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 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	:	A-2019-3008589
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	:	A-2019-3008652

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

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I. INTRODUCTION

This decision approves an application by Duquesne Light Company for the construction of a 138 kV transmission line and approves a settlement between Duquesne Light and the Allegheny County Sanitation Authority. The decision also approves an application for the acquisition of property by eminent domain. Duquesne Light met its burden to demonstrate that the Project meets the statutory and regulatory requirements for approval.

II. HISTORY OF THE PROCEEDINGS

On March 15, 2019, Duquesne Light Company (Duquesne Light) filed with the Pennsylvania Public Utility Commission (Commission) an application for approval to site and construct 138 kV transmission lines associated with the Brunot Island-Crescent Project (BI-Crescent Project or Project) in the City of Pittsburgh, McKees Rocks Borough, Kennedy Township, Robinson Township, Moon Township and Crescent Township, Allegheny County. (Docket No. A-2019-3008589).

Duquesne Light also filed an application for eminent domain to acquire a certain portion of the lands of George N. Schaefer of Moon Township, Allegheny County, in connection with the transmission line project. (Docket No. A-2019-3008652).

A prehearing conference was scheduled by notice dated March 28, 2019. Notice of the applications and prehearing conference was published in the *Pennsylvania Bulletin* on April 6, 2019, which provided a deadline for the filing of petitions to intervene and protests on or before May 29, 2019. 49 Pa.B. 1740. On April 29, 2019, a prehearing conference order was served on all entities who were directly served with the applications in accordance with the Commissions regulations.

The prehearing conference convened on June 6, 2019, as scheduled. At that time no one had filed a protest or petition to intervene. However, several affected landowners

appeared. Following a discussion with the participants, an extension was granted for the filing of protests to the applications and a further prehearing conference was scheduled for July 2, 2019.

Protests were filed by Victoria Adams, John P. and Jennifer Crowe, Richard Gable, Folezia Marinkovic, Zachariah Nave, Joseph G. and Suzanne Rabosky, Aaron and Rebecca Siegel, Cynthia and Patrick Wilson, and Dennis J. and Jeanne Zona.

The July 2, 2019 prehearing conference convened as scheduled. Garret P. Lent and Emily M. Farah, Esquires, appeared on behalf of Duquesne Light. Protestants Rabosky, Nave, Zona, Marinkovic, Adams and Gable also appeared and represented themselves. Following a discussion with the parties, a litigation schedule was established which set deadlines for the filing of expert testimony, scheduled evidentiary hearings for September 10 and 11, 2019, for the purpose of receiving the oral testimony of the Protestants, and further technical evidentiary hearings on October 29 and 30, 2019.

Testimony of the Protestants was offered at an evidentiary hearing held on September 10, 2019. Protestants Adams, Crowe, Gable, Marinkovic, Wilson and Zona testified. The Protestants exhibits were admitted into the record: Adams Exs. 1-16A, 18-20; Crowe Exs. 1-11; Gable Exs. 1-3; Marinkovic Exs. 1-2; Wilson Ex. 1; and Zona Exs. 1-6.

Also at the September 10, 2019 hearing, the Protestants made a motion to convene a public input hearing, which was not opposed by Duquesne Light. The motion was granted.

A public input hearing was held in Moon Township on October 9, 2019. Remarks were offered by State Representative Valerie Gaydos and 22 witnesses testified.[1]

On October 22, 2019, Duquesne Light filed a motion to continue the October 29, 2019 hearing in order to allow Duquesne Light an opportunity to file an amendment to the application in response to the public input testimony. By Interim Order entered

[1] N.T. 196-279.

October 24, 2019, Duquesne Light's motion was granted. That order also converted the first day of the technical evidentiary hearings, October 29, 2019, to a prehearing conference.

The October 29, 2019 prehearing conference convened as scheduled. Counsel for Duquesne Light appeared as well as Protestants Gable, Adams, Nave and Zona. Duquesne Light offered an overview of the amendment planned for the application and the likely time horizon for completion. The Parties also discussed publication and notice of the amendment as well as miscellaneous discovery issues. I entered an Interim Order staying the proceedings on the applications until August 2020 and directed Duquesne Light to publish notice of the amended application.

On August 10, 2020, Duquesne Light filed an amended application, which modified the original proposal to eliminate the construction of one of the two circuits to 345 kV engineering standards and to reduce the height of the poles that will be constructed as part of the amended project. Proof of publication of the amended application in the Pittsburgh *Post-Gazette* was filed with the Secretary's Bureau on September 14, 2020.

A further prehearing conference was scheduled to take place on Friday, September 25, 2020, at 10:00 a.m. The notice was served on August 20, 2020. On August 24, 2020, a prehearing conference order was issued setting forth instructions for participation in the prehearing conference.

On September 18, 2020, the Allegheny County Sanitary Authority (ALCOSAN) filed a petition to intervene.[2]

The September 25, 2020 prehearing conference convened as scheduled. Counsel for Duquesne Light and ALCOSAN appeared and participated. Protestants Adams, Crowe, Gable, Marinkovic, Nave, Rabosky, Wilson, and Zona also appeared. The petition to intervene

[2] ALCOSAN also filed a petition for admission *pro hac vice* of Ade Adeniyi, Esquire. That petition was granted by separate order dated September 28, 2020.

of ALCOSAN was granted. The parties also agreed to a litigation schedule which permitted a further day of hearing on December 21, 2020, for the Protestants to offer their testimony regarding the amended application; permitted ALCOSAN and Duquesne Light to file written testimony; and scheduled final hearings on February 3 and 4, 2021, for the purpose of providing the Protestants an opportunity to offer rebuttal testimony, and to permit any further cross-examination or oral rejoinder testimony by any party. These matters were memorialized in an Interim Order served on September 28, 2020.

The hearings convened on December 21, 2020 and February 3, 2021. Counsel for Duquesne Light and ALCOSAN appeared at the hearing on December 21, 2020, as well as Protestants Adams, Gable, Crowe, Nave, Marinkovic and Zona. Protestants Zona, Gable and Nave testified. No exhibits were offered for admission into the record.

The final day of hearing convened on February 3, 2021. Counsel for Duquesne Light and ALCOSAN appeared, as did Protestants Adams, Gable, Crowe, Nave, and Marinkovic. Duquesne Light witness Meena Shyu and ALCOSAN witness Michael Lichte testified. Also, the written testimony of Duquesne Light along with exhibits sponsored by Duquesne Light's witnesses were admitted into the record without objection. The written testimony of ALCOSAN's witness, Michael Lichte, P.E. was also admitted into the record.[3] The Protestants did not offer further testimony or exhibits.

On February 4, 2021, I entered an Interim Order directing briefs to be filed. The Protestants were excused from strict compliance with the specific briefing directives and were permitted to file a written statement in response to Duquesne Light's main brief and in support of their positions. Duquesne Light filed a well-written main brief as directed on March 18, 2021. The Protestants did not file responsive statements.

[3] On March 2, 2021, ALCOSAN filed a transcript errata sheet to correct, among other things, the spelling of "ALKAZAN" to "ALCOSAN." No objections were filed, and the corrections were deemed granted. 52 Pa.Code § 5.253.

On March 2, 2021, Duquesne Light and ALCOSAN reached a settlement of their dispute and filed a Joint Petition for Settlement and Statements in Support. No comments were filed by the Protestants.

The record closed on April 22, 2021, following the expiration of the reply brief period. The hearings generated a transcript of 413 pages.

III. PUBLIC INPUT HEARING

A public input hearing was held at Robert Morris University in Moon Township, Allegheny County on October 9, 2019. Remarks were offered by State Representative Valerie Gaydos and 22 witnesses testified.[4]

The majority of the citizens who testified at the public input hearing objected to the route selection for the proposed project and expressed health and safety concerns.

Most of the witnesses who objected to the route selection felt that the impact on residents was not adequately considered.[5] While several individuals had existing towers on or near their property, they were concerned that the new towers, which would be much taller than the existing towers, would have a negative impact on their property values.[6] A few witnesses suggested that the transmission line should be placed underground or along the river.[7]

Evan Bookbinder objected to the notice provided by Duquesne Light because property owners along the alternative routes did not receive notice of the project. He noted that one of the alternative routes would impact his property. He also testified that other homes would

[4] N.T. 196-279.

[5] E.g., Bachman, N.T. 217-20.

[6] E.g., Bachman, Brilhart, N.T. 223-26; Egger, N.T. 241; Horvath, N.T. 214-15; Lockridge, N.T. 238-39; Ludman, N.T. 229-31; McBee, N.T. 212-13; Rushman, N.T. 232-33; Sharma, 253-54; Solt, N.T. 226-28; Woolet, N.T. 234-37.

[7] Bookbinder; Bachman, N.T. 217-20; Wojak , N.T. 276-78.

be affected by the identified alternate routes, but those residents were not notified that their property might be impacted.[8]

Many voiced specific objections to the proposed height of the towers and the necessity to engineer the towers to accommodate a 345 kV line.[9] A number of witnesses were also concerned about the size of the easements that Duquesne Light was acquiring in connection with the project as well as Duquesne Light's use of existing easements.[10]

Another area of common concern were the perceived health risks associated with transmission lines. A number of witnesses noted the prevalence of cancer among their neighbors or were cancer survivors themselves.[11] Two other witnesses specifically identified EMFs as a cause for concern.[12] One witness identified the use of herbicides used for vegetation management as a health and safety risk.[13]

Another safety concern raised by some witnesses was the integrity of the ground upon which the towers would be built. They noted the prevalence of landslides in the area. They worried that the steep hillsides along the selected route would pose a danger to residents.[14]

IV. FINDINGS OF FACT

1. The Applicant, Duquesne Light Company, furnishes electric service to approximately 596,000 customers throughout its certificated service territory, which includes all

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[8] Bookbinder, N.T. 270-75.

[9] E.g., Brilhart, N.T. 223-26; Egger, N.T. 239; Lockridge, N.T. 238-39; Rushman, N.T. 232-33; Hartman, N.T. 251.

[10] Brilhart, N.T. 223-26; Hartman, N.T. 245-51; Jackson, N.T. 242-44; Lockridge, N.T. 238-39; Solt, N.T. 226-28; Woolet, N.T. 234-37.

[11] Rushman, N.T. 232-33; Woolet, N.T. 234-37; Sharma, N.T. 253-57; Antram, N.T. 256-58.

[12] Antram; Bookbinder, N.T. 270-75.

[13] Nave, N.T. 259-63.

[14] E.g., Hartman, N.T. 245-51; Longwell, N.T. 252-53.

or portions of Allegheny and Beaver Counties and encompasses approximately 800 square miles in western Pennsylvania. Duquesne Light is a "public utility" and an "electric distribution company" as defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 102, 2803.

2. The proposed Amended Project involves the siting and rebuilding of the doubt-circuit BI-Crescent 138 kV Transmission Line that will extend approximately 14.5 miles between the Brunot Island Substation in the City of Pittsburgh and the Crescent Substation in Crescent Township. Amended Application,[15] Paragraph 5.

3. Approximately 2.0 miles of the Amended Project will be located in the City of Pittsburgh, approximately 2.6 miles will be located within Kennedy Township; approximately 3.1 miles will be located within Robinson Township, approximately 5.0 miles will be located within Moon Township, and approximately 1.8 miles will be located within Crescent Township. Amended Application, Paragraph 18.

4. Duquesne Light implements an asset management process to ensure prudent repair and replacement of assets to maintain the reliability of Duquesne Light's system by proactively preventing equipment failures. Amended Application, Attachment 2 at 2.

5. The BI-Crescent Project, as amended, does not involve facilities designed to operate at 345 kV. N.T. 385.

6. The BI-Crescent Project was developed consistent with PJM[16] planning criteria and was reviewed by PJM stakeholders and included in PJM's RTEP as projects s0320 and s0320.1. Amended Application, Attachment 2.

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[15] The Amended Application, filed on August 10, 2020, was admitted into the record as Duquesne Light Exh. 3.

[16] PJM is a Regional Transmission Organization approved by the Federal Energy Regulatory Commission to ensure the reliable and efficient operation of the electric transmission system under its functional control, and coordinate the transmission of electricity in all or parts of thirteen states, including Pennsylvania, and the District of Columbia. Duquesne Light St. 1A at 3-4.

7. The BI-Crescent Project addresses and replaces aged transmission infrastructure that is reaching the end of its useful life and cannot be permanently repaired. Amended Application, Amended Application at 8.

8. The structures associated with the Project are some of the oldest in-service steel lattice towers in Duquesne Light's system and were originally constructed in 1914. Duquesne Light St. 1A at 5; Amended Application, Attachment 2 at 5-6.

9. The structural evaluations and inspections of the subject facilities were completed by an independent engineering firm with experience in transmission tower design. Duquesne Light St. 1A at 5.

10. The transmission corridor associated with the Project extends from the Brunot Island Substation to the Crescent Substation and provides a transmission source to three (3) distribution substations including Sewickley, Montour, and Neville Substations. Duquesne Light St. 1A at 5.

11. As between the Sewickley, Montour, and Neville Substations distribution substations, 24,000, 35,000 and 5,500 customers are respectively provided electrical service. *See* Duquesne Light St. 1A at 5-6.

12. The transmission corridor associated with the Project allows for a significant flow of load current from the western portion of the system to the City of Pittsburgh as well as its eastern suburbs. Duquesne Light St. 1A at 6.

13. The BI-Crescent Project will resolve the identified asset health issues and ensure that reliable electric service is continued to be provided to approximately 75,000 Duquesne Light customers. Amended Application, Attachment 2 at 6-7.

14. The old existing steel lattice towers will be replaced with new monopoles with concrete foundations. Amended Application, Attachment 2 at 7.

15. The double circuit 138 kV transmission lines associated with the Amended BI-Crescent Project have been designed to meet or surpass all requirements specified by the National Electric Safety Cody ("NESC"). Duquesne Light St. 3A at 6-9; Amended Application, Attachment 11.

16. Duquesne Light designs all of its transmission lines for "Grade B construction," which has more stringent design standards than the NESC, including the BI-Crescent Project. Amended Application, Attachment 11 at 1-2.

17. Duquesne Light also surpasses NESC standards for clearance requirements and structure overload or multiplying factors. For the BI-Crescent Project, Duquesne Light's design loading conditions for structures, wires, and clearances exceed NESC standards. Amended Application, Attachment 11 at 2, Duquesne Light St. 3A at 9.

18. The facilities will be designed to withstand potential landslides and will support reliable electric service of the Bulk Electric System. Amended Application, Attachment 2 at 7.

19. Certain of the facilities that are the subject of the Project have been impacted by landslides as recently as the Spring of 2018. *See* Amended Application, Amended Application at 3, n.1.

20. The proposed facilities would be designed to withstand surface movement. Duquesne Light St. 3A-R at 18-19.

21. Duquesne Light has also developed work procedures and tooling to allow work to be performed in a safe manner on energized facilities. Personnel are also furnished with appropriate protective equipment for the performance of construction or maintenance activities in a safe manner. Duquesne Light St. No. 3A at 9.

22. Duquesne Light uses engineering data with expert geologists to make conclusions on the soil characteristics of the proposed monopole - this includes the characteristics of the rock. Duquesne Light St. 3A-R at 17. N.T. 388-390.

23. By collecting soil borings, which is an industry accepted practice, there is sufficient information to make scientific assessments of the soil in order to design a suitable foundation. Duquesne Light St. 3A-R at 17.

24. Based on the data collected, the foundation of the structure proposed for Protestant Gable's property would be socketed to intact rock that has not been exposed to weather conditions, located deep in the earth. Duquesne Light St. 3A-R at 17.

25. Duquesne Light regularly inspects its facilities, and based on the results of these inspections, the proposed structure that will be located on Protestant Gable's property will have a foundation that will withstand surface movement. Duquesne Light St. 3A-R at 18-19.

26. Duquesne Light Exhibits MS-3 and MS-4, which provide the results of soil boring data, provide detailed information that shows the proposed foundation will be embedded deep into the soil and affixed to rock, providing a stable design. Duquesne Light St. 3A-R at 19; Duquesne Light Exhs. MS-3 and MS-4.

27. The average height of all structures in the Project will be 155 feet. N.T. 386; *see also* Amended Application, Amended Application at 10.

28. Although the new monopoles will be taller than the existing structures, they will have a smaller base footprint and will not require maintenance as frequently. Duquesne Light St. 3A-R at 21.

29. The existing structure located on Protestant Zona's property was built according to the NESC in effect at the time of construction. Duquesne Light St. 3A-R at 20.

30. Current NESC standards have changed and increased engineering requirements over the years. Duquesne Light St. 3A-R at 20.

31. Due to those changes, all heights and clearances must be increased for Duquesne Light to meet the requirements of newest edition of the NESC. Duquesne Light St. 3A-R at 20.

32. Replacing the existing structure on Protestant Zona's property with a monopole of the same height would create violations in the newest edition of NESC. Duquesne Light St. 3A-R at 20.

33. The new structure uses stacked circuits "to limit the blowout of the line as defined by the NESC as 6 psf." Duquesne Light St. 3A-R at 20.

34. A horizontal configuration would increase blowout. Duquesne Light St. 3A-R at 20-21.

35. To reduce EMFs,[17] Duquesne Light has adopted a Magnetic Field Management Program, as a part of its Design and Safety Criteria. Duquesne Light St. 3A at 9-10, Amended Application, Attachment 11 at 2-4.

36. Pursuant to its Magnetic Field Management Program, Duquesne Light designed the BI-Crescent Project to mitigate EMFs by: (1) wherever possible, locating the proposed transmission lines through unoccupied parcels and, where the line is located in occupied areas, running it along the edge of the parcel; (2) establishing a wide buffer area around the lines by utilizing a minimum conductor clearance of 23 feet; and (3) using a vertically stacked configuration, as shown in Attachment 4 to the Amended Application, which does not change the EMF emitted by the line at the right-of-way compared to the existing circuit position at the same right-of-way. Amended Application, Attachment 11 at 2-3.

[17] Electromagnetic fields.

37. Duquesne Light took additional steps with respect to EMF associated with the BI-Crescent Project. Duquesne Light St. 3A at 10-11.

38. Duquesne Light first identified the point(s) in a new transmission line with highest potential for EMF exposure. Duquesne Light St. 3A at 10.

39. Then, Duquesne Light conducted an EMF study on select areas in the Project area to confirm that the lines' EMF levels are under the reference levels of the applicable standards and guidelines of its Magnetic Field Management Program. Duquesne Light St. 3A at 10-11.

40. This EMF study confirmed that the BI-Crescent Project has EMF levels that are under the acceptable levels of the applicable standards and guidelines of its Magnetic Field Management Program. Duquesne Light St. 3A at 11.

41. Duquesne Light retained GAI Consultants, Inc. ("GAI") to prepare the Siting Study. Duquesne Light St. 2A at 3.

42. The methodology of the Siting Study was as follows:

> The initial step in the siting process involved the identification of a study area boundary. This was established to include the Project end points (the existing Brunot Island Substation and the existing Crescent Substation), the mid route tie in substations (the existing Montour, Neville and Sewickley Substations), existing Duquesne Light transmission line corridors to allow for opportunities to parallel existing ROWs, and the intervening areas. The northern limits of this study area were defined to avoid the Ohio River. The southern limits of the study area were defined to avoid close proximity to the Pittsburgh International Airport and to avoid Interstate 376. The study area incorporates an approximately 34.1-square-mile area in Allegheny County, PA.

Duquesne Light St. 2A at 5.

43. GAI used a variety of publicly available information and conducted field reconnaissance to update the data available for any resources in the vicinity of any preliminary routes considered, and also conducted field reconnaissance. Duquesne Light St. 2A at 5-6.

44. The Siting Study explained each step taken by GAI in defining the study area, identifying constraints and opportunities in the study area, identifying possible alignments to develop preliminary routes, modifying the preliminary routes based on actual field data to select alternative routes, and comparing the alternative routes based 30 environmental, human/built, and engineering resource criteria that were scored and weighted in accordance with weights established by the Siting Criteria Council (SCC) for the GPU-DQE 500 kV Transmission Line Project. *See* Duquesne Light St. No. 2A; Amended Application, Attachment 3.

45. Duquesne Light's analysis of potential routes included three public open houses prior to the filing of the original application and an additional public input hearing on October 9, 2019, substantial consultation with governmental and non-governmental agencies, and consultation with regulatory agencies. Duquesne Light St. 2A at 8-9.

46. The Siting Study also involved review and consideration of local zoning ordinances and comprehensive land use plans to evaluate the impact of the Proposed Route on municipalities. Duquesne Light St. 2A at 9-10; Amended Application, Attachment 3, Section 6.2.

47. Duquesne Light identified three suitable Alternative Routes for the BI-Crescent Project—*i.e.*, the Proposed Route and Alternatives 1 and 2—using the analysis described above. Duquesne Light St. 2A at 10-14; Amended Application, Attachment 3, Section 3.4.

48. Duquesne Light evaluated the environmental and social impacts of the available alternative routes for the BI-Crescent Project. Duquesne Light St. 2A at 15-16.

49. Each of the feasible routes will have some impact to the natural and/or human environment. Duquesne Light St. 2A at 15-16.

50. Duquesne Light selected preferred routes for the BI-Crescent Project that will, on balance, minimize these impacts when compared to all other feasible alternatives. *See also* Amended Application, Attachment 3; Duquesne Light St. 2A at 15-16.

51. Duquesne Light evaluated and compared the Proposed Route and Alternatives 1 and 2 against each other using 30 environmental, human/built, and engineering resource criteria that were scored and weighted in accordance with weights established by the Siting Criteria Council (SCC) for the GPU-DQE 500 kV Transmission Line Project. *See* Duquesne Light St. 2A at 7-8; Amended Application, Attachment 3, Section 4.0.

52. SCC weights existed for 22 of the 30 resource criteria. Duquesne Light St. 2A at 7-8; Amended Application, Attachment 3, Section 4.0.

53. The Siting Team assigned weights for the remaining eight resource criteria (Land Trust Protected Area, Cemeteries, Exceptional Value Streams, Landslide Prone Area, Commercial/Industrial Areas, Forest Land Cleared, Non-existing right-of-way ("ROW"), and Length of ROW). *See* Duquesne Light St. 2A at 7-8; Amended Application, Attachment 3, Section 4.0.

54. The scaled scores for each criterion were then multiplied by its respective weight to obtain the impact scores shown in Section 4 and Appendix A of the Siting Study. These impact scores were summed to obtain an overall impact score for each alternative route. These scores are presented in Section 4.0 of the Siting Study. *See* Duquesne Light St. 2A at 7-8; Amended Application, Attachment 3, Section 4.0.

55. The routes were then qualitatively and quantitatively evaluated and compared to identify the Proposed Route. Duquesne Light St. 2A at 14-15; Amended Application, Attachment 3, Sections 4.0 and 5.0.

56. A review of the quantitative analysis performed for the BI-Crescent Project indicated that the Proposed Route would produce significantly fewer overall impacts when compared to Alternatives 1 and 2. *See* Duquesne Light St. 2A at 15-16; Amended Application, Attachment 3, Section 5.0.

57. The Proposed Route has the lowest/best final impact score of all the alternative routes and is the best overall alternative from an environmental, human/built, cultural, and engineering perspective, for several reasons. Duquesne Light St. 2A at 15-16; Amended Application, Attachment 3, Section 5.0.

58. The Proposed Route is the shortest route and would require the fewest new ROW acquisitions. Duquesne Light St. 2A at 15-16; Amended Application, Attachment 3, Section 5.0.

59. Although the Proposed Route crosses the most human/built resources, as it has the most road crossings, crosses the most residential structures, and crosses the most institutional complexes, it will cross these human/built resources within existing ROW and no new long-term impacts are anticipated. Duquesne Light St. 2A at 15-16; Amended Application, Attachment 3, Section 5.0.

60. The Proposed Route is also the best alternative from an engineering perspective, because it crosses the least steep terrain and landslide-prone areas and is the farthest from the Pittsburgh International Airport. Duquesne Light St. 2A at 15-16; Amended Application, Attachment 3, Section 5.0.

61. The Proposed Route further has the least impact to most of the environmental resources including forest land cleared, core RTE habitat, land trust protected areas, and perennial streams crossed, but has some of the higher impact to other criteria such as wetlands crossed and recreational areas. Duquesne Light St. 2A at 15-16; Amended Application, Attachment 3, Section 5.0.

62. The two Alternative Routes would require acquisition of new ROW, which means that the environmental, human/built, cultural, and engineering impact scores attributable to impacts for each of Alternative 1 and Alternative 2 are new impacts on those resources. Duquesne Light St. 2A at 15-16; Amended Application, Attachment 3, Section 5.0.

63. The Siting Study accounts for forest land cleared and includes this information in the overall score. Duquesne Light St. 2-R at 6.

64. Despite the reduction in woodland areas, the overall score for the Proposed Route remains the lowest after accounting for these effects. Duquesne Light St. 2-R at 6.

65. The Siting Study already evaluates impacts to "Residential Areas," which includes residential homes. Duquesne Light St. 2-R at 6.

66. The SCC weights were developed during the evaluation of the GPU-DQE 500 kV Transmission Line siting that included over 500 miles of line and a study area of 20,000 square miles. Duquesne Light St. 2-R at 12.

67. The SCC was formed and asked to aid in the selection of the natural and manmade resource criteria that would be used to evaluate impacts along alternative routes. *See* Duquesne Light St. 2-R at 12-13.

68. The criteria weights were developed through an iterative and interactive process that involved a diverse group of stakeholders. *See* Duquesne Light St. 2-R at 12-13.

69. The weighting session involved four interactive rounds, each of which involved (a) each member weighing each criterion, (b) each member reviewing the weight they attributed to criteria against the mean for all other members, and (c) an opportunity to express their view on scores. Duquesne Light St. 2-R at 13.

70. After the fourth round, the SCC voted to adopt the mean weights for each criterion; the established weights are now considered an industry standard. Duquesne Light St. 2-R at 13.

71. The SCC weights were used for 22 of the 30 criteria, to which the weights applied, and GAI reviewed an additional eight resource criteria to reflect items of local significant and regulatory concerns. Duquesne Light St. 2-R at 13-14.

72. The SCC weights are based upon the sensitivity and frequency of the resources potentially affected by the construction and operation of the BI-Crescent Project. Duquesne Light St. 2-R at 14.

73. The resources and their sensitivity are not related to the voltage of the Project. Duquesne Light St. 2-R at 14.

74. The criteria used by GAI was developed by experienced industry professionals, based upon and consistent with their experience and in response to the regulatory and ecological regimes they work within. Duquesne Light St. 2-R at 17.

75. The procedures used to evaluate the resource criteria are consistent with the standard of practice regarding the siting of high voltage transmission lines before the Commission for the past 25 years. Duquesne Light St. 2-R at 17-18.

76. The weighting criteria and the Siting Study are consistent with widespread and accepted industry practices, and enabled Duquesne Light's siting team to evaluate the Proposed Route and the Alternative Routes in an objective manner. Duquesne Light St. 2-R at 18.

77. The parameters used to quantify the identified resources were identified and calculated using GIS software and publicly available data. Duquesne Light St. 2-R at 19.

78. The replacement of an existing structure with a new structure does not pose a new visual impact just a different visual impact, as the existing structure already creates a visual impact. Duquesne Light St. 2-R at 20.

79. Visual impact is a secondary impact that "was accounted for in many of the criteria used in the siting study, including recreational areas, cemeteries and historic sites, scenic areas, residential areas, and institutional areas." Duquesne Light St. 2-R at 20-21.

80. Duquesne Light worked with landowners to route the project transmission lines, structures, and access roads to minimize impacts to future housing developments and avoid sensitive natural areas. Duquesne Light St. 2A at 16-17; *see also* Amended Application, Attachment 3, Section 5.1.

81. Where potential impacts are unavoidable, Duquesne Light will obtain any necessary permits and comply with the best management practices laid out during construction. Duquesne Light St. 2A at 16-17; *see also* Amended Application, Attachment 3, Section 5.1.

82. Duquesne Light has committed to obtain all required permits prior to construction of the BI-Crescent Project and will comply with any and all conditions placed on such permits by those agencies that have appropriate jurisdiction over environmental matters. Amended Application, Attachment 3, Section 6.0; Duquesne Light St. 2A at 16-17.

83. Best management practices may include fencing sensitive resources to protect them during construction, use of timber matting equipment for crossings of streams and wetlands, and utilizing erosion and sedimentation controls. Duquesne Light St. 2A at 16-17; *see also* Amended Application, Attachment 3, Section 5.1.

84. Duquesne Light provided a detailed description of its efforts to minimize impacts to land use and land cover, hydrology, scenic and recreational area, natural areas and rare/threated/endangered species, terrain and landscape, archaeological and

architectural/historical resources, and airports in Section 5.1 of the Siting Study. Amended Application, Attachment 3, Section 5.1.

85. An alternative route "along the river" with an underground transmission line would create considerable conflicts with existing railroad and transportation infrastructure and numerous industrial developments are located along the river in McKees Rocks. Duquesne Light St. 2-R at 7.

86. In addition, the installation of an underground transmission line can cost between five and ten times as much per mile as installing an overhead line, with an associated shorter life expectancy and higher maintenance and repair costs. Duquesne Light St. 2-R at 7.

V. DISCUSSION

A. Legal Standards

1. Burden of Proof

The proponent of a rule or order in any Commission proceeding has the burden of proof.[18] As the applicant, Duquesne Light has the burden of proving that the proposed project meets all the relevant statutory and regulatory requirements by a preponderance of the evidence.[19] Additionally, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[20] More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.[21]

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[18] 66 Pa.C.S. § 332.

[19] *Energy Conservation Council of Pa. v. Pub. Util. Comm'n*, 25 A.3d 440 (Pa. Cmwlth. 2011)(*Energy Conservation Council II*); *Energy Conservation Council of Pa. v. Pub. Util. Comm'n*, 995 A.2d 465 (Pa. Cmwlth. 2010)(*Energy Conservation Council I)*.

[20] *Id.*

[21] *Norfolk & W. Ry. v. Pa. Publ. Util. Comm'n,* 413 A.2d 1037 (Pa. 1980).

If the applicant sets forth a *prima facie* case, then the burden shifts to the opponent.[22] Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case on a point has been established, if contrary evidence is not presented, there is no requirement that the applicant produce additional evidence in order to sustain its burden of proof.[23]

As discussed in detail below, I find that Duquesne Light has met its burden of proof. The Protestants did not offer sufficient evidence to rebut the evidence of Duquesne Light.

2. Legal Standards for the Approval of Transmission Lines

The threshold issue in the siting of a transmission line which a utility must establish is whether the upgraded or additional transmission line is "needed" in order to furnish the adequate facilities mandated by Section 1501of the Public Utility Code: [24]

> Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. …[25]

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[22] *McDonald v. Pa. R.R. Co.*, 36 A.2d 492 (Pa. 1940).

[23] *Dist. of Columbia's Appeal*, 343 Pa. 65, 21 A.2d 883 (Pa. 1941). *See, e.g., Application of Pa. Power & Light Co.*, Docket Nos. A-110500F0196, et al.; 1994 Pub. Utility Comm'n LEXIS 65 (Oct. 21, 1994) (holding that the company met its burden to prove that there was an immediate need for the reinforcement of the power supply where the need for the project was uncontested and no party presented any evidence challenging the need for the project).

[24] *Application of PPL Elec. Utils.Corp. Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting & Constr. of the Pa. Portion of The Proposed Susquehanna-Roseland 500 kV Transmission Line in Portions of Lackawanna, Luzerne, Monroe, Pike & Wayne Cntys., Pa.*, A-2009-2082652 (Order entered February 12, 2010) (hereinafter referred to as "Susquehanna-Roseland 500 kV Transmission Line"), *affirmed sub nom., Environmental Conservation Council v. Pa. Pub. Util. Comm'n*, 25 A.3d 440 (Pa. Cmwlth. 2011).

[25] 66 Pa.C.S. § 1501.

If the applicant establishes that the proposed project is necessary and proper within the meaning of Section 1501, then consideration turns to whether the route selected is appropriate in terms of location, safety, health and environmental impacts, and costs.[26] The Commission's evaluation of the environmental impact of a proposed line must meet the requirements of Article I, Section 27 of the Pennsylvania Constitution. [27] This constitutional mandate has been codified in Commission regulations[28] which provide that the determination of the appropriateness of a project must be made by examining the application in the context of Sections 57.75 and 57.76 of the Commission's regulations, which enumerate specific criteria which must be considered.[29]

Section 57.76 of the Commission's regulations[30] provide, at a minimum, the Commission will not grant an application for a proposed high voltage line unless it finds:

> (1) That there is a need for it.
>
> (2) That it will not create an unreasonable risk of danger to the health and safety of the public.
>
> (3) That it is in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth.
>
> (4) That it will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives.

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[26] *Susquehanna-Roseland 500 kV Transmission Line,* at 7.

[27] Article I, Section 27 of the Pennsylvania Constitution states:

> "The people have a right to clean air, pure water and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people."

[28] *Application of Duquesne Light for the Siting &Constr. of a 345 kV Transmission Line in the City of Pittsburgh,* Docket No. A-2010-2159814 (Order entered February 10, 2011), at 5.

[29] 52 Pa.Code §§ 57.75, 57.76.

[30] 52 Pa.Code § 57.76(a)(1)-(4).

The four prongs in Section 57.76 provide the structure for the Commission's evaluation. In determining whether the applicant has satisfied the four prongs, the Commission will consider evidence on the matters set forth in Section 57.75[31] of the Commission's regulations, as follows:

> (e) At hearings held under this section, the Commission will accept evidence upon, and in its determination of the application it will consider, inter alia, the following matters:
>
> (1) The present and future necessity of the proposed HV line in furnishing service to the public.
>
> (2) The safety of the proposed HV line.
>
> (3) The impact and the efforts which have been and will be made to minimize the impact, if any, of the proposed HV line upon the following:
>
> (i) Land use.
> (ii) Soil and sedimentation.
> (iii) Plant and wildlife habitats.h
> (iv) Terrain.
> (v) Hydrology.
> (vi) Landscape.
> (vii) Archeologic areas.
> (viii) Geologic areas.
> (ix) Historic areas.
> (x) Scenic areas.
> (xi) Wilderness areas.
> (xii) Scenic rivers.
>
> (4) The availability of reasonable alternative routes.

3. Legal Standards for the Approval of Eminent Domain

Section 1511 of the Business Corporation Law of 1988,[32] statutorily grants a public utility, such as Duquesne Light, the power or authority to take and condemn property for the purpose of providing electricity to the public. However, before a public utility may seek to

[31] 52 Pa.Code § 57.75(e).

[32] *See* 15 Pa.C.S. § 1511(a)(3).

exercise the authority to condemn property for an aerial transmission line, it must obtain approval from the Commission pursuant to Section 1511(c)[33], which provides, in pertinent part, as follows:

> (c) The powers conferred by subsection (a) [for the running of aerial electric facilities] may be exercised to condemn property … only after the Pennsylvania Utility Public Commission, upon application of the public utility corporation, has found and determined … that the service to be furnished by the corporation through the exercise of those powers is necessary or proper for the service, accommodation, convenience or safety of the public.

Thus, on an application for condemnation, the Commission must determine whether the service—the transmission or distribution of electricity to or for the public that will be provided to the public if the subject property is condemned—is necessary or proper for the service, accommodation, convenience, or safety of the public. Stated otherwise, the Commission does not determine whether to grant a condemnation application on the basis of the legal authority, scope, validity, damages, or the willingness of a condemnee to negotiate.

Pennsylvania appellate courts have interpreted Section 1511 as requiring a condemning utility to show that the proposed transmission line is necessary and that it has not acted wantonly, capriciously, or arbitrarily in selecting the proposed right-of-way.[34] The selection of the right-of-way is a matter for the public utility in the first instance and, while the route selection must be reasonable, it need not be the "best alternative" in terms of reducing or eliminating inconvenience to particular landowners.[35]

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[33] 15 Pa.C.S. § 1511(c).

[34] *Dep't of Env't Res. v. Pa. Pub. Util. Comm'n*, 335 A.2d 860 (Pa. Cmwlth. 1975), *aff'd.*, 473 Pa. 378, 374 A.2d 693 (1977); *Dickson v. Pub. Serv. Comm'n*, 89 Pa. Super. 126 (1926).

[35] *Stone v. Pa. Pub. Util. Comm'n*, 162 A.2d 18 (Pa. Super. 1960).

B. Description of the BI-Crescent Project

Duquesne Light identified a need to address aging infrastructure along the Brunot Island-Crescent 138 kV Transmission Line. To address the aging infrastructure, Duquesne Light proposes to rebuild the Brunot Island-Crescent 138 kV Transmission Line that will extend approximately 14.5 miles between the Brunot Island Substation in the City of Pittsburgh and the Crescent Substation in Crescent Township. The Brunot Island-Crescent 138 kV Transmission Line will be rebuilt as a 138 kV overhead transmission line along existing right-of-way (ROW).

The Proposed Route for the project was described by Duquesne Light witness, Aimee Kay:[36]

> The Proposed Route exits the Brunot Island Substation to the west crossing the Ohio River then travels west roughly paralleling Chartiers Creek for approximately two miles in an undeveloped area squeezed between an industrial area to the north of Chartiers Creek and residential areas to the south of Chartiers Creek. Once crossing Chartiers Creek for the final time, the Proposed Route proceeds west-northwest following an existing ROW through a forested area for approximately 1 mile. The Proposed Route then turns north-northwest and precedes for approximately 0.5 miles. Where it crosses a subdivision located between McKees Rocks Road and Clever Road and then passes into a forested area that parallels Fairhaven Park. Once past Fairhaven Park the Proposed Route turns northwest and continues for approximately one mile, where it crosses residential areas intermingled with forested areas. The Proposed Route then crosses Interstate 79 and continues for approximately a mile in a northwest direction crossing residential areas intermingled with forested areas. The Proposed Route then turns north to enter and exit the Montour Substation, which involves approximately 0.70 miles of combined ROW. The Proposed Route then continues in a generally northwest direction for approximately eight miles crossing residential areas intermingled with forested areas. In this eight-mile stretch, the Proposed Route crosses numerous residential streets, including Thorn Run Road, University Boulevard, Flaugherty Run Road,

[36] Duquesne Light St. 2-A p. 11. Duquesne Light witness Ms. Aimee Kay is employed by GAI Consultants, Inc. as an Environmental Manager in the Power Delivery-Environmental Services Market Sector. She possesses a Master of Science in Urban and Regional Planning. Duquesne Light St. 2-R at 11. She has been employed by GAI for over nine and a half years, and, furthermore, has over 34 years of experience in the fields noted above. Duquesne Light St. 2-A p. 2.

> Spring Run Road, and Bocktown Road, before entering the Crescent Substation.

C. Need

The Public Utility Code does not define need; however, Pennsylvania courts have recognized that there is a need for reliable regional electric service and transmission systems.[37] Moreover, the General Assembly has recognized the importance of ensuring the reliability of electric transmission systems, and the provision of sufficient electrical power at affordable rates. Section 2802(12) of the Code[38] states that "[r]eliable electric service is of the utmost importance to the health, safety and welfare of the citizens of the Commonwealth. Electric industry restructuring should ensure the reliability of the interconnected electric system by maintaining the efficiency of the transmission . . . system." Section 2802(20) of the Code[39] provides, *inter alia*, that ensuring the reliability of electric service depends on conscientious maintenance of transmission systems, and that electric system operators shall establish inspection, maintenance, repair, and replacement standards. Finally, Section 2803 of the Code[40]defines "reliability" as:

> Includes adequacy and security. As used in this definition, "adequacy" means the provision of sufficient generation, transmission and distribution capacity so as to supply the aggregate electric power and energy requirements of consumers, taking into account scheduled and unscheduled outages of system facilities; and "security" means designing, maintaining and operating a system so that it can handle emergencies safely while continuing to operate.

The Commonwealth Court has explained, however, that nowhere in any of the foregoing statutory or regulatory provisions is there a requirement that a public utility demonstrate a "need" for the installation of the transmission line from an "engineering"

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[37] *Stone v. Pa. Pub. Util. Comm'n*, 162 A.2d 18, 19-221 (Pa. Super. 1960); *Dunk v. Pa. Pub. Util. Comm'n*, 232 A.2d 231, 234-35 (Pa. Super. 1967).

[38] 66 Pa.C.S. § 2802(12).

[39] 66 Pa.C.S. § 2802(20).

[40] 66 Pa.C.S. § 2803.

perspective.[41] Indeed, an electric utility can demonstrate that the transmission line project is needed where the project resolves violations of the utility's internally developed planning and reliability criteria.[42]

In the Amended Application and testimony, Duquesne Light explained that the amended project is needed to replace aged transmission infrastructure that is reaching the end of its useful life and cannot be permanently repaired. Specifically, the structures associated with the Project are some of the oldest in-service steel lattice towers in Duquesne Light's system and were originally constructed in 1914. Further, Duquesne Light offered substantial credible evidence which supports the development of the project as consistent with reliability planning. The system is also planned to withstand specific unscheduled contingencies without exceeding the equipment capability, causing system instability or cascade tripping, exceeding voltage tolerances, or causing large-scale, long term or frequent interruptions to customers. The system was reviewed by PJM stakeholders.

Although the Protestants and most of the witness testimony provided at the public input hearing disputed the need for the proposal to design one circuit to 345 kV standards reflected in the initial Application, none of the Protestants have disputed the need to replace the current line and the proposed design and operation at 138 kV.

Duquesne Light sustained its burden of proving that the Project meets the need requirement of Section 57.76(a)(1) of the Public Utility Code.[43] The Project is necessary to meet Duquesne Light's reliability standards. Further the facilities associated with the transmission

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[41] *Pa. Power & Light Co. v. Pa. Pub. Utility Comm'n*, 696 A.2d 248, 250 (Pa. Cmwlth. 1997).

[42] *See Hess v. Pa. Pub. Util. Comm'n*, 107 A.3d 246, 262-263 (Pa. Cmwlth. 2014), *appeal den.*, 632 Pa. 678, 117 A.3d 1282 (Pa. 2015); *Application of PPL Elec. Utils. Corp. filed Pursuant to 52 Pa. Code Chapter 47, Subchapter G, for Approval of the Siting & Constr. of the N. Lancaster Honey Brook # 1 & # 2 138/69 kV Transmission Lines in Lancaster Cnty., Pa.*, Docket Nos. A-2014-2430565 et al., 2015 Pub. Utility Comm'n LEXIS 77, at *49 (Order dated Feb. 27, 2015) (PPL North Lancaster-Honey Brook) (holding that a project which alleviates violations of an electric utility's own planning criteria provides sufficient evidence to support a finding of need).

[43] 52 Pa.Code § 57.76(a)(1).

line must be replaced because they have reached the end of their useful life and can no longer be efficiently repaired.

D. Risk of Danger to Health and Safety of the Public

Duquesne Light's Amended Application and supporting expert witness testimony describe the design features of the proposed project. The double circuit 138 kV transmission lines associated with the Amended BI-Crescent Project have been designed to meet or surpass all requirements specified by the NESC.[44] In addition to the safety features incorporated by designing the line in accordance with the NESC, Duquesne Light designs all of its transmission lines for "Grade B construction," which has more stringent design standards, including the BI-Crescent Project. Duquesne Light also surpasses NESC standards for clearance requirements and structure overload or multiplying factors. For the BI-Crescent Project, Duquesne Light's design loading conditions for structures, wires, and clearances exceed NESC standards.

Furthermore, Duquesne Light described work procedures and tooling which have been developed to allow work to be performed in a safe manner on energized facilities. Personnel are also furnished with appropriate protective equipment for the performance of construction or maintenance activities in a safe manner.

The Commission has held in numerous cases that transmission lines that meet or exceed the NESC requirements do not create an unreasonable risk of danger to the health and safety of the public.[45] Although some of the Protestants raised concerns or asked questions regarding the height of the poles and spacing of the circuits, none offered evidence which

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[44] Duquesne Light St. 3A at 6-9; Duquesne Light Exh. 3, Attachment 11.

[45] *See, e.g. Application of PPL Elec. Utils. Corporation Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting & Constr. of the PA. Portion of The Proposed Susquehanna-Roseland 500 kV Transmission Line*, Docket Nos. A-2009-2082652, et al., 2010 Pub. Utility Comm'n LEXIS 434 at *166 (Feb. 12, 2010); *Investigation on Comm'n Motion of the Safety of the Cabett-Wylei Ridge 500 kV Transmission Line*, I.D. 236 (Sept. 18, 1981); *Application of PPL for Approval to Locate & Constr. a 138 kV Transmission Line Between W. Allentown & Salisbury Substations*, Docket No. A-00104160 (July 20, 1984); *Application of PP&L for Authorization to Locate & Constr. its Hamlin 138 kV Elec. Transmission Line*, Docket No. A-00101826 (Apr. 3, 1981); *Larken v. Phila. Elec. Co.*, 39 Pub. Util. Comm'n 777 (1961).

rebutted Duquesne Light's testimony that the facilities associated with the project were engineered to meet or exceed current NESC standards for 138 kV lines, or otherwise posed a safety concern.

Protestant Gable noted that areas on his property were susceptible to landslides and questioned the integrity of the ground where Duquesne Light proposed to set a pole. He did not offer expert engineer testimony in support of his claim.

Duquesne Light's witness Meenah Shyu, the Manager of the Civil and Transmission Line Engineering Group at Duquesne Light, noted some of the facilities related to the Project have been impacted by landslides as recently as the Spring of 2018.[46] She also responded to claims regarding landslides in the area of the proposed facilities in or around January 2020 and explained that the proposed facilities would be designed to withstand surface movement.[47] She further explained that Duquesne Light uses engineering data provided by expert geologists to make conclusions on the soil characteristics of the proposed monopole - this includes the characteristics of the rock.[48] By collecting soil borings, which is an industry accepted practice, there is sufficient information to make scientific assessments of the soil in order to design a suitable foundation.[49] Although Protestant Gable asserted his opinion that the foundation depths could cause a landslide, Ms. Shyu explained that based on the data collected the foundation of the structure would be socketed to intact rock that has not been exposed to weather conditions, located deep in the earth.[50] Moreover, Ms. Shyu explained that Duquesne Light regularly inspects its facilities, and based on the results of these inspections, the proposed structure that will be located on Protestant Gable's property will have a foundation that will withstand surface movement that already accounts for his concerns regarding the soil characteristics.

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[46] *See* Duquesne Light Exh. 3, Amended Application at 3, n.1.

[47] Duquesne Light St. 3A-R at 18-19.

[48] Duquesne Light St. 3A-R at 17.

[49] Duquesne Light St. 3A-R at 17.

[50] Duquesne Light St. 3A-R at 17; see also N.T. 380-87.

Ms. Shyu's testimony and supporting exhibits demonstrates that the poles for the proposed project will be adequately engineered to avoid damage from landslides.

Protestants Gable and Rabosky also raised concerns regarding EMF mitigation. Duquesne Light presented evidence which demonstrated that the Project includes measures for EMF mitigation.

The Commission has concluded that EMFs do not pose an unreasonable risk of harm from transmission lines similar to the proposed line here.[51] However, the Commission's interim guidelines require public utilities to include a description of EMF mitigation procedures for a proposed project.[52]

Duquesne Light has adopted a Magnetic Field Management Program, as a part of its Design and Safety Criteria to address EMF. Pursuant to its Magnetic Field Management Program, Duquesne Light designed the BI-Crescent Project to mitigate EMFs by: (1) wherever possible, locating the proposed transmission lines through unoccupied parcels and, where the line is located in occupied areas, running it along the edge of the parcel; (2) establishing a wide buffer area around the lines by utilizing a minimum conductor clearance of 23 feet; and (3) using a vertically stacked configuration, as shown in Attachment 4 to the Amended Application, which does not change the EMF emitted by the line at the right-of-way compared to the existing circuit position at the same right-of-way.

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[51] E.g., *Application of PPL Elec. Utils. Corp. Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting & Constr. of the Pa. Portion of The Proposed Susquehanna-Roseland 500 kV Transmission Line in Portions of Lackawanna, Luzerne, Monroe, Pike & Wayne Cntys., Pa.*, Docket No. A-2009-2082652 *et al.* (Order entered February 12, 2010) (*Susquehanna-Roseland*) at 100, *affirmed sub nom.*, *Energy Conservation Council II, supra*; *Application of Pa. Elec. Co. Seeking Approval to Locate, Constr., Operate & Maintain a High-Voltage Transmission Line Referred to as the Bedford North-Central City W. 115 kV HV Transmission Line Project*, Docket A-2016-2565296 (Opinion and Order entered March 8, 2018); *Application of Pa. Elec. Co. for Approval to Locate & Constr. the Bedford North-Osterburg E. 115 kV Transmission Line Project Situated in Bedford & E. St. Clair Twps., Bedford Cnty., Pa.*, Docket Nos. A 2011-2247862, *et al.* (Order entered June 7, 2012).

[52] 52 Pa.Code § 69.3107(b).

Ms. Shyu also described the additional steps taken by Duquesne Light with respect to EMF associated with the BI-Crescent Project.[53] Duquesne Light first identified the point(s) in a new transmission line with highest potential for EMF exposure. Then, it conducted an EMF study on select areas in the Project area to confirm that the lines' EMF levels are under the reference levels of the applicable standards and guidelines of its Magnetic Field Management Program. This study confirmed that the BI-Crescent Project has EMF levels that are under the acceptable limit of the standards and guidelines of its Magnetic Field Management Program.

It is important to emphasize that Duquesne Light abandoned its proposal to engineer the line structures to accommodate a future 345 kV transmission line. Instead, the Amended Application revises the proposal to design the facilities solely for a 138 kV transmission line, which results in revised engineering for the poles and line configurations. This amendment to the project answers many of the concerns raised by the Protestants and public input witnesses. Although some of the Protestants asked Duquesne Light's expert witnesses questions regarding the height of the poles and the engineering of certain poles to withstand landslides, none offered their own expert testimony to rebut the evidence offered by Duquesne Light. None took the opportunity to explain why the engineering testimony of Duquesne Light was not credible or demonstrate how Duquesne Light failed to meet the requirements of the Commission's regulations.

Thus, viewing the credible evidence in the record, I conclude that Duquesne has satisfied the criteria set forth in Section 57.76(a)(2) of the Commission's regulations and demonstrated that the Amended BI-Crescent Project will not create an unreasonable risk of danger to the health and safety of the public.[54]

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[53] Duquesne Light St. 3A at 10-11.

[54] 52 Pa.Code § 57.76(a)(2).

E. Route Selection and Minimizing Environmental Impacts

In reaching its determination on whether a proposed route will have minimum adverse environmental impacts, the Commission will consider the impact and the efforts that have been and will be made to minimize the impact, if any, of the proposed line upon the following: (i) land use; (ii) soil and sedimentation; (iii) plant and wildlife habitats; (iv) terrain; (v) hydrology; (vi) landscape; (vii) archeological areas; (viii) geologic areas; (ix) historic areas; (x) scenic areas; (xi) wilderness areas; and (xii) scenic rivers.[55] Further, the Commission will examine the proposed route for the transmission line and consider the availability of reasonable alternative routes in reaching a conclusion as to whether the proposed route will have minimum adverse environmental impacts.[56]

Guidance provided by the Commission[57] directs the utility to include certain information in an application to aid in evaluating the route selection process utilized:

> (1) Transmission applicants should utilize a combination of transmission route evaluation procedures including high-level GIS data, traditional mapping (including United States Geological Survey data and compilation), aerial maps and analysis of physical site-specific constraints raised by affected landowners.
>
> (2) Transmission applicants should summarize the status of property acquisitions (including fee simple acquisitions and rights of way/easements) as part of the application. The applicant should provide the current status and continuing updates on property acquisition litigation or settlements during the course of the siting proceeding.
>
> (3) In providing information regarding the reasonable alternative routes, the utility actively considered in its final phase of the route selection process, and the relative merits of each, in accordance with § 57.72(c)(10), the applicant should include the following information:
>
> (i) The environmental, historical, cultural and aesthetic considerations of each route.

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55 52 Pa.Code § 57.75(d)(3).

56 52 Pa.Code §§ 57.75(d)(4), 57.76(a)(4).

57 52 Pa.Code § 69.3105.

(ii) The proximity of these alternative routes to residential and nonresidential structures.

(iii) The applicant's consideration of relevant existing rights of way.

(iv) The comparative construction costs associated with each route.

(4) With reference to the proposed route, applicants should provide a summary of efforts made to contact and solicit assistance from local governments and nongovernmental organizations regarding areas encompassed within the requirement of § 57.72(c)(8).

The Commonwealth Court held that the Commission should approve a utility's route for a proposed high-voltage transmission line where record evidence shows that the utility's route-selection process was reasonable, and that the utility properly considered the factors relevant to siting a transmission line:

> [I]t is settled law that the designation of the route for a HV line is a matter for determination by [a utility's] management in the first instance, and the utility's conclusion will be upheld unless shown to be wanton or capricious. Thus, where the record establishes that the utility's route selection was reasonable, considering all the factors, its route will be upheld. The mere existence of an alternative route does not invalidate the utility's judgment. This reasoning is equally sound when considering whether a utility has complied with 52 Pa. Code § 57.72(c)(10), as the information required by this section goes towards establishing the reasonableness of the utility's route selection. [58]

In sum, the issue is not whether the Commission would prefer a different route. The issue is whether the utility used reasonable means to select a route and whether the utility has shown reasonable efforts to minimize adverse environmental impacts. A utility must consider available alternative routes but need not consider all possibilities. Moreover, it is also not required to choose a route that has no adverse impacts. Instead a utility must make

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[58] *Energy Conservation Council I*, 995 A.2d at 479-80.

reasonable efforts to minimize and mitigate any impacts and ensure that any harm to the environment is outweighed by the benefits of the project.[59]

Duquesne Light identified three suitable Alternative Routes for the BI-Crescent Project—i.e., the Proposed Route and Alternatives 1 and 2. The routes were then qualitatively and quantitatively evaluated and compared to select a Proposed Route. Each of the routes that were evaluated by Duquesne Light included different adverse impacts.

Duquesne Light evaluated and compared the Proposed Route and Alternatives 1 and 2 against each other using 30 environmental, human/built, and engineering resource criteria that were scored and weighted following weights established by the Siting Criteria Council (SCC) for the GPU-DQE 500 kV Transmission Line Project. SCC weights existed for 22 of the 30 resource criteria. The Siting Team assigned weights for the remaining eight resource criteria (Land Trust Protected Area, Cemeteries, Exceptional Value Streams, Landslide Prone Area, Commercial/Industrial Areas, Forest Land Cleared, Non-existing right-of-way (ROW), and Length of ROW). The scaled scores for each criterion were then multiplied by its respective weight to obtain the impact scores shown in Section 4 and Appendix A of the Siting Study. These impact scores were summed to obtain an overall impact score for each alternative route. These scores are presented in Section 4.0 of the Siting Study. [60]

A review of the quantitative analysis performed for the BI-Crescent Project showed that the Proposed Route would produce significantly fewer overall impacts than either Alternatives 1 or 2. Duquesne Light concluded that the Proposed Route has the lowest/best final impact score of all the alternative routes and is the best overall alternative from an environmental, human/built, cultural, and engineering perspective, for several reasons. The Proposed Route is the shortest route and would require the fewest new ROW acquisitions. Although the Proposed Route crosses the most human/built resources, as it has the most road crossings, crosses the most residential structures, and crosses the most institutional complexes, it

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[59] *Energy Conservation Council II*., 25 A.3d at 448-49.

[60] *See* Duquesne Light St. 2A at 7-8; Duquesne Light Exh. 3, Attachment 3, Section 4.0.

will cross these human/built resources within existing ROW and no new long-term impacts are expected. The Proposed Route is also the best alternative from an engineering perspective, as it crosses the least steep terrain and landslide-prone areas and is the farthest from the Pittsburgh International Airport. The Proposed Route further has the least impact to most of the environmental resources including forest land cleared, core RTE habitat, land trust protected areas, and perennial streams crossed, but has some of the higher impact to other criteria such as wetlands crossed and recreational areas. Moreover, it is the second-best alternative from a cultural resources perspective. Duquesne Light explained that the other two Alternative Routes would require acquisition of new ROW, which means that the environmental, human/built, cultural, and engineering impact scores attributable to impacts for each of Alternative 1 and Alternative 2 are new impacts on those resources.

Based on the quantitative assessment and qualitative review of Proposed Route and Alternatives 1 and 2, Duquesne Light selected the Proposed Route for the BI-Crescent Project. According to Duquesne Light, the Proposed Route has the lowest impact score of all the alternative routes and is the best overall alternative from an environmental, human/built, cultural, and engineering perspective.

Admittedly, the route selected affects a significant number of residential dwellings. However, the standard is whether the utility's selection process was reasonable. A reasonable selection process is one that considers alternatives by weighing the factors in the Commission's regulations. The Commission will not overturn a route selection because the Commission or another entity might weigh factors differently or choose a route not selected or considered by the utility.[61]

Protestant Zona questioned some of the factors used by GAI in developing the route selection analysis. He argued that the inclusion of these factors biased the route selection in favor of the Proposed Route. [62]

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[61] *E.g., Energy Conservation Council I.*

[62] *See* N.T. 182-85; Zona Ex. 4.

Duquesne Light's witness Aimee Kay, responded to this testimony by explaining that Duquesne Light selected criteria which are required by the Commission's regulations, and that these criteria were weighted using a methodology that is meant to reduce "bias" in the route selection, developed by the Siting Criteria Council (SCC). The SCC was formed and asked to aid in the selection of the natural and manmade resource criteria that would be used to evaluate impacts along alternative routes. The criteria weights were developed through an iterative and interactive process that involved a diverse group of stakeholders. The weighting session involved four interactive rounds, each of which involved (a) each member weighing each criterion, (b) each member reviewing the weight they attributed to criteria against the mean for all other members, and (c) an opportunity to express their view on scores. After the fourth round, the SCC voted to adopt the mean weights for each criterion; the established weights are now considered an industry standard.

Ms. Kay also explained that the Siting Study properly used and incorporated the SCC criteria weights. The SCC weights were used for 22 of the 30 criteria, to which the weights applied, and GAI reviewed an additional eight resource criteria to reflect items of local significant and regulatory concerns. The basis for each of these criteria being added were fully addressed by Ms. Kay.

Protestant Zona's further claim that the SCC criteria should be ignored based on the difference in voltage between this project and the GPU-DQE 500 kV Transmission Line project is also without merit. The SCC weights are based upon the sensitivity and frequency of the resources potentially affected by the construction and operation of the BI-Crescent Project. The resources and their sensitivity are not related to the voltage of the Project.

Ms. Kay demonstrated that the criteria considered in the GAI siting study are reasonable and consistent with industry standards. Ms. Kay explained that the SCC weights were developed by a diverse group of stakeholders and "is the closest representation of current societal values we have assembled for the Western Pennsylvania Region." Furthermore, the criteria used by GAI was developed by experienced industry professionals, based upon and consistent with their experience and in response to the regulatory and ecological regimes they

work within. According to Ms. Kay, these procedures are consistent with the standard of practice regarding the siting of high voltage transmission lines before the Commission for the past 25 years. Duquesne Light St. 2-R at 17-18.

Protestant Zona challenged Duquesne Light's position that the use of an existing ROW does not create a "new" visual impact. According to Protestant Zona, the new structures proposed for the project will be somewhat taller and different from the lattice structures currently on his property.[63]

In rebuttal testimony, Ms. Kay explained that the replacement of an existing structure with a new structure does not pose a new visual impact just a different visual impact, as the existing structure already creates a visual impact. That visual impact is a secondary impact that "was accounted for in many of the criteria used in the siting study, including recreational areas, cemeteries and historic sites, scenic areas, residential areas, and institutional areas."[64]

Protestant Crowe asserted that the Proposed Route would require clearing of "numerous mature trees" at her property located at 1123 Juanita Drive.[65] Ms. Kay also addressed this issue in her rebuttal testimony. Ms. Kay explained that the Siting Study already accounts for forest land cleared and includes this information in the overall score. Duquesne Light St. 2-R at 6. Despite the reduction in woodland areas, the overall score for the Proposed Route remains the lowest after accounting for these effects. Duquesne Light St. 2-R at 6.

Finally, Protestant Gable and public input witnesses advocated for a route "along the river" or underground. However, Ms. Kay explained that this alternative would create considerable conflicts with existing railroad and transportation infrastructure and numerous industrial developments are located along the river in McKees Rocks. In addition, the installation of an underground transmission line can cost between five and ten times as much per

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63 N.T. 172-78; 349.

64 Duquesne Light St. 2-R at 20-21.

65 N.T. 126.

mile as installing an overhead line, with an associated shorter life expectancy and higher maintenance and repair costs.[66]

The Proposed Route requires Duquesne Light to acquire rights-of-way. Duquesne Light's efforts to acquire the rights-of-way were set forth in detail in the testimony of Leslie Gannon, including notifications of landowners and field efforts to determine or confirm property boundaries. She also described the public meetings hosted by Duquesne Light regarding the project.

Protestant Adams was permitted to offer significant testimony and exhibits claiming that Duquesne Light trespassed on her property at 306 Konter Road[67] and that Duquesne Light did not have permission to use her property with an easement or right-of-way. Protestant Crowe also accused Duquesne Light of trespassing on her Juanita Drive property and testified to her belief that Duquesne Light had not obtained necessary rights-of-way. Protestant Marinkovic also asserted that Duquesne Light had not secured rights-of-way with respect to her property, based on her belief that her private road would have to be enlarged.

The Commission does not have jurisdiction to resolve disputes in trespass. Therefore, the claims made by Protestant Adams and Crowe regarding their allegations that Duquesne Light wrongfully accessed their properties must be resolved in another forum.[68]

Ms. Gannon explained that no existing Duquesne Light transmission facilities traverse the property located at 306 Konter Road today and no transmission facilities are planned

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[66] Duquesne Light St. 2-R at 7.

[67] Although the property is owned by Protestant Crowe, Protestant Adams' sister, Protestant Adams resides at 306 Konter Road.

[68] *See Shedlosky v. Pa. Elec. Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *see also Perrige v. Metro. 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); *Messina v. Bell Atlantic-Pa.*, 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)).

to traverse this property as a part of the Amended BI-Crescent Project. *See* Duquesne Light St. 4-R at 4-5. As such, Duquesne Light does not need and does not intend to acquire any rights-of-way to locate any transmission facilities associated with the Amended BI-Crescent Project on the property located at 306 Konter Road.

Furthermore, Ms. Gannon explained that Mrs. Adams and Mrs. Crowe are mistaken about alleged plans to widen Konter Road as a part of this project; although there are ruts and holes in the road that Duquesne Light will need to repair in order to drive construction vehicles on the road, there are no plans to widen Konter Road. Duquesne Light St. 4-R at 6-7.

Protestant Marinkovic raised similar claims with respect to her property located at 205 Purdy Road. However, no existing Duquesne Light transmission facilities traverse the property located at 205 Purdy Road today and no transmission facilities are planned to traverse this property as a part of the BI-Crescent Project.

Protestant Crowe further asserted that Duquesne Light has not obtained easements for the Amended BI-Crescent Project to cross her property located at 1123 Juanita Drive. However, Duquesne Light explained that it already possesses an easement for transmission facilities on this property. As such, Duquesne Light does not need and does not intend to acquire any rights-of-way from other nearby properties.[69]

I find that Duquesne Light's route selection process was reasonable, and that Duquesne Light has complied with the appropriate Commission regulations. Although the Protestants argued that another route should be selected, none presented evidence which demonstrated that the site selection process used by Duquesne Light was clearly unreasonable. The procedure used by Duquesne Light included the factors which must be considered in accordance with Commission regulations and guidelines. On balance, Duquesne Light's determination that using existing rights-of-way rather than acquiring new rights-of-way with new impacts that would be required by other routes was not "wanton or capricious." Further, Duquesne Light's amendment to the project by withdrawing the proposal to engineer the line to

[69] Duquesne Light St. 4-R at 12-13.

accommodate a 345 kV line further mitigates some of the impacts identified by the witnesses at the public input hearing and by the Protestants.

F. ALCOSAN Settlement

In its petition to intervene, ALCOSAN raised concerns regarding whether the proposed route would overlap with ALCOSAN's existing and future wastewater treatment facilities. These concerns were explained in detail in the testimony of Michael Lichte, P.E., the Manager of Planning at ALCOSAN. Duquesne Light and ALCOSAN (Joint Petitioners) engaged in settlement discussions throughout the course of this proceeding. As a result of those discussions, the Joint Petitioners were able to reach a settlement in principle of all issues related to ALCOSAN's intervention prior to the date for filing Main Briefs. The agreement of Duquesne Light and ALCOSAN is embodied the Joint Petition for Settlement filed on March 2, 2021.

1. Settlement Terms

The Joint Petitioners agreed to the following terms:[70]

> 25. Duquesne Light and ALCOSAN will openly and timely share material changes to engineering plans, specifications, calculations, foundation locations, and construction plans as it relates to utility facilities on or near Parcels 43-P-1-0-1, 43-L-130, or 43-L-150. The communications will concern any and all material changes in engineering and construction plans for the respective projects of Duquesne Light and ALCOSAN insofar as the projects overlap, as described in the testimonies in this proceeding.
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> 26. Duquesne Light and ALCOSAN will each provide a Single Point of Contact for purposes of collaborating and coordinating to ensure continuous, effective communications. The Single Point of Contact will ultimately be responsible for coordinating its staff with the staff of ALCOSAN/Duquesne Light. In the event a party's Single Point of Contact changes, the affected party will immediately inform the other party.

[70] The Settlement Terms are set forth verbatim.

27. On any Pennsylvania 811 ("One Call") correspondence and actions concerning or relating to ALCOSAN's facilities or impacts thereto, Duquesne Light must include ALCOSAN on all relevant communications and invite ALCOSAN personnel to be present and available during any One Call actions, inspections, and excavations.

28. Where Duquesne Light has flexibility and discretion in siting options (e.g., siting a transmission line in any particular location within a 50 or 100 foot easement), Duquesne will select the option that is least intrusive (or least likely to be intrusive based on ALCOSAN's input) to the existing and planned facilities of ALCOSAN as described by the Direct Testimony of Michael Lichte, pre-filed on December 9, 2020 at Docket Nos. A-2019-3008589 and A-2019-3008652. Once engineering design is complete, Duquesne Light will not be required to relocate its facilities pursuant to this paragraph. In the event that Duquesne Light decides to adjust its 100% engineering plans or must adjust its 100% engineering plans due to an unforeseen circumstance (e.g., discovering a topographic change or soil erosion upon beginning construction), Duquesne Light will work with ALCOSAN consistent with paragraph 29 and the collaborative objectives of this stipulation.

29. Duquesne Light and ALCOSAN agree to hold quarterly status calls, beginning with the quarter following Pennsylvania Public Utility Commission approval of this stipulation and ending when construction on or near Parcels 43-P-1-0-1, 43-L-130, or 43-L-150 is complete. In a reasonable time in advance of the status calls, Duquesne Light will provide ALCOSAN personnel with an opportunity to review and comment on Duquesne Light's engineering documents (including plans, specifications, calculations, foundation locations, and construction details) that may impact ALCOSAN's existing and planned facilities (as described by the Direct Testimony of Michael Lichte, pre-filed on December 9, 2020 at Docket Nos. A-2019-3008589 and A-2019-3008652). Duquesne Light will work with ALCOSAN in good faith on a best efforts basis to site Duquesne Light's transmission line in a manner that minimizes the likelihood of any adverse impact on ALCOSAN's existing and planned facilities. Duquesne Light will provide ALCOSAN advanced notice and an opportunity to attend the pre-construction conference and contractor progress meetings.

30. When Duquesne Light is in the vicinity of ALCOSAN's existing sewer lines in Sheraden Park, Duquesne Light will provide

adequate protection, consistent with industry standards, to prevent settlement and damage to ALCOSAN's buried facilities/infrastructure.

31. As indicated in the Rebuttal Testimony of Lesley Gannon, pre-filed on January 21, 2021 at Docket No. A-2019-3008589 and A-2019-3008652, Duquesne Light does not currently anticipate the need to exercise eminent domain on Parcels 43-P-1-0-1, 43-L-130, or 43-L-150 or otherwise in areas where ALCOSAN has planned facilities under the EPA Consent Decree, as described in the Direct Testimony of Michael Lichte, pre-filed on December 9, 2020 at Docket No. A-2019-3008589 and A-2019-3008652. In the event that Duquesne Light must use its eminent domain powers on Parcels 43-P-1-0-1, 43-L-130, or 43-L-150 or otherwise in areas where ALCOSAN has planned facilities under the EPA Consent Decree, ALCOSAN will be notified pursuant to the applicable law and legal standards.

* * *

37. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Settlement without modification. This Settlement shall become effective on the date on which the Commission enters a final order that adopts the terms and conditions of this Settlement. If the Commission enters a final order that approves this Settlement, but with one or more modifications, this Settlement shall nonetheless become effective unless one or more of the Joint Petitioners elects to withdraw from the Settlement. Such election to withdraw must be made in writing, filed with the Secretary of the Commission, and served upon all parties within five business days after the entry of an Order modifying the Settlement. In such event, the Settlement shall be void and of no effect.

38. This Settlement is proposed by the Joint Petitioners to settle all of the issues raised by ALCOSAN in this proceeding. If the Commission does not approve the Settlement and the proceedings continue, the Joint Petitioners reserve their respective rights to present full briefing and argument. The Settlement is made without any admission against, or prejudice to, any position that any party may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

39. The Joint Petitioners acknowledge that the Settlement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding. This Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement.

> 40. This Settlement is being presented only in the context of this proceeding in an effort to resolve the issues raised by ALCOSAN in this proceeding in a manner which is fair and reasonable. The Settlement is presented without prejudice to any position which any of the Joint Petitioners may have advanced and without prejudice to the position any of the Joint Petitioners may advance in the future on the merits of the issues in future proceedings except to the extent necessary to effectuate the terms and conditions of the Settlement. This Settlement does not preclude the Joint Petitioners from taking other positions in proceedings of other public utilities.

2. Position of Duquesne Light and ALCOSAN

ALCOSAN and Duquesne Light (Joint Petitioners) each filed Statements in Support of the Settlement. ALCOSAN explains that the Settlement reflects a reasonable balance and an appropriate compromise of the Joint Petitioners' positions. The Settlement achieves compromise by requiring both parties, through the use of a Single Point of Contact and through quarterly status update calls, to openly and timely share material changes to engineering plans, specifications, calculations, foundation locations, and construction plans as it relates to facilities where the respective projects of Duquesne Light and ALCOSAN could overlap.

ALCOSAN further explains the Settlement establishes a means by which the Settlement Parties may work together toward protection of ALCOSAN's existing and planned facilities in the vicinity of Duquesne Light's planned transmission route, and to minimize the likelihood of any adverse impacts that could otherwise arise from Duquesne Light's BI-Crescent Project in the absence of ongoing communication and collaboration. The Joint Petition requires the parties to coordinate and converse on any relevant Pennsylvania 811 ("One Call") actions concerning ALCOSAN's facilities or impacts thereto. Accordingly, the Joint Petition appropriately reflects the Settlement Parties' agreement to collaborate with each other to ensure that both Duquesne Light and ALCOSAN can continue to provide safe, adequate, and reliable service to their respective customers.

ALCOSAN also supports the Settlement because, Duquesne Light will, on a best-efforts basis, work with ALCOSAN and select the siting option that is the least intrusive to

ALCOSAN's existing and planned facilities where Duquesne Light retains such flexibility and discretion in siting its facilities. This term is responsive to ALCOSAN's testimony regarding its concerns about the exact siting of Duquesne Light's transmission facilities Duquesne Light will provide ALCOSAN advanced notice and an opportunity to attend the pre-construction conference and contractor progress meetings. Further, Duquesne Light will provide adequate protection, consistent with industry standards, to prevent settlement and damage to ALCOSAN's buried facilities/infrastructure when Duquesne Light is in the vicinity of ALCOSAN's existing sewer lines in Sheraden Park in Pittsburgh.

Finally, the Settlement avoids the expense and uncertainty of fully litigating all of the matters in this proceeding and otherwise advances the policy of this Commission to encourage parties to resolve contested proceedings through settlement processes. The Settlement enables ALCOSAN to better serve its customers by removing the uncertainties, costs, and risks associated with prolonged administrative and/or appellate court litigation.

Duquesne Light agrees with ALCOSAN's characterization of the terms of the Settlement. According to Duquesne Light, the Settlement balances Duquesne Light's interest in obtaining certainty regarding the location of its facilities upon completion of engineering design with ALCOSAN's interest in avoiding interference with its facilities. Paragraph 28 of the Settlement, in particular, achieves this balance by setting forth a process for Duquesne Light to utilize a less intrusive option, where it has the flexibility and discretion to do so, and also protecting Duquesne Light from relocating facilities once engineering design is complete. Both ALCOSAN and Duquesne Light noted that it was important to have certainty regarding the location of facilities when engineering designs were completed. (*See* Duquesne Light St. 3A-R at 8-9; ALCOSAN St. 1 at 8.) However, Duquesne Light noted that the Project was at 90% design and significant changes could not be made without delaying the schedule or increasing project costs. (Duquesne Light St. 3A-R at 9.)

Furthermore, Paragraph 30 of the Settlement affirms Duquesne Light's commitment to use adequate cover and protection when working in the vicinity of ALCOSAN's existing sewer lines in Sheraden Park. (Settlement ¶ 30.) Duquesne Light explained in its

rebuttal testimony that it had provided the proposed foundation depths of its facilities to ALCOSAN, and that the proposed foundations were designed with the use of boring logs and a drilled caisson will be installed, consistent with industry standards. (Duquesne St. 3A-R at 15.) Moreover, timber matting and air bridges are already planned in areas where an underground sanitary line is located to help disperse any point loading on ALCOSAN's facilities. (Duquesne St. 3A-R at 14.) Nevertheless, this Settlement provision affirms Duquesne Light's commitment to implement adequate protections to mitigate the risks of damaging nearby water and wastewater facilities.

Finally, Paragraph 31 of the Settlement makes clear that it does not anticipate the need to exercise eminent domain authority on the parcels identified by ALCOSAN. (Settlement ¶ 31.) Although ALCOSAN raised a concern about the potential exercise of eminent domain authority (ALCOSAN St. 1 at 8), Duquesne Light indicated that the exercise of this authority was not anticipated or needed at this time in its rebuttal testimony. (Duquesne St. 4A-R at 4-5.) Duquesne Light further explained that it believed its facilities could coexist with ALCOSAN's existing facilities near Sheraden Park. (Duquesne St. 4A-R at 5.) To the extent that Duquesne Light's needs change, paragraph 31 confirms that it will provide ALCOSAN with notice consistent with the applicable law and legal standards.

3. Disposition

The Commission encourages parties in contested on-the-record proceedings to settle cases.[71] Settlements eliminate the time, effort, and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission's decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of the utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

[71] *See* 52 Pa.Code § 5.231.

By definition, a "settlement" reflects a compromise of the parties' positions, which arguably fosters and promotes the public interest. When parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest.[72]

I find the Settlement to be in the public interest and therefore, approve the Settlement without modification. No other party commented or objected to the Settlement. The Settlement as a whole reflects the Joint Petitioners' commitments to openly and timely share material changes to their respective engineering plans, specifications, calculations, foundation locations, and construction plans related to their respective projects. The formal collaborative process agreed to in the Settlement ensures that ALCOSAN will be able to plan the expansion of its facilities and meet its legal obligations. This process also permits Duquesne Light to appropriately engineer its facilities to meet its service obligations.

G. Eminent Domain Application

Duquesne Light initially filed with the Commission one application for a finding and determination that the service to be furnished by Duquesne Light through its proposed exercise of the power of eminent domain to acquire rights-of-way and easements for the construction, operation, and maintenance of the proposed BI-Crescent Project is necessary or proper for the service, accommodation, convenience, or safety of the public. Although Duquesne Light filed an Amended Application with respect to the BI-Crescent Project, the Proposed Route was not changed. According to Duquesne Light, the Schaefer Condemnation Application is interrelated with the consideration of the Amended Application and it requested that the proceedings remain consolidated.

Duquesne Light seeks to exercise the power of eminent domain to acquire rights-of-way for the construction, operation, and maintenance of the BI-Crescent Project, specifically the portion of the 138 kV transmission lines that would run approximately 1,079 feet over and

[72] *Pa. Pub. Util. Comm'n v. CS Water & Sewer Assocs.*, 74 Pub. Util. Comm'n 767, 771 (1991).

across the property identified in the Schaefer Condemnation Application. *See* Duquesne Light St. 1 (Schaefer) at 4.

No party to this proceeding has opposed the request for condemnation. Duquesne Light detailed its efforts to ensure the potential owners of the Schaefer property received notice of the Schaefer Condemnation Application. Duquesne Light St. 1-R (Schaefer) at 16-17. Through its review of intestacy law and estates of record, Duquesne Light served the heirs to the estate of George N. Schaefer who it believed were those who could claim an interest in the Schaefer property. Duquesne Light St. 1-R (Schaefer) at 17. In addition, Duquesne Light published a notice of the Schaefer Condemnation Application in a newspaper of general circulation in the area where the property is located and filed a proof of publication on April 30, 2019. Duquesne Light St. 1-R (Schaefer) at 18; see also Duquesne Light Exh. LG-5 (Schaefer). None of these potential property owners have submitted any evidence in this proceeding.

The proposed rights-of-way and easements over the property identified in the Schaefer Condemnation Application do not interfere or require the condemnation of any place of public worship, burying ground, dwelling or its reasonable cartilage. *See* 15 Pa.C.S. § 1511(b).

In addition, as explained above, Duquesne Light did not act wantonly, capriciously, or arbitrarily in selecting the proposed right-of-way.[73] Duquesne Light properly considered the factors required by the Commission's regulations using qualitative and quantitative criteria.

Duquesne Light also demonstrated that the Project is necessary. The service to be provided by Duquesne Light through the proposed transmission lines and related facilities is necessary or proper for the service, accommodation, convenience or safety of the public for the reasons set forth above. Accordingly, Duquesne Light's proposed exercise of the power of eminent domain to acquire rights-of-way and easements for the proposed BI-Crescent Project

[73] *Dep't of Env't Re. v. Pa. Pub. Util. Comm'n*, 335 A.2d 860 (Pa. Cmwlth. 1975), *aff'd*., 473 Pa. 378, 374 A.2d 693 (1977); *Dickson v. Pub. Serv. Comm'n*, 89 Pa. Super. 126 (1926).

over the land identified in the Schaefer Condemnation Application is necessary for the service, accommodation, convenience, or safety of the public and is approved.

H. Conclusion

The hearing procedure designed for this case was developed in large part to accommodate the self-represented Protestants to facilitate their right to be heard. Commendably, Duquesne Light supported or did not object to these modifications. However, even self-represented parties must provide relevant and necessary information in support of their claims.

The Protestants in this case proceeded *pro se* by choice and bore the risk of doing so.[74] The opinions and fears offered by the Protestants in their opposition to the Project are similar to testimony offered by opponents to a conditional use permit which was reviewed by the Pennsylvania Supreme Court in *Commonwealth, Bureau of Corrections v. City of Pittsburgh*.[75] The Court found that the evidence presented by opponents to an application for the placement of a pre-release center for state prisoners in a Pittsburgh neighborhood was not substantial evidence to prove that the center posed a substantial threat to the community. The objectors made statements concerning "the high crime rate in the area, the number of bars in the area, and the existence of a house of prostitution in the area. There was concern voiced about the numerous elderly and female residents in the area. . . . Finally, concern over the effect on property values which would be caused by the center was expressed."[76] The court noted that none of the opponents' opinions were substantiated by any facts, studies, police records, property valuations or any substantive facts upon which their fears were based. In the absence of facts, there was no substantial evidence in the record upon which to base a conclusion that the center would pose a detriment to the community. Like the opinions and assertions offered by the opponents in *City of Pittsburgh*, testimony critical of Duquesne Light's route selection and mitigation efforts is based

[74] *Groch v. Unemployment Comp. Bd. of Review*, 472 A.2d 286 (Pa. Cmwlth. 1984); *Vann v. Unemployment Comp. Bd. of Review*, 494 A.2d 1081 (Pa. 1985).

[75] 532 A.2d 12 (Pa. 1987).

[76] 532 A.2d at 14.

merely on lay opinions and do not rebut the credible expert testimony offered in support of the Project by Duquesne Light.

After fully reviewing the evidence presented by Duquesne Light in support of the request for approval of the Project, I find that Duquesne Light met its burden to demonstrate that the Project meets the statutory and regulatory requirements for approval. No substantial evidence was presented in rebuttal which undermined the credibility or contradicted the evidence provided by Duquesne Light. Therefore, the applications for the BI-Crescent Project will be approved as set forth in the ordering paragraphs below.

VI. CONCLUSIONS OF LAW

1. Duquesne Light Company bears the burden of proof. 66 Pa.C.S. § 332.

2. Duquesne Light Company has established by sufficient evidence that there is a need for the Brunot Island-Crescent Project . 52 Pa.Code § 57.76(a)(1).

3. Duquesne Light Company has established by sufficient evidence that the Brunot Island-Crescent Project will not create an unreasonable risk of danger to the health and safety of the public. 52 Pa.Code § 57.76(a)(2).

4. Duquesne Light Company has established by sufficient evidence that the Brunot Island-Crescent Project is in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth. 52 Pa.Code § 57.76(a)(3).

5. Duquesne Light Company has established by sufficient evidence that the Brunot Island-Crescent Project will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives. 52 Pa.Code § 57.76(a)(4).

6. Duquesne Light Company has established by sufficient evidence that the application for eminent domain to acquire a certain portion of the lands of George N. Schaefer of Moon Township, Allegheny County, in connection with the transmission line project is necessary or proper for the service, accommodation, convenience, or safety of the public. 15 Pa.C.S. § 1511(c)

7. When parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest. *Pa. Pub. Util. Comm'n v. CS Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa. PUC 1 (1985).

VII. ORDER

THEREFORE

IT IS ORDERED:

1. That the Amended 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, filed on August 10, 2020, Docket No. A-2019-3008589 is approved.

2. That the 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 BI-Crescent Project is Necessary or Proper for the Service, Accommodation, Convenience or Safety of the Public, at Docket No. A-2019-3008652, is approved.

3. That Duquesne Light Company shall comply with any and all permit requirements received from any agency or entity from which a permit is required in order to site and construct the high-voltage transmission line referred to as the Brunot Island - Crescent Project.

4. That the protests of Victoria Adams, John P. and Jennifer Crowe, Richard Gable, Folezia Marinkovic, Doug and Linda Meyers, Zachariah Nave, Joseph G. and Suzanne Rabosky, Joanne Rushman, Aaron and Rebecca Siegel, Cynthia and Patrick Wilson, and Dennis and Jeanne Zona are dismissed.

5. The dockets at Docket Nos. A-2019-3008589, and A-2019-3008652 be marked closed.

Date: June 10, 2021

/s/
Mary D. Long
Administrative Law Judge