Witness Adds Value to the Case

12. PECO's argument that OTS' participation through its witness "would add little, if anything, to ... this proceeding," PECO Answer p. 7, is an appalling and contemptuous prejudgment of a potential adversary. This argument is clearly self-serving and of no value whatsoever, and, it should, to use PECO's term, be "disregarded." PECO suggests, PECO Answer 11-12, that the scope of OTS participation in a discretionary case under 66 Pa. C.S. §306(b) can be limited by the Commission and need not involve the active development of record through witnesses but might only involve cross-examination and briefing. Of course, PECO is correct that OTS participation in the discretionary cases is a matter of Commission discretion. OTS replies, however, that rather than accede to the appalling and contemptuous prejudgment posited by PECO of a potential adversary, the Commission should make clear its intentions regarding OTS participation in this case. IF THE COMMISSION INTENDS THAT OTS SHOULD REPRESENT THE PUBLIC INTEREST IN THIS CASE, IT SHOULD ALLOW OTS TO PARTICIPATE IN A MEANINGFUL WAY. As noted in OTS' May 19, 1993 letter to ALJ Smolen, OTS will pursue withdrawal from the within proceeding if OTS' representation of the public interest on health related issues must be done without an expert witness. OTS has responded, as best as should be reasonably expected, to the Commission's Order granting OTS leave to participate, which came as a complete surprise to OTS. OTS requests that the Commission "disregard" PECO's external and uninformed criticisms, and,

instead consider squarely whether it desires OTS to be a full participant, nun pro tunc or something less. If something less, OTS respectfully suggests that the public interest would be better served by not continuing what is essentially a sham, and, OTS would respectfully request the Commission grant OTS leave to withdraw from the within proceeding.

Expanding the Time Limit Will Not Harm the Public Interest

13. PECO suggests that "the Commission has already decided that further delay is against the public interest," PECO Answer p. 10. It may be true that the Commission has directed a "limited remand" and that the Commission "cannot go on forever", however, it takes an impossible leap of faith to glean from this that the Commission also intends to not afford OTS the time necessary to adequately represent the public interest.

14. PECO alleges that OTS desires an unreasonable delay of the Woodbourne-Heaton case, PECO Answer p. 10. This is untrue. OTS merely requests that the Commission would allow sufficient expansion of time to permit OTS to fully participate.

15. PECO's suggestion that "the existing parties to the case more than adequately represent the public interest," PECO Answer p. 11, is ludicrous. First, PECO and PP&L represent their respective shareholders, who are nothing more than a constituent part of the public interest, and, certainly not the broad spectrum of the public interest. Second, although OCA and the Commission's Law Bureau are present, as noted hereinabove,

the Law Bureau has chosen a course which most often coincides with PECO's interests.

16. PECO criticizes OTS for not seeking leave, initially, to participate from the very start of the within proceeding, PECO Answer p. 12. PECO neatly overlooks the fact that EMF had not attained the compelling public interest significance at the time this case began, and, that OTS is not normally involved in siting proceedings. The limited resources of OTS are required in every Commission rate proceeding, and, should be committed to discretionary cases when there are compelling public purposes and public interests to be protected. OTS commented, via statutorily authorized exceptions, when the public interest potential of the within case became apparent. Subsequently, when the Commission granted OTS leave to participate (presumably to enhance the "sense of fairness" which the Commission intended to convey), OTS did its best to structure its participation in a manner which would enhance the production of a meaningful record and which would protect the public interest.

Judge Palladino's Criticism Lays at The Heart of the OTS Request that the Commission Reformulate the Burden of Proof in the Within Proceeding

17. PECO asserts that OTS is questioning Orders that the ALJ and the Commission "issued almost two years ago," PECO Answer p. 13. However, it is Judge Palladino who is questioning such Orders. As noted in OTS' May 11, 1992 Petition, Judge Palladino has criticized the letter of notification procedure as

inadequate in this instance -- this is the basis of her remand.

Could Judge Palladino have put it more clearly:

"... the letter notification process of 52 Pa. Code §57.72(d) ... did not contemplate the fact matrix before this court ... the notice to entities owning property ... provided in 52 Pa. Code §57.72(d) is insufficient ..."

Small et al. v. Pa. PUC, 761 C. D. 1991, May 24, 1991
Memorandum Opinion and Order, p. 1.

Must Judge Palladino be required to state, with hypertechnical precision, that the Commission must redocket the case as an application proceeding rather than a letter of notification? On the contrary, it would seem that the tenor of Judge Palladino's criticism is fairly clear. The Commission's transmission line siting regulations are outmoded in the era of EMF awareness. Limiting notification to property owners within the right-of-way is not adequate. Notice must be given to property owners whose property will be affected by EMF produced by a line. PECO prefers to analyze OTS' criticism of the Commission's framing of the first remand and the ALJ's implementation of it, however, PECO has completely avoided discussing Judge Palladino's actual words. The fact remains, that the letter of notification procedure was defective for the "fact matrix" in this case, and, the Commission should provide the type of hearing afforded by the application process. In addition, the Commission should provide a process whereby cases filed by utilities utilizing the letter of notification format can be transformed, without resistance and

limitation, into application proceedings if the level of public protest (and the "fact matrix") warrants.

The recent Geisler Ruling Provides an Important New Standard Which Should Not Be Excluded from EMF Cases

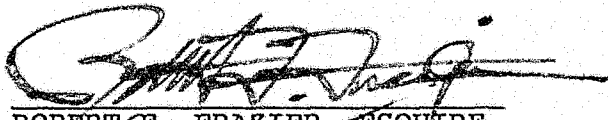
18. PECO suggests that fear and apprehension of EMF (as well as effects on land use) have already been fully litigated in the within proceeding, PECO Answer p. 15. Assuming, arguendo, that they have, there is no need to exclude the incorporation into the existing record of the standard announced in Geisler et ux, 2125 C.D. 1988, March 5, 1993 Opinion and Order. The Commission should not be bound by PECO's self-serving limitation that Geisler is only "a condemnation proceeding," which only narrowly reaches a "question of what kinds of evidence will be allowed ... in condemnation," PECO Answer p. 16.^{3/} In fact, as noted in OTS' May 11, 1993 Petition, Geisler makes it clear that diminution in land value caused by fear and apprehension are compensable, and, such a determination bears on the economic sense of a proposed line before the Commission. No one suggests that the Commission awards damages, however, the Commission does review the economic foundations of proposals before it. With the pronouncement such as that contained in the Geisler case, utilities proposing to construct power lines can no

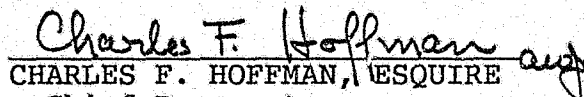
^{3/} It should be noted that PECO, a party to Geisler, chose not to appeal the Commonwealth Court Order. It would not now be appropriate to permit PECO to impose limits on that ruling when PECO could have tested the ruling on further appeal.

longer pretend that they will not have to pay landowners for the diminution in market value caused by the fear of EMF.

WHEREFORE, for the reasons set forth in OTS' May 11, 1993 Petition, and for the reasons set forth hereinabove, OTS respectfully requests the Commission grant OTS' May 11, 1993 Petition: (1) allowing sufficient time for OTS to participate in a meaningful fashion, (2) reformulating the burden of proof to more fairly comport with the "fact matrix" of these proceedings, and, (3) allowing the Geisler standard to be explored in this remand. In addition, for the reasons set forth hereinabove, OTS respectfully requests the Commission accept the OTS corrections contained herein to PECO's May 24, 1993 Answer, that the Commission accept OTS' Response herein to that Answer, and, that the Commission deny PECO's Answer and reject its arguments.

Respectfully submitted,


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Dated: June 2, 1993

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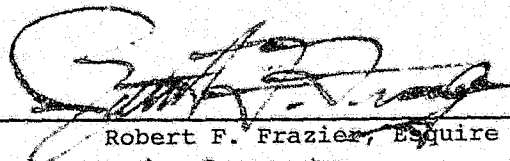
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Pennsylvania Public Utility Commission

Dated: June 2, 1993

A-110550F055

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MAY 21 1993

SECRET
Public Utility Commission
OFFICE

May 17, 1993

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

Re: Letter of Notification of Philadelphia Electric
Company at Docket No. A-110550F055

Dear Mr. Alford:

Enclosed please find protestants' Response to Petition of OTS
for Reconsideration in the above-referenced matter.

Sincerely,


Robert J. Sugarman

RJS:er
Enclosure

cc: Honorable David W. Rolka
Honorable Joseph Rhodes
Honorable John Quain
Honorable John Hanger
Service List

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

MAY 21

SECRETARY'S
Public Utility Commission

IN RE: LETTER OF NOTIFICATION :
OF PHILADELPHIA ELECTRIC COMPANY :
UNDER 52 PA CODE §57.72(d) :
RE: PROPOSED 230 KV WOODBOURNE :
TO HEATON TRANSMISSION LINE :

DOCKET NO. A-110550F055

RESPONSE TO PETITION OF OTS FOR
RECONSIDERATION, ON BEHALF OF PROTESTANTS,
RELATING TO ORDER ENTERED MARCH 26, 1993

The protestants property owners and families whose property and health would be effected by the energization of the above-mentioned line, respond to the Petition of OTS for Reconsideration as follows:

1. Petitioners join with the OTS in its arguments and contentions, and particularly with those relating to the burden of proof. Petitioners add only that, to the extent implied in paragraph 8 of the said Petition, at pages 8 and 9, the protestants agreed to bear the burden of proof, protestants did not so agree. Rather, the Commonwealth Court did not address the issue of burden of proof, and it was only by the Commission's action and that of the ALJ after remand by the Commonwealth Court, that burden of proof was assigned to the protestants. In this regard, however, it is noted that the protestants met the burden of proof, with the considerable assistance of OCA.

2. The protestant landowners and affected families wish to supplement the Petition of OTS by noting that the decision of the Commonwealth Court did not limit the Commission's scope on remand to health effects, and it was the action of the Commission itself

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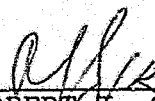
which so limited the proceedings on remand. In fact, the clear import of the Commonwealth Court decision, holding the prior proceedings invalid for lack of notice, was to require the entire scope of all issues to be addressed. The protestants have continuously protested the bifurcation of the issues, and have objected to PECO's contention that the issues of need and alternatives should only be addressed if the protestants prove health effects.

3. At the present time, however, protestants note that both the ALJ and the Commission have concluded that there is proof of adverse effect, and therefore it is incumbent upon the Commission to reopen the issue of need at this time, in granting the Petition of OTS, so as to allow for one consolidated remand proceeding.

4. In addition, protestants petition the Commission to allow financial reimbursement and assistance to the protestants, in order to protect their due process rights to their property. It is manifestly unjust and a denial of due process to require a small group of less than one hundred persons of modest means to provide a detailed education to the Commission, which has massive resources, and to the applicant, which has still more massive resources. Where parties are required to produce significant expert evidence to defend their property and their health, the Commission should require, where meritorious cases exist at least (as already established here) the provision of financial assistance to those affected. Anything less is not only inequitable, but a denial of due process.

5. Consideration of need for the line, as mandated by 5 Pa. Code §75.56, is also necessary in order to allow for a rational decision as to "mitigation". Mitigation, as suggested by the Commission's remand, is arbitrary unless it includes an evaluation of the need which is being mitigated. To the extent that PECO's proposed line has no rational justification, it is inappropriate for it to be approved based on some mitigation; the issues of need and additional mitigation expense are therefore closely interconnected.

As aforesaid, therefore, the Commission is requested to grant the Petition of OTS, to expand the scope of the proceeding to include the issue of need for the line (as would have been included had the Letter of Notification been properly sent to the protestants,) and to reopen the proceeding generally.



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I, Robert J. Sugarman, certify that I have mailed a copy of the foregoing Response to Petition of OTS for Reconsideration, on Behalf of Protestants, Relating to Order Entered March 26, 1993 to the following counsel by first class mail postage pre-paid on this date:

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5/18/93

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May 24, 1993

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MAY 24 1993
SECRETARY'S OFFICE
Public Utility Commission

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

Dear Secretary Alford:

Enclosed for filing with the Commission are the original and two (2) copies of Philadelphia Electric Company's Answer To The Office Of Trial Staff's Petition For Reconsideration in this proceeding. I have attached to the original Answer a U.S. Postal Form 3817, dated May 24, 1993, to evidence the filing as of this date. I have also enclosed an additional copy of this cover letter which I request that you date-stamp and return to me.

DOCUMENT
FOLDER

Sincerely yours,

Paul R. Bonney
Paul R. Bonney

PRB/meb
Enclosure

cc: Honorable Herbert Smolen
Parties of Record

AVL

CERTIFICATE OF SERVICE

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

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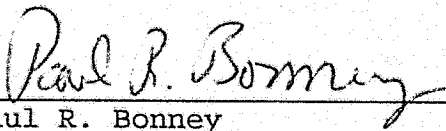
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Dated: May 24, 1993

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

MAY 24 1993

SECRETARY'S OFFICE
Public Utility Commission

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

DOCKET NO. A-110550, F.055

PHILADELPHIA ELECTRIC COMPANY'S ANSWER
TO
THE OFFICE OF TRIAL STAFF'S PETITION FOR RECONSIDERATION

DOCKETED
JUN 08 1993

DOCUMENT
FOLDER

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Dated: May 24, 1993

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I. Introduction

Philadelphia Electric Company ("PECO" or the "Company") hereby answers the May 11, 1993 Petition of the Office of Trial Staff ("OTS" or "Trial Staff") for reconsideration of the Commission's March 26, 1993 Order in this proceeding. For the reasons set forth below, the Commission should deny the OTS' Petition.

II. The Commission Should Reject Trial Staff's Request To Expand The 120-Day Time Limit Established For This Limited Remand

In its Petition (p. 13) the Trial Staff asks the Commission to "expand indefinitely the time limit set for the proceeding, or, in the alternative to assure that the time limit is sufficiently expanded to accommodate the needs of the public interest parties"

To put the OTS' request for delay into perspective, it is appropriate to recall that this proceeding already had a lengthy history before the Commission ordered this remand on March 26:

- It is more than 3 years since PECO requested approval to reconstruct and energize this line (November 21, 1989), and more than 3 years since the Commission granted that approval (February 9, 1990).
- This case was before the Commission several times in 1990-91, before the Commonwealth Court in 1991, and again before the Commission for extended hearings on EMF in 1991-92. Trial Staff did not participate -- or even request the opportunity to participate -- in any of those proceedings.
- Twelve days of evidentiary hearings have already been held in this proceeding. Protestants, the Office of Consumer Advocate, Law Bureau, PP&L and PECO participated in those hearings. 34 witnesses testified (10 outside experts on EMF issues, 2 PECO engineering and EMF experts, and 22

individual protestants) compiling a record consisting of over 1500 transcript pages, 200 pages of written testimony, and 40 exhibits.

With these events in mind, we now turn to the Trial Staff's request for an extension of time and yet further delay in this proceeding.

A. Trial Staff's Petition Was Untimely Filed

A brief review of some of the events that have occurred since the Commission ordered these remanded proceedings will demonstrate quite clearly that the Trial Staff's Petition was untimely filed.

March 11, 1993--Commission votes at public meeting to order a limited remand. Commission requires ALJ to issue a supplemental decision within 120 days of entry of Commission Order

March 26, 1993--Commission enters remand Order.

March 31, 1993--ALJ holds prehearing conference during which, among other things discussed, Trial Staff states that it is contemplating requesting Commission to expand the 120-day remand limitation (Tr. 15, 40-41, 54-59, 66-67).

April 9, 1993--ALJ Smolen issues prehearing Order requiring, among other things: that all parties exchange by April 30, 1993 lists of witnesses and EMF studies to be addressed; that all parties file direct testimony on May 12 and rebuttal testimony on May 20, that hearings be held from May 27 to June 7; and that Initial and Reply Briefs be filed on June 16 and 23, respectively.

April 30, 1993--Parties exchange witness and EMF study lists. Trial Staff indicates that it is still seeking authorization to retain Samuel Milham but lists the EMF studies upon which its witness will rely.

May 11, 1993--Trial Staff petitions for reconsideration.

May 12, 1993--PECO and OCA submit written direct testimony, and Law Bureau, PP&L and Protestants (on May 14, 1993)

submit position statements on the issues pursuant to ALJ Order.

In sum, the Trial Staff filed its Petition: (1) two months after the Commission's March 11 public meeting remand vote; (2) 46 days after the Commission's March 26 remand Order; (3) 41 days after the prehearing conference (in which the Trial Staff clearly stated its intention to request the Commission to expand the 120-day remand limit); (4) 32 days after ALJ Smolen issued an Order setting forth the schedule for testimony and hearings; and (5) one day before testimony was due in-hand.

The Trial Staff withheld its Petition until the eleventh hour. The Trial Staff's procurement problems are no excuse for filing its Petition so late in this proceeding. The fact is that on March 31 at the latest, the Trial Staff knew that it faced a somewhat lengthy procurement process and that it intended to seek a time expansion from the Commission (see prehearing conference transcript, pp. 15, 40-41, 54-59, 66-67). Yet it chose to wait 41 days thereafter, until one day before the due date for testimony, to file its Petition.

Moreover, because the Trial Staff filed so late, granting its Petition will prejudice the other parties, who have moved forward with the presentation of their cases in compliance with the Commission's and the ALJ's Orders. Those parties have revealed their positions to the Trial Staff. Trial Staff, on the

other hand, has not complied with the schedule ordered by the ALJ, nor has it presented its position on the remanded issues.

In addition, the Trial Staff's late filing, if granted, will disrupt the orderly presentation of evidence in this remand. Evidentiary hearings are scheduled to be held May 27 to June 7, but likely will be completed by June 1. Thus, by the time the Commission has an opportunity to decide this Petition, evidentiary hearings will be complete. If the Trial Staff's request were to be granted, yet another round of evidentiary hearings would be required at some point in the future. The Trial Staff could have avoided such a difficulty by filing its Petition early in this proceeding so that minor adjustments to the schedule could have accommodated its concerns. It should not be allowed to file late in the proceeding and thereby disrupt the orderly development of this case.

For these reasons, the Trial Staff's request for an extension of the 120-day limit should be summarily rejected as untimely filed.

B. Trial Staff's Request Does Not Meet The Standard For Granting Reconsideration Of Commission Orders

In Philip Duick et al. v. Pennsylvania Gas and Water Co., 56 Pa. P.U.C. 553, 559 (December 17, 1982), the Commission set forth the legal standards for determining whether to exercise its discretion to grant a Petition for reconsideration under 66 Pa. C.S. § 703(g). Among other things, the Commission stated:

"What we expect to see raised in such Petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error."

The Trial Staff offers two reasons for delaying this proceeding: (1) OTS has not yet been able to formally retain its EMF science witness, Dr. Milham, due to the procurement process it must follow and (2) this case might be used to "collaterally attack the developing records in the GPU/DQE, Hoffman-Minooka (PP&L), and other transmission line cases." (Petition, pp. 2-6; 13)

Neither of these reasons satisfies the high standard for granting reconsideration. When the Commission granted the present remand, surely it was aware of the procurement process its own Office of Trial Staff must follow. Likewise, the Commission was certainly aware of the Trial Staff's arguments concerning its desire to avoid an impact on the GPU/DQE proceeding, the Trial Staff having previously raised those arguments in its exceptions in this case. See OTS Exceptions, pp. 2-4. Simply put, the Trial Staff's arguments are not "new and novel," nor do they appear to have been "overlooked" by the Commission.

The Commission should, therefore, reject the Trial Staff's requested delay.

C. Trial Staff Did Not Diligently Pursue Retention Of Its Witness

As noted above, one of the reasons the Trial Staff offers for delaying this proceeding is that it has not yet been able to formally retain its EMF science witness, Dr. Milham. The Trial Staff's argument should be rejected because, upon close examination, it is clear that the Trial Staff did not pursue the retention of its witness with diligence under the circumstances of this case.

PECO understands that the Trial Staff has certain procurement processes that it must follow. But it disagrees with the Trial Staff's assertion (Petition, p. 3) that the 120-day limit set by the Commission for this limited remand is "patently insufficient for [the parties] to identify and retain qualified expert witnesses" The OCA has been able to retain its witness and prepare and file testimony within the time allowed, and it is under similar procurement constraints (see prehearing conference transcript at 61; OTS Petition, p. 4).

Moreover, the Trial Staff's own Petition establishes that, if it had more actively pursued the retention of its witness, it too could have complied with the schedule. OTS states that in the GPU/DQE siting case it required seven weeks to identify and retain Dr. Milham as its EMF science witness. In this

proceeding, the Trial Staff did not have to identify Dr. Milham, and it was able "almost immediately" (on March 26, 1993) to secure his oral agreement to testify (Petition, p. 3).¹ But it took the Trial Staff nearly another month (until April 23, 1993) to reduce that agreement to writing and forward it to the appropriate agencies to begin the procurement process. If the Trial Staff had not delayed for this month it would have been able to comply with the testimony filing date of May 12 (almost 7 weeks after the March 26 Order). Stated differently, it should not have taken the Trial Staff longer to retain Dr. Milham in this case than it did in the GPU/DQE case.

Therefore, the Commission should reject the Trial Staff's requested delay because the Trial Staff has not demonstrated that it pursued the retention of its witness diligently.

D. Dr. Milham's Testimony Will Add Little, If Any, Value To This Case

PECO submits that Dr. Milham's testimony would add little, if anything, to the already lengthy and still growing record in this proceeding. Eight scientific and medical expert witnesses presented by Protestants, OCA and PECO have already appeared in

¹PECO takes exception to the Trial Staff's assertion (petition, p. 3, fn. 1) that "[m]any qualified experts are unwilling to testify because they perceive that either their current sources of income will be jeopardized . . . or, that the development of their future careers will be adversely affected." The Trial Staff's statement should be disregarded as it is completely without basis, given that the Trial Staff was able to easily identify an EMF witness in this case, and because it is hearsay testimony by counsel.

this proceeding; four are scheduled to return for the hearings on remand. These science witnesses have already addressed hundreds of EMF studies, and in particular those witnesses have addressed (in prior or remand testimony) almost all of the EMF studies upon which Dr. Milham has indicated he intends to rely (See Appendix A, attached to this Answer). Allowing the Trial Staff and its witness to revisit many of the EMF studies that have already been explored, and perhaps relitigate issues that have been decided in this case, would be contrary to the Commission's directive to limit the remand to "studies [that] may have become public since the close of the [prior] record in this case." (Order p. 21).

Thus, it appears that Dr. Milham's review of the science would add little, if anything, to this case. Whatever limited value it might have is certainly outweighed by the need to resolve this case promptly. The Trial Staff's request to delay this proceeding to accommodate the formal retention and participation by Dr. Milham should, therefore, be rejected.

E. Further Delay Would Be Contrary To The Public Interest

As noted above, the Trial Staff has requested either an "indefinite" delay in this remand or delay "sufficient to accommodate the needs of the public interest parties and to avoid the possibility of an order in this case being used to collaterally attack the developing records in the GPU/DQE, Hoffman-Minooka (PP&L), and other transmission line cases." (Petition, p. 13). The Trial Staff's requests are contrary to

the public interest, and there is no public interest concern that would be materially advanced by granting its requests.

The Commission has already determined -- on more than one occasion -- that this line is needed to reliably serve PECO's customers and that delay in energizing the line adversely affects the public interest.² See Commission Order of February 9, 1990 (approving Letter of Notification); Commission Order of March 8, 1991 at p. 14 ("the Commission has already found public need for the reconstruction of the Conrail electric line. Thus it would be inconceivable that halting construction of this line would not adversely affect PECO . . . or the public interest."); and Commission Order of May 8, 1991 at p. 5 ("the Commission found public need for [the Woodbourne-Heaton line] when it approved PECO's Letter of Notification. It is, therefore, inconceivable that halting construction of this line even temporarily would not adversely affect PECO or the public interest.").

More recently, in its March 26 Order (p. 21) the Commission underscored that, due to the strong public interest in moving forward with this proceeding, even a 120-day remand is an extraordinary remedy:

²The Protestants have on multiple occasions during this proceeding attempted to convince the Commission, the Court, and the ALJ to reopen this proceeding for reconsideration of the Commission's finding of need, and have failed, correctly so, in each instance. See March 8, 1991 Commission Order at p. 14; May 8, 1991 Judge Palladino Order at p. 2; June 14, 1991 Commission Order at p. 2; July 18, 1991 ALJ Smolen's Order at p. 5.

"We note that the record concerning EMF has been extensively developed, but prior to our disposition of the instant matter we shall direct a limited remand. Our reopening of the record to secure an important piece of information appeals to our sense of fairness. However, we cannot go on forever in hope that the next piece of evidence or study will resolve the EMF question once and for all." (emphasis added).

In short, the Commission has already decided that further delay is against the public interest.

Nor has the Trial Staff provided any compelling public interest rationale for a delay. PECO has already addressed one of the bases for the Trial Staff's request for an extension -- its inability to retain Dr. Milham. In its Petition, the Trial Staff also provides the following justification for its request for a time extension: "to avoid the possibility of this case being used to collaterally attack the developing records in the GPU/DQE, Hoffman-Minooka (PP&L), and other transmission line cases."

This justification is not in the public interest. The Trial Staff is, practically speaking, asking the Commission to put this case on hold until the Commission decides, at some point many months from now, all other transmission line siting cases. And the Trial Staff offers but one reason for this position -- i.e., that "the GPU-DQE case will provide the Commission with an extensive and thorough record which vigorously explores the [EMF issues]."

The Commission need not wait for the GPU/DQE proceeding to have a record which "vigorously explores" the EMF issue. The Commission's March 26, 1993 Order (p. 21) acknowledges that the record in this proceeding already has been "extensively developed." In fact, as noted, this proceeding has consumed 12 hearing days over 7 months with testimony from 34 witnesses (11 of whom are expert witnesses that addressed EMF-related issues), compiling a record of over 1500 transcript pages, 200 written testimony pages, and 40 exhibits. In short, the Trial Staff offers no compelling reason to delay this proceeding to await the results of other transmission line proceedings, particularly when to do so would adversely affect the ultimate customers and work an injustice on PECO.

Moreover, the public interest will not be prejudiced by denying Trial Staff's request. The existing parties to the case more than adequately represent the public interest. The OCA and the Commission's Law Bureau, as well as the Protestants, PP&L and PECO, have actively participated in this case from its start. Furthermore, PECO disagrees with the Trial Staff's assertion (Petition, p. 5) that until its science witness is under formal contact, "it is impossible for OTS to participate in this proceeding in any meaningful way." The OTS can, like the other parties, conduct cross-examination, take a position on the EMF science and standards issues based on the ample record evidence, and file briefs. Moreover, as made clear by the Pennsylvania Public Utility Code (66 Pa.C.S. § 306(b)), and Commission

precedent (the Commission's February 14 and April 10, 1992 Orders in the GPU/DQE proceeding, Docket No. A-110300F051) the Trial Staff's participation in transmission line siting cases is by no means mandatory, and the scope of its participation in such cases is within the Commission's discretion.

In fact, the Trial Staff's actions in this proceeding make it unclear whether the Trial Staff itself believes that its participation in this case is required to protect the public interest. It did not seek leave to participate in this proceeding (Petition, p. 1) and did not participate in any way for the first 2½ years that this proceeding was underway. And in a recent (May 19) letter to ALJ Smolen explaining why it did not file a formal position statement according to ALJ's Order to do so, the Trial Staff stated that if the Commission does not grant this Petition, the "OTS intends to pursue withdrawal from this case." (emphasis added).

For these reasons, the Commission should deny the Trial Staff's delay request outright. But if, for some reason, it does not so decide, the Commission should consider alternative forms of relief that would be more in keeping with the public interest than those requested by the Trial Staff. For example, the Commission could direct that this line be energized during the pendency of this proceeding, while retaining jurisdiction over the line pending the outcome of any future hearings, thereby

relieving some of the pressure to hold evidentiary hearings in this matter expeditiously.

In any event, PECO firmly believes, for the reasons set forth above, that the delay requested by the Trial Staff should be denied.

III. The Commission Should Disregard Trial Staff's Arguments Concerning Burden Of Proof

The Trial Staff's Petition (pp. 6-11) argues at length that the Commission should revise its June 14, 1991 Order and ALJ Smolen's July 18, 1991 prehearing conference Order with respect to the assignment of burden of proof. The Trial Staff's arguments should be disregarded for several reasons.

First, the Trial Staff is questioning Orders that the Commission and ALJ issued almost two years ago. Its Petition is, therefore, untimely. Moreover, the Trial Staff made no arguments concerning burden of proof in its exceptions to ALJ's Smolen August 19, 1992 Initial Decision. Thus, it has waived its right to make those arguments now.

Second, the March 26, 1993 Commission Order, which is generally the subject of the Trial Staff's Petition, does not discuss burden of proof, let alone rely upon a burden of proof assignment in reaching any conclusions. Therefore, the Trial Staff's arguments, if directed toward the March 26, 1993 Order, are irrelevant and of no consequence.

Third, the Commission and ALJ Smolen did not, as the Trial Staff argues (Petition, p. 10), "completely ignore" Judge Palladino's Order.³ The Trial Staff's Petition overlooks the ultimate holding of the May 24, 1991 Order by Commonwealth Court Judge Palladino that required the Commission to hold hearings in this case: "This court concludes that Petitioners are entitled to a hearing on the question of whether they will be adversely affected by the reducturing of the high tension electrical line at issue in this case." It was based on that holding that the Commission and the ALJ properly concluded that the Protestants, having been granted their request for a hearing, had the burden of proving their claim that they would be adversely affected, particularly regarding alleged health effects from EMF.⁴

Finally, with respect to the Trial Staff's suggestion (Petition, p. 11) that in the ongoing remand PECO should be "assign[ed] the burden of record development on this most

³The Trial Staff engages in speculation when it asserts (Petition, pp. 8-9) that "[h]ad Petitioners not apparently agreed at oral argument to a remand for the purpose of a hearing on health effects, the Court would no doubt have required a full-blown application proceeding after it concluded that Petitioners had a right to notice and an opportunity to be heard." The Trial Staff's supposition, which is contrary to the actual Order that Judge Palladino issued, should be ignored.

⁴ALJ Smolen did not assign the burden of proof to Protestants on all issues addressed, only alleged adverse effects. ALJ Smolen assigned to PECO the burden of proof regarding those matters relating to safety as required under the Commission's letter of notification regulations (see ALJ Smolen's July 18, 1991 Prehearing Order, pp. 1-5).

important national issue. . . , " PECO would only point out that the comprehensive testimony it submitted on May 12 and 20, 1993 satisfies any "burden of record development" on remand -- just as its substantial testimony in the first remanded proceedings satisfied the burden at that time.

For these reasons, the Commission should reject Trial Staff's belated attempt to relitigate the question of burden of proof assignment.

IV. The Commission Should Reject Trial Staff's Request To Require The Parties To Present Evidence Regarding The Geisler Decision

The Trial Staff also requests that the Commission expand the scope of this proceeding to include consideration of the recent Commonwealth Court decision in In re: PECO Taking of Land of Geisler et ux., No. 2125 C.D. 1988, Opinion and Order dated March 5, 1993 (Geisler) (Petition, pp. 11-13). Specifically, Trial Staff argues that this proceeding should "address and develop the Commonwealth Court's standard that EMF fear and apprehension are proper considerations, that the fear is not therefore irrational, and that economic consequences requiring mitigation may flow from market reactions to such fear." (Petition, pp. 12-13).

The Commission should reject the Trial Staff's request. First, the issues of fear and apprehension of EMF, potential effects on land use, etc., have already been fully litigated in this proceeding. 22 individual Protestants testified regarding

their concerns, fears, or apprehensions of EMF from this line, and the actions they intend to take to address those concerns. Two expert witnesses addressed the land use implications of that fear. All parties briefed the issue. The ALJ reached findings of fact regarding this issue. The Trial Staff and other parties addressed the issue in their exceptions and reply exceptions. The Commission specifically addressed and decided the issue in its March 26 Order. There is no need to take further evidence on fear of EMF and its effects on land use.

Second, the Trial Staff has slightly, but significantly, missed the point of Geisler decision. Geisler is a condemnation proceeding and addresses only the question of what kinds of evidence will be allowed to prove monetary damages in condemnation. It does not set any new "standard" for this Letter of Notification proceeding. Moreover, it does not "establish" that fear of EMF is a "proper consideration" -- ALJ Smolen already decided that in the prior evidentiary hearings and in his Recommended Decision. It does not "establish" that fear is not irrational -- ALJ Smolen and the Commission already decided that on the record in this proceeding. It does not decide that "economic consequences requiring mitigation may flow from market reactions" -- rather, it decides that if such effects exist, evidence can be taken to address such effects in a condemnation proceeding.

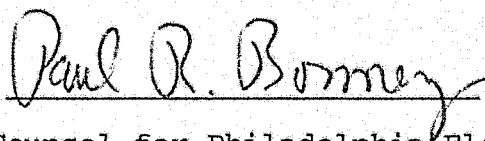
Moreover, these issues have already been fully addressed in this proceeding, either through evidence or exceptions, and therefore are not "new or novel" questions under the Duick reconsideration standard. (See Section II.B. above.) As noted, the question of whether "fear" effects exist and whether they are rational was fully explored in evidence and argument. The parties filed extensive exceptions on the question of whether the Commission's jurisdiction extends to consideration of monetary damages (see, e.g., OCA Exceptions, pp. 4-6, Trial Staff Exceptions, pp. 4-6), and the question of what type of evidence can be allowed to prove such a claim thus cannot be "new or novel." And given that there is already an extensive record on all other aspects of the "fear" issue, there would be no purpose to expanding this remand for a consideration of the Geisler decision.

For these reasons, the Commission should reject the Trial Staff's request to expand the scope of this remanded proceeding to include consideration of the Geisler case.

V. Conclusion

For the reasons set forth above, the Commission should deny the Trial Staff's Petition.

Respectfully submitted,



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Dated: May 24, 1993

Appendix A:
Studies Listed by Dr. Milham in April 30, 1993 Filing With
Citations of Discussion in Record

1. Bowman, J.D., et al. (1988): Exposures to extremely low frequency (ELF) electromagnetic fields in occupations with elevated leukemia rates. *Appl. Ind. Hyg.* 3:189-194
2. Callo E., Savitz D.A. (1985): Leukemia in occupational groups with presumed exposure to electrical and magnetic fields. *N Engl J Med*; 313:1476-7
3. Coggon D., Pannett B., Osmond C., Acheson E.D. (1986): A survey of cancer and occupation in young and middle aged men. II Non-respiratory cancers. *Brit J Ind Med*; 43:381-386
4. Coleman M., Bell J., Skeet R. (1983): Leukaemia incidence in electrical workers. *Lancet*; 1:982-3.
Cole Rebuttal, p. 30
5. Demers P.A., Thomas D.B., Rosenblatt K.A., et al (1990): Occupational exposure to electromagnetic radiation and breast cancer in males. Conference abstract. *Am J Epidemiol*; 132; 775-776
Janes Surrebuttal, p. 2,3; Cole Direct, N.T. 1463-1464, 1468-1472, 1492-1488; Cole Cross, N.T. 1493, 1513-1514, 1519-1521; Janes Cross, N.T. 1426-1428, 1430, 1442, 1444-1446
6. Feychting, M., Ahlbom, A. (1992): Magnetic fields and cancer in people residing near Swedish high voltage power lines. Karolinska Institute, Stockholm.
Cole Direct on Remand, p. 1-5,8; Janes Direct on Remand, p. 3,4
7. Floderus, B., et al. (1992): Occupational exposure to electromagnetic fields in relation to leukemia and brain tumors. A case-control study. National Institute of Occupational Health, Solna, Sweden.
Cole Direct on Remand, p. 8; Janes Direct on Remand, p. 3
8. Fulton, J.P. et al. (1980): Electrical wiring configurations and childhood leukemia in Rhode Island, 111(2) *Am J Epidemiology* 292-296.
Cole Rebuttal, p. 14,30; Rosenbaum Cross, N.T. 344,345; Rosenbaum Direct, p. 4,10
9. Gilman P.A., Ames R.G., McCawley A. (1985): Leukaemia risk among U.S. white male coal miners. *JOM*; 27:669-671.
Cole Rebuttal, p. 31
10. Goodman, R., Henderson, A. (1988): Exposure of salivary gland cells to low-frequency electromagnetic fields alters

- polypeptide synthesis. Proc. Nat. Acad. Sci. U.S.A. 85:3928-3932.
Janes Direct, p.13; Liboff Direct, p. 2; Gelmann Rebuttal, p. 15,16,17; Liboff Cross, N.T. 800-801; Gelmann Cross, N.T. 1166
11. Howe G.R., Lindsay J.P. (1983): A follow-up study of a ten-per cent sample of the Canadian Labour Force. 1. Cancer mortality in males. 1965-73. JNCI; 70:37-44.
 12. Lin R.S., Dischinger P.C., Conde J., Farrell K.P. (1985): Occupational exposure to electromagnetic fields and the occurrence of brain tumors: and analysis of possible associations. JOM; 27:413-9.
Cole Rebuttal, p. 31
 13. London, S.J. et al. (1991): Exposure to residential electric and magnetic fields and risk of childhood leukemia. Am J Epidemiol 134:923-937.
Cole Rebuttal, p. 17,18,31; Rosenbaum Surrebuttal, p. 2,3,4; Cole Direct, N.T. 1479-1488; Cole Cross, N.T. 1488; Rosenbaum Cross, N.T. 1372, 1374, 1381-1386, 1389-1411, 1413-1414, 1416; Rosenbaum Redirect, N.T. 1419-1423; Rosenbaum Recross, N.T. 1423-1424; Cole Cross, N.T. 1073-1074, 1088-1089, 1112-1118, 1122, 1126-1129
 14. Mader, D.L. and S.B. Peralta (1992): Residential exposure to 60 hZ magnetic fields from appliances. Bioelectromagnetics; 13:287-301.
 15. Matanoski G. (1989): The Hopkins telephone worker study. Health and Safety Report; 7:3-4.
Cole Rebuttal, p. 26; Bockman Cross, N.T. 1055-1056; Cole Cross, N.T. 1078-1080, 1082, 1106-1109, 1121-1122
 16. Matanoski, G.M. et al. (1991): Electromagnetic field exposure and male breast cancer. The Lancet. 337:737.
Cole Rebuttal, p. 26
 17. McDowall M.E. (1983): Leukemia mortality in electrical workers in England and Wales. Lancet; 1:246.
Cole Rebuttal, p. 31; Cole Cross, N.T. 1492
 18. Olsen, J. et al. (1992): Residences near high voltage plants and the risk of cancer in children. Copenhagen, Denmark.
Cole Direct on Remand, p. 2,7; Janes Direct on Remand, p. 3
 19. Pearce N.E., Sheppard A.R., Howard J.K., Fraser J., Lilley E.M. (1985): Leukaemia in electrical workers in New Zealand. Lancet.
Cole Rebuttal, p. 32

20. Pearce N., Reif J., Fraser J. (1989): Case-control studies of cancer in New Zealand electrical workers. *Int J Epidemiol*; 18:55-59.
21. Preston-Martin S., Peters J.M. (1988): Prior employment as a welder associated with the development of chronic myeloid leukaemia. *Brit J Cancer*; 58:105-108.
22. Savitz, D.A. et al. (1988): Case-control study of childhood cancer and exposure to 60-Hz magnetic fields, *Am J Epidemiol* 128:21-38.
Cole Rebuttal, p. 15-18, 33; Rosenbaum Cross, N.T. 338-342; Rosenbaum Direct, p. 4,10; Rosenbaum Surrebuttal, p. 1-4; Cole Direct, N.T. 1474-1480, 1482-1485; Cole Cross, N.T. 1487; Rosenbaum Cross, N.T. 1372, 1374, 1378-1416; Rosenbaum ReDirect, N.T. 1419-1423; Rosenbaum Recross, N.T. 1423-1424; Cole Cross, N.T. 1087, 1089, 1112-1118
23. Savitz, D.A., Pearce, N.E., and C. Poole (1989): Methodological Issues in the Epidemiology of Electromagnetic Fields and Cancer. *Epidemiologic Reviews*; 11:59-77.
24. Speers M.A., Dobbins J.G., Miller V.S. (1988): Occupational exposures and brain cancer mortality: a preliminary study of East Texas residents. *Am J Ind Med*; 13: 629-638.
Cole Rebuttal, p. 33
25. Stern F.B., Waxweiler R.A., Beaumont J.J. et al. (1986): A Case-control study of leukemia at a naval nuclear shipyard. *Am J Epidemiol*; 123:980-992.
Cole Rebuttal, p. 33
26. Swerdlow A.J. (1983): Epidemiology of eye cancer in adults in England and Wales 1962-1977. *Am J Epidemiol*; 118:294-300.
Cole Rebuttal, p. 33
27. Tamarkin, L., et al. (1981): Melatonin inhibition and pinealectomy enhancement of 7,12-dimethylbenz (a) - anthracene induced mammary tumors in the rat. *Cancer Res.* 41:4432-4436.
Janes Surrebuttal, p. 2,3; Janes Cross, N.T. 1439-1442, 1458; Bockman Cross, N.T. 996; Gelmann Cross, N.T. 1156-1158
28. Thomas T.L., Stolley P.D., Sternhagen A. et al. (1987): Brain tumor mortality among men with electrical and electronics jobs: a case-control study. *JNCI*; 79:233-238.
Cole Rebuttal, p. 25,33
29. Tomenius, L. (1986): 50-Hz Electromagnetic environment and the incidence of childhood tumors in Stockholm County. *Bioelectromagnetics* 7:191-207.
Cole Rebuttal, p. 15,33; Rosenbaum Cross, N.T. 332-338; Rosenbaum Direct, p. 3,4,10; Bockman Cross, N.T. 1055, 1058; Janes Direct on Remand, p. 4.

30. Wertheimer, N., Leeper E. (1979): Electrical wiring configurations and childhood cancer. Am J Epidemiol 109: 273-284.
Cole Rebuttal, p. 12-14, 17,23,34; Rosenbaum Cross, N.T. 328-333,361; Rosenbaum Direct, p. 3,4,10; Liboff Direct, p. 4; Rosenbaum Surrebuttal, p. 2; Cole Direct, N.T. 1479,1480,1485; Rosenbaum Cross, N.T. 1374; Rosenbaum ReDirect, N.T. 1421-1423; Liboff Cross, N.T. 816-823, 826-827, 868; Liboff ReDirect, N.T. 928; Bockman Cross, N.T. 1049-1050, 1058, 1060, 1112-1113
31. Wilson, B.W., et al. (1990): Evidence for an effect of ELF electromagnetic fields on human pineal gland function. Journal of Pineal Research 9:259-269.
Liboff Direct, p. 4; Janes Surrebuttal, p. 2,3; Janes Cross, N.T. 1430-1434, 1440,1441; Liboff Cross, N.T. 828-834; Bockman Cross, N.T. 989-994, 1016-1018; Gelmann Cross, N.T. 1191-1193
32. Wilson, B.W., Stevens, R.G., Anderson, L.E. (1990): Extremely low frequency electromagnetic fields: The question of cancer. Battelle Press. Parts I-V.
Janes Cross, N.T. 391-393,409; Bockman Rebuttal, p. 17; Gelmann Rebuttal, p. 34; Liboff ReDirect, N.T. 906-907; Bockman Cross, N.T. 988, 1019-1030, 1062-1063, 1191-1193
33. Wright W.E., Peters J.M., Mack T.M. (1982): Leukaemia in workers exposed to electrical and magnetic fields. Lancet 2:1160-4.
Cole Rebuttal, p. 34

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MAY 26 1993

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Public Utility Commission

CERTIFICATE OF SERVICE

Re: Letter of Notification of Philadelphia Electric Company
Relative to Reconductoring and Rebuilding of the Existing
138-KV Line to Operate as the Woodbourne-Heaton 230KV Line
Docket No. A-110550F055

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

Dated this 26th day of May, 1993.

SERVICE IN PERSON

Charles F. Hoffman, Esq.
Kandace F. Melillo, Esq.
Office of Trial Staff
PA Public Utility Commission
Room 210, North Office Bldg.
Harrisburg, PA 17120

Patricia Krise Burket, Esq.
Law Bureau
PA Public Utility Commission
Room G-28, North Office Bldg.
Harrisburg, PA 17120

SERVICE BY FACSIMILE AND FIRST CLASS MAIL, POSTAGE PREPAID

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Philadelphia, PA 19101

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Tanya J. McCloskey
Tanya J. McCloskey
Assistant Consumer Advocate

Counsel for
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120
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NWL

DOCKET NO. A-110550F055
 CASE NAME Letter of Notification of
Philadelphia Electric Co.
 HEARING LOCATION Philadelphia
 HEARING DATE May 27, 28, 1993
 ALJ Smolen

CHECK THOSE BLOCKS WHICH APPLY:

Hearing held YES NO
 Testimony taken YES NO
 Hearing concluded YES NO
 Further hearing needed YES NO
 Estimated add'l days PREVIOUSLY SCHEDULED ESTABLISHED
 RECORD CLOSED YES NO
 Briefs to be filed YES NO
 BENCH DECISION YES NO

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Office of A. L. J.
Public Utility Commission

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JUN 04 1993

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JUN 3 1993

Office of A. L. J.
Public Utility Commission

SECRETARY'S BUREAU

Information Control Division

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

DOCUMENT FOLDER

NAME and TELEPHONE NUMBER	ADDRESS	APPEARING FOR
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Tom Watson Telephone No. (202) 624-2510	1001 Pa. Ave N.W. City: Wash State: DC Zip: 20004	Philadelphia Electric Co.
Patricia KriseBurket Telephone No. (717) 783-2810	P.O. Box 3265 North Office Bldg Rm. G-30 City: Harrisburg State: PA Zip: 17105-3265	PUC Law Bureau Prosecutory Staff

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

Robert Q. Stomler (INC.)

Reporter

ml

6/3/93

SUBJECT:

Re: A-110550F055

TO: The File

FROM: Office of Administrative Law Judge

This is to inform the record that hearing^s in the above referenced proceeding scheduled for June 2 - 4, 1993 at 10:00 am

was cancelled.

were

cc: office file

Pat Jones

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SECRETARY'S BUREAU
Information-Control Division

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EDA

PHILADELPHIA ELECTRIC COMPANY
LEGAL DEPARTMENT

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Senior Vice President
and General Counsel

2301 Market Street, Box 8699
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(215) 841-5544 FAX: 568-3389

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Legal Administrator

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Ellen M. Cavanaugh
Rudolph A. Chillemi
Edward J. Cullen, Jr.
Todd D. Cutler
Katherine K. Dodd
Aubra S. Gaston
Dawn R. Getty
Gregory Golazeski
John C. Halderman
Elizabeth P. Harris
Mary McFall Hopper
Assistant General Counsel

Stephen L. Huntoon
Thomas G. Jackson
J. Lindsey Johnston
Conrad O. Kattner
Kimberly Lewis
Stephanie Whitton Lewis
Jeffrey J. Norton
Christine A. Reuther
Wendy Schermer
Jenny P. Shulbank
Ward L. Smith
Noel H. Trask
Assistant General Counsel

June 7, 1993

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SECRETARY'S OFFICE
Public Utility Commission

TELECOPY AND FIRST-CLASS MAIL

John G. Alford
Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Alford:

Enclosed for filing with the Commission are the original and three (3) copies of Philadelphia Electric Company's Petition for Permission to File an Additional Response and Proposed Response in this proceeding. As indicated in the attached Certificate of Service, I have served copies of this filing upon Administrative Law Judge Smolen and all parties of record.

Sincerely yours,

Ward L. Smith
Ward L. Smith

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WLS/mtj

Enclosure
xc Cheryl Walker Davis, Director (w/enc.)
Office of Special Assistants

WLS

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Letter of Notification of	:	
Philadelphia Electric Company	:	
Relative to Reconstructing	:	
and Rebuilding of the	:	
Existing 138 kV Line to	:	Docket No.
Operate as the Woodbourne-	:	A-110550F055
Heaton 230 kV Line in	:	
Montgomery and Bucks Counties	:	

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SECRETARY
Public Utility Com.

PETITION
OF PHILADELPHIA ELECTRIC COMPANY FOR
PERMISSION TO FILE RESPONSE TO
OFFICE OF TRIAL STAFF'S RESPONSE
AND
RESPONSE OF PHILADELPHIA ELECTRIC COMPANY PENDING COMMISSION
APPROVAL

Philadelphia Electric Company ("PECO") requests permission to file a brief response to the June 2, 1993 Response of Office of Trial Staff ("Trial Staff"). Pending approval of PECO's Petition, PECO's proposed Response is attached. In support of its request, PECO avers as follows:

1. This Petition is filed pursuant to 52 Pa. Code § 5.41(a). PECO recognizes that when one party has filed a Petition for Reconsideration (as the Trial Staff has done) and another party has had an opportunity to Answer that Petition (as PECO has done), the Commission's Rules and Regulations do not encourage the filing of additional responses. Unfortunately, for the reasons set forth below, PECO feels compelled to request permission to file a brief response to Trial Staff's June 2, 1993 Response.

2. While PECO disagrees with many of the statements made in the Trial Staff's June 2, 1993 Response, we will generally rest upon the arguments set forth in our Answer and not burden the Commission with additional argument. For one issue, however -- Trial Staff's extensive discussion and argument related to

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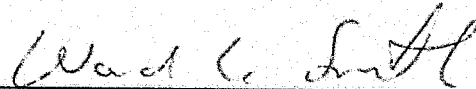
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"certifying a question" to the Commission -- PECO believes that it is vital to direct the Commission's attention to a key discussion that occurred during the March 31, 1993 prehearing conference. The attached Response is limited to that single issue.

3. Pending approval of this request, a proposed PECO Response is attached.

WHEREFORE, PECO requests that the Commission grant its request for permission to file a brief response and consider the arguments contained in the following PECO Response.

Respectfully submitted,



Paul R. Bonney
Ward L. Smith
Assistant General Counsels
Philadelphia Electric Co.
2301 Market Street
Philadelphia Pa. 19103

Dated: June 7, 1993

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Letter of Notification of	:	
Philadelphia Electric Company	:	
Relative to Reconstructing	:	
and Rebuilding of the	:	
Existing 138 kV Line to	:	Docket No.
Operate as the Woodbourne-	:	A-110550F055
Heaton 230 kV Line in	:	
Montgomery and Bucks Counties	:	

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RESPONSE
OF PHILADELPHIA ELECTRIC COMPANY TO
OFFICE OF TRIAL STAFF'S RESPONSE

SECRETARY'S OFFICE
Public Utility Commission

1. In its June 2, 1993 Response, Office of Trial Staff ("Trial Staff") argues at length that it was prejudiced by the 120-day time period allotted by the Commission for this proceeding, and refers to the procedure for certifying a question to the Commission pursuant to 66 Pa. C.S. § 331 (e) and 52 Pa. Code § 5.305 (OTS Response, p. 6). Trial Staff also discusses this procedure at numerous other points in its Response, e.g.: "PECO fails to acknowledge, however, that the ALJ refused to initiate any action to have the Commission correct the patently insufficient time period given to the parties to litigate the case, Tr. 40-41, 54-59, 66-67" (OTS Response, p. 4) (emphasis added). See generally OTS Response pp. 4-13.

2. During the March 31, 1993 prehearing conference, the parties and Administrative Law Judge Smolen discussed whether the "120-day" question should be presented to the Commission via certification by the ALJ, or via a Petition for Reconsideration filed by the Trial Staff:

MR. SUGARMAN: Your Honor, would Your Honor considering [sic] based on the results of this prehearing [conference] .

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. . . submitting or certifying to the Commission a suggestion for an additional 60 days?

JUDGE SMOLEN: I think Mr. Hoffman may be doing that. Why don't you folks discuss that.

MR. SUGARMAN: I would certainly join Mr. Hoffman. But if I remember correctly, Your Honor - -

JUDGE SMOLEN: I'm not sure I have to certify anything. Do I? I really don't know.

MR. SUGARMAN: I think you can if I remember correctly. I certainly know with respect to discovery and discovery rulings --

JUDGE SMOLEN: Let me ask Mr. Hoffman. Do you recall what the specific rule is?

MR. HOFFMAN: Well --

JUDGE SMOLEN: I think you are going to file anyway. I don't know and I can't tell you.

MR. HOFFMAN: I would just as soon, I think, put together our arguments and submit it that way.

JUDGE SMOLEN: I think that is probably the best way and maybe the Commission will rule on it. The parties will have an opportunity to respond, do whatever they want to do.

MR. SUGARMAN: All I am asking is if Your Honor would consider, I believe that Your Honor has the discretion to certify an order --

JUDGE SMOLEN: I don't have any question in front of me to certify. You are making a request of the Commission to extend the 120 days. If you want to make such a request, make it directly to the Commission. Maybe other parties will join you. Maybe the Commission will take action on it.

Tr. 66-67 (emphasis added).

3. PECO believes that the Commission should consider this dialogue in evaluating Trial Staff's argument that it was prejudiced when Administrative Law Judge Smolen did not certify the "120-day" question to the Commission.

4. PECO also submits that if, as Trial Staff contends, ALJ Smolen had sufficient information before him on March 31, 1993 to

certify the "120-day" question, then, a fortiori, Trial Staff had sufficient information to file a Petition for Reconsideration on that same date and could have filed its Petition on or shortly after March 31, 1993, rather than 41 days later on May 11, 1993.

WHEREFORE, for the reasons set forth above and in its previously filed Answer to Trial Staff's Petition, PECO requests that the Commission reject Trial Staff's Petition.

Respectfully submitted,



Paul R. Bonney
Ward L. Smith
Assistant General Counsels
Philadelphia Electric Co.
2301 Market Street
Philadelphia Pa. 19103

Dated: June 7, 1993

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document(s) upon the following parties and in the manner indicated below in accordance with the requirements of 52 Pa. Code § 1.54:

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Honorable Herbert Smolen
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/wls
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2301 Market Street
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(215) 841-6863

Dated: June 7, 1993