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File #: 166407

July 8, 2019

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Application of Duquesne Light Company filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the 138 kV Transmission Lines Associated with the Brunot Island-Crescent Project in the City of Pittsburgh, McKees Rocks Borough, Kennedy Township, Robinson Township, Moon Township, and Crescent Township, Allegheny County, Pennsylvania
Docket No. A-2019-3008589**

Dear Secretary Chiavetta:

Enclosed for filing is the Answer of Duquesne Light Company to the Protest of Joseph G. and Suzanne L. Rabosky.

Copies are being provided per the attached Certificate of Service.

Sincerely,



Garrett P. Lent

GPL/kl
Enclosures

cc: Certificate of Service

ALLENTOWN HARRISBURG LANCASTER PHILADELPHIA PITTSBURGH PRINCETON WASHINGTON, D.C.

A PENNSYLVANIA PROFESSIONAL CORPORATION

CERTIFICATE OF SERVICE
(A-2019-3008589 and A-2019-3008652)

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Joseph G. and Suzanne L. Rabosky
104 Wynview Drive
Coraopolis, PA 15108

Dated: July 8, 2019



Garrett P. Lent

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Duquesne Light Company :
filed Pursuant to 52 Pa. Code Chapter 57, :
Subchapter G, for Approval of the Siting and : Docket No. A-2019-3008589
Construction of the 138 kV Transmission :
Lines Associated with the **Brunot Island –** :
Crescent Project in the City of Pittsburgh, :
McKees Rocks Borough, Kennedy :
Township, Robinson Township, Moon :
Township, and Crescent Township, :
Allegheny County, Pennsylvania :
:
:
:
Protest of Joseph G. and Suzanne L. Rabosky :

**ANSWER OF DUQUESNE LIGHT COMPANY
TO THE PROTEST OF JOSEPH G. AND SUZANNE L. RABOSKY**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE MARY D. LONG:

Duquesne Light Company (“Duquesne Light” or the “Company”) files this Answer to the Protest of Joseph G. and Suzanne L. Rabosky (“Protestants”)¹ pursuant to Section 5.61 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.61. Although the Commission’s regulations do not require an answer to a Protest, Duquesne Light responds to each of the separately-numbered paragraphs of the Rabosky Protest as follows:

ANSWER

1. Admitted.
2. Denied as stated. The Company’s name is Duquesne Light Company.
3. Admitted.

¹.Duquesne Light received a Formal Complaint from the Protestants on June 18, 2019. No docket number has been assigned to the pleading. As the pleading contests and opposes the electric transmission line siting application at Docket No. A-2019-3008589, Duquesne Light is treating the pleading as a Protest to the Application.

4. Admitted in part and denied in part. It is admitted Duquesne Light recently filed: (1) “Application of Duquesne Light Company filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the 138 kV Transmission Lines Associated with the Brunot Island – Crescent Project in the City of Pittsburgh, McKees Rocks Borough, Kennedy Township, Robinson Township, Moon Township, and Crescent Township, Allegheny County, Pennsylvania,” at Docket No. A-2019-3008589 (“BI-Crescent Full Siting Application”); and (2) “Application of Duquesne Light Company Under 15 Pa.C.S. § 1511(c) For A Finding and Determination That the Service to be Furnished by the Applicant Through Its Proposed Exercise of the Power of Eminent Domain to Acquire a Certain Portion of the Lands of George N. Schaefer of Moon Township, Allegheny County, Pennsylvania for the Siting and Construction of Transmission Lines Associated with the Proposed Brunot Island – Crescent Project is Necessary or Proper for the Service, Accommodation, Convenience, or Safety of the Public,” at Docket No. A-2019-3008652 (“Schaefer Condemnation Application”).²

It is also admitted that Duquesne Light possesses a valid easement through the property now known as 104 Wynview Drive, Moon Township, PA 15108. Any characterization of the language of the right-of-way or Duquesne Light’s rights thereunder is denied. By way of further response, the Commission is without authority to interpret the language of easements and lacks jurisdiction over property disputes, including disputes related to proper use of easements. *Fairview Water Company. v. Pa. Pub. Util. Comm’n*, 502 A.2d 162 (Pa. 1985) (“...the PUC does not have jurisdiction to determine the scope and validity of an easement. Once there has been a determination by the PUC that the proposed service is necessary and proper, the issues of scope

² While the Protest references the Schaefer Condemnation Application and/or its docket number, Duquesne Light denies that the Protestants are a property owner of record for the subject property.

and validity and damages must be determined by a Court of Common Pleas exercising equity jurisdiction.”); *see also* *See Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *see also* *Anne E. Perrige v. Metropolitan Edison Co.*, Docket No. C-00004110 (Order entered July 11, 2003) (Commission had no jurisdiction to interpret the meaning of a written right-of-way agreement); *Samuel Messina v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00968225 (Order entered Sept. 23, 1998) (“The Commission has clearly stated in prior decisions that it is without subject matter jurisdiction to adjudicate questions involving trespass and whether or not utility facilities are located pursuant to valid easements or rights-of-way.” (citation omitted)). It is further denied that Duquesne Light has failed in its obligation to acquire land to support its infrastructure or that the Company has used or is using insufficient right-of-way to support its transmission line projects.

It is denied that Duquesne Light’s existing right-of-way at or near the Protestants’ address is insufficient or that Duquesne Light has abused its use of existing right-of-way at or near the Protestants’ address. By way of further response, it is denied that the Commission has the authority to interpret the relevant easement or determine whether Duquesne Light has acted inconsistent with its rights under the easement. It is denied that the current or intended future operation of Duquesne Light’s facilities within the existing right-of-way are unreasonable or unsafe. As set forth in the New Matter, below, Duquesne Light designs, installs and operates its transmission facilities in compliance with all applicable National Electric Safety Code (“NESC”) standards. By way of further response, Duquesne Light incorporates by reference Attachment 11 – Design Criteria and Safety Practices and Duquesne Light St. No. 3, the direct testimony of Meenah Shyu, both of which were attached to the BI-Crescent Full Siting Application.

It is denied the Duquesne Light has requested the Commission to approve a misuse of the existing right-of-way. It is admitted that the Company intends to replace a seventy-eight (78) foot high light tower, twin circuit, 138 kV structure with a one hundred and eight-five (185) foot high monopole structure. By way of further response, the Protestants' property is in the mid-span of the transmission line, the two existing lattice tower at the ends of the span are seventy-eight (78) foot and ninety (90) foot. These lattice structures will be replaced with a one hundred and ninety-five (195) foot and one hundred and ninety (190) foot tall monopole. It is denied that the existing right-of-way is in any way insufficient.

It is denied that the BI-Crescent Project presents a health or safety risk due to electromagnetic fields ("EMFs"). By way of further response, Duquesne Light Company described its EMF practices and policies in Attachment 11 – Design Criteria and Safety Practices to the BI-Crescent Full Siting Application and incorporates the information contained therein into this Answer.

5. Denied. The averments contained in Paragraph 5 (referencing the requests for relief on page 3 of 3 of the attachment to the Protest) of the Protest are requests for relief to which no responsive pleading is required. To the extent a response is deemed necessary, Duquesne Light denies that the Protestants are entitled to the relief requested.

By way of further response, Duquesne Light incorporates Paragraphs 2 through 4, *supra*, as though fully set forth herein.

6. Paragraph 6 of the Protest relates to Protection from Abuse orders, to which no responsive pleading is required.

7. Admitted. By way of further response, Duquesne Light has attempted to be responsive to all contacts and communications from the Protestants and has treated the Protestants in the same respectful and fair manner that it treats all other customers.

8. Paragraph 8 of the Protest pertains to the Protestants' legal representation, to which no responsive pleading is required.

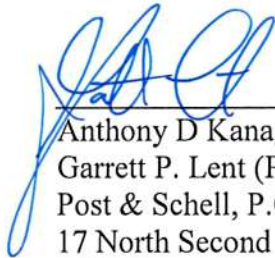
9. Paragraph 9 sets forth the verification and signature, to which no responsive pleading is required.

10. Paragraph 10 sets forth the instructions for filing the Protest, to which no responsive pleading is required.

WHEREFORE, Duquesne Light Company respectfully requests that the Protest of Joseph G. and Suzanne L. Rabosky be denied and with prejudice as against Duquesne Light.

Respectfully submitted,

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Date: July 8, 2019

Attorneys for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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filed Pursuant to 52 Pa. Code Chapter 57, :
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Crescent Project in the City of Pittsburgh, :
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Robinson Township, Moon Township, and :
Crescent Township, Allegheny County, :
Pennsylvania :
:
:
:
Protest of Joseph G. and Suzanne L. Rabosky :

VERIFICATION

I, MEENAH SHYU, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).



Dated: 7/8/2019