# **PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held October 28, 2021

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

John F. Coleman, Jr., Vice Chairman

Ralph V. Yanora

Application of Duquesne Light Company filed A-2019-3008589

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

Application of Duquesne Light Company A-2019-3008652

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

**OPINION AND ORDER**

**BEFORE THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition, are the Exceptions of Mr. Richard Gable (Mr. Gable, Gable, or Protestant, *infra*), filed on June 28, 2021, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Mary D. Long issued June 16, 2021 (as corrected), in the above-captioned proceedings. Replies to the Exceptions of Mr. Gable were received from Duquesne Light Company (Duquesne or Company) on July 16, 2021.[[1]](#footnote-2)

The Initial Decision recommended the approval of the application, as amended, filed by Duquesne for the construction of a 138 kV transmission line 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. The Initial Decision also recommended approval of the application of Duquesne for the acquisition of certain property by eminent domain in connection with the Project.

In addition to recommending approval of the siting and eminent domain applications, the Initial Decision recommends the approval and adoption of a settlement entered into between Duquesne and the Allegheny County Sanitation Authority (ALCOSAN or Intervenor, *infra*), resolving certain contested issues that arose during the proceeding (Settlement hereafter). The Initial Decision found that Duquesne met its burden to demonstrate that the applications for siting and eminent domain met the statutory and regulatory requirements for approval, and, further, that approval of the Settlement between ALCOSAN and Duquesne is in the public interest.

For the reasons stated below, we shall deny the Exceptions of Mr. Gable and adopt the ALJ’s Initial Decision, consistent with this Opinion and Order.

**I. Introduction**

Before the Commission is a consolidated proceeding comprised of two applications filed by Duquesne: (1) on March 15, 2019, Duquesne filed an Application, at Docket No. A-2019-3008589, requesting approval for the reconstruction of approximately 14.5 miles of overhead double-circuit 138 kV transmission lines associated with the BI-Crescent Project;[[2]](#footnote-3) and (2) on March 15, 2019, Duquesne filed an Application at Docket No. A-2019-3008652, requesting findings that the exercise of the power of eminent domain to acquire rights-of-way across one tract of land (Schaefer Condemnation) is necessary or proper for the service accommodation, convenience or safety of the public.

The matter was assigned to the Commission’s Office of Administrative Law Judge (OALJ), with ALJ Mary D. Long assigned as presiding officer, for the conduct of such proceedings as necessary and the issuance of an Initial Decision. The record indicates that one Public Input Hearing was held at which time participants and interested persons gave statements. Two days of evidentiary hearings were also held on December 21, 2020, and February 3, 2021, at which time testimony was sponsored by Duquesne and ALCOSAN *infra*. As noted, ALCOSANparticipated in the proceedings as an intervenor. Protests were received by individual landowners and interested persons in the vicinity of the Project. All Protestants were granted participant status in the proceedings, received notice of hearings, and were hearing participants.

Testimony of the Protestants was offered at a hearing held on

September 10, 2019, at which Protestants Victoria Adams, John P. and Jennifer Crowe, Richard Gable, Folezia Marinkovic, Cynthia and Patrick Wilson, and Dennis J. and Jeanne Zona testified, *infra*. I.D. at 2.[[3]](#footnote-4) The Protestants’ exhibits were admitted into the record and identified by the presiding ALJ as follows: 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. *Id*.

On consideration of the record and the positions of the Parties, the ALJ concluded that Duquesne met the evidentiary and statutory requirements for siting and for eminent domain. The ALJ, therefore, recommended that the Commission approve both applications. The ALJ concluded, in pertinent part:

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). 49

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).

*See* I.D. at 48-49.

As noted, a Settlement was entered into between Duquesne and ALCOSAN resolving certain issues that arose during the proceedings. The Initial Decision, on review of the Settlement and Statements filed in support of the Settlement, also recommended that the Settlement be approved as consistent with the public interest.

**II. History of the Proceedings**

On March 15, 2019, Duquesne filed with the Commission an application for approval to site and construct 138 kV transmission lines associated with the BI‑Crescent Project. *See* Docket No. A-2019-3008589.[[4]](#footnote-5) I.D. at 1.

In connection with the BI-Crescent Project, Duquesne also filed on March 15, 2019, an application to acquire a certain portion of the lands of Mr. George N. Schaefer of Moon Township, Allegheny County, by eminent domain. *See* Docket No.

A-2019-3008652. I.D. at 1. Mr. Schaefer is, Deceased, and proceedings are, as a result, against legal representatives.

As noted, the applications were consolidated and assigned to ALJ Mary D. Long as presiding officer. 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. I.D. at 1.

An initial prehearing conference convened on June 6, 2019, as scheduled. Presiding ALJ Long granted an extension of time for the filing of protests to the applications and a further prehearing conference was scheduled for July 2, 2019. I.D. at 1-2. Protests were, thereafter, 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.[[5]](#footnote-6) I.D. at 2.

The July 2, 2019 prehearing conference convened as scheduled. Garret P. Lent and Emily M. Farah, Esquires, appeared on behalf of Duquesne. Protestants Rabosky, Nave, Zona, Marinkovic, Adams and Gable appeared and represented themselves. I.D. at 2.

A litigation schedule was established which set procedural deadlines for the conduct of the proceeding. On September 10, 2019, an evidentiary hearing was held. Testimony of the following Protestants was offered at the hearing: Adams, Crowe, Gable, Marinkovic, Wilson and Zona. The following 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. I.D. at 2.

At the September 10, 2019, hearing, the Protestants made an unopposed motion to convene a public input hearing, which motion was granted. I.D. at 2. Pursuant to the request, a public input hearing was scheduled to be held in Moon Township on October 9, 2019. At the October 9, 2019, public input hearing, remarks were offered by State Representative Valerie Gaydos and the testimony of twenty-two (22) witnesses was received. I.D. at 2; N.T. 196-279, *infra*.

Pursuant to a continuance requested by the Company, on October 29, 2019, prehearing conference was convened as scheduled. Counsel for Duquesne appeared as well as Protestants Gable, Adams, Nave, and Zona. Duquesne offered an overview of a proposed amendment planned for the application and the likely time horizon for completion of the Project according to the amended application. The proposed amendment was discussed by the Parties and presiding ALJ Long entered an Interim Order staying the proceedings until August 2020.

In response to the information received from the public input hearings, Duquesne amended the siting Application. The Amended Application eliminated the proposal to build one of the circuits at issue in the Project to 345 kV standards. Duquesne, instead, revised the Project to rebuild both circuits at the current 138 kV design voltage. On August 10, 2020, Duquesne filed the Amended Application. *See*Duquesne Light St. 3-A (witness Shyu), at 4-5:

The initial proposal submitted in March 2019 involved designing, constructing, and operating the Brunot Island – Crescent Transmission line as a 138 kV double-circuit transmission line, with the second circuit being designed and constructed to 345 kV 20 standards, until load growth made it necessary to increase the voltage of the second circuit to 345 kV. The amended proposal does not contemplate increasing the voltage of the second circuit to 345 kV standards. In short, the Amended Project maintains the double - circuit 138 kV voltage that exists today. Both proposals were (and are) designed to meet all applicable NESC[[6]](#footnote-7) requirements. As explained by Mr. Jason A. Harchick in Duquesne Light Statement No. 1-A, Duquesne Light amended the initial proposal based on recent generator deactivations and after receiving feedback from its customers through multiple 6 channels and forums, including the feedback received at the public input hearing on October 9, 2019.

Proof of publication of the Amended Application in the Pittsburgh *Post‑Gazette* was filed with the Commission’s Secretary’s Bureau on September 14, 2020. I.D. at 3. A further prehearing conference was scheduled to take place on September 25, 2020. 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. I.D. at 3

On September 18, 2020, ALCOSAN filed a petition to intervene (ALCOSAN Petition). ALCOSAN also filed a petition for admission *pro hac vice* of Ade Adeniyi, Esquire. I.D. at 3.

ALCOSAN is a Municipal Authority created by Allegheny County under the Municipalities Authorities Act of 1945 (codified in the Municipality Authorities Act, 53 Pa. C.S. §5601 et seq.) (MAA). *See* ALCOSAN Petition at 1. ALCOSAN was created under the MAA to design, construct, and operate an interceptor system and treatment plant for residential, commercial, and industrial wastewater. ALCOSAN provides wastewater treatment services to eighty-three (83) communities, including the City of Pittsburgh. *Id*.

ALCOSAN has wastewater facilities that are located along portions of the project route, parallel to Chartiers Creek. ALCOSAN notes that this constitutes a substantial interest in the outcome of this proceeding. *See* 52 Pa. Code § 5.72. ALCOSAN is concerned that the determinations in the Duquesne application proceedings, including approval of the proposed route in the Application, may adversely impact its existing operations and obligations under a Consent Decree entered into with the United States Environmental Protection Agency (ALOCSAN/EPA Consent Decree). ALCOSAN Petition at 2, n. 2; n. 3.[[7]](#footnote-8)

The ALCOSAN Petition to Intervene was granted by separate order dated September 28, 2020.

The September 25, 2020, prehearing conference convened as scheduled. Counsel for Duquesne and ALCOSAN appeared and participated. Protestants Adams, Crowe, Gable, Marinkovic, Nave, Rabosky, Wilson, and Zona also appeared. The Parties agreed to a litigation schedule which: (1) permitted a further day of hearing on

December 21, 2020, for the Protestants to offer testimony regarding the amended application; (2) permitted ALCOSAN and Duquesne to file written testimony; and (3) 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. *See* Interim Order served on September 28, 2020; I.D. at 3-4.

The hearings convened on December 21, 2020, and February 3, 2021. Counsel for Duquesne 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.[[8]](#footnote-9) I.D. at 4.

The final day of hearing convened on February 3, 2021. Counsel for Duquesne and ALCOSAN appeared. Also appearing at the final day of hearings were Protestants Adams, Gable, Crowe, Nave, and Marinkovic. Duquesne witness Meena Shyu, and ALCOSAN witness Michael Lichte testified. Also, the written testimony of Duquesne, along with exhibits sponsored by Duquesne’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.[[9]](#footnote-10) The Protestants did not offer further testimony or exhibits at the final day of hearing. I.D. at 4.

On February 4, 2021, an Interim Order directing briefs to be filed was issued. Duquesne filed its Main Brief as directed on March 18, 2021. The Protestants did not file responsive statements.[[10]](#footnote-11) I.D. at 4.

On March 2, 2021, Duquesne 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. I.D. at 5.

The record closed on April 22, 2021, following the expiration of the Reply Brief period. The hearings generated a transcript of 413 pages. I.D. at 5.

As noted, the Initial Decision of ALJ Long was issued June 16, 2021. Exceptions were filed by Mr. Gable, June 28, 2021. Replies to the Exceptions of Mr. Gable were received from Duquesne on July 16, 2021.

**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. *See* I.D. at 5-6; N.T. 196-279.

We duly note the summary of the testimony received at the public input hearing set forth by the presiding ALJ. The topics of concern included: (1) the route selection and the impact on residents, I.D. at 5, citing Bachman, N.T. 217-20; (2) the potential negative impact of the height of the new towers, which would be taller than the existing towers and the impact that would have on property values, I.D. at 5, citing 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; (3) the possibility that the transmission line could be placed underground or along the river, I.D. at 5-6, citing Bookbinder; Bachman, N.T. 217-20; Wojak, N.T. 276-78; (4) whether property owners along the alternative siting routes received adequate notice of the project, I.D. at 5, citing Bookbinder, N.T. 270-75; (5) concern about the size of the easements that Duquesne was acquiring in connection with the project as well as Duquesne’s use of existing easements, I.D. at 6, citing 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; and (6) objections to the proposed height of the towers and the necessity to engineer the towers to accommodate a 345 kV line, I.D. at 6,citing Brilhart, N.T. 223-26; Egger, N.T. 239; Lockridge, N.T. 238-39; Rushman, N.T. 232-33; Hartman, N.T. 251.

We further note the testimony expressing concern regarding the prevalence of cancer among neighbors or persons who were cancer survivors themselves living in proximity to the Project. I.D. at 6, n. 11.

The Public Input Hearing testimony further received comments on perceived health risks associated with transmission lines, I.D. at 6, citing Rushman, N.T. 232-33; Woolet, N.T. 234-37; Sharma, N.T. 253-57; Antram, N.T. 256-58; also, a discussion of EMFs (Electromagnetic Fields) as a cause for concern was noted. I.D. at 6, citing Antram; Bookbinder, N.T. 270-75. One witness identified the use of herbicides used for vegetation management as a health and safety risk. I.D. at 6, citing Nave, N.T. 259-63.

An issue of particular interest to Mr. Gable concerned the integrity of the ground upon which the towers would be built and the prevalence of landslides in the area.[[11]](#footnote-12) Mr. Gable, in addition to other residents, expressed worries that the steep hillsides along the selected route would pose a danger to residents. *See, e*.g., I.D. at 6, citing Hartman, N.T. 245-51; Longwell, N.T. 252-53.

# **V. DISCUSSION**

Before we address the Initial Decision and the merits of the Exceptions filed to the Initial Decision, we note, as a preliminary matter, that any issue, Exception, or contention of a party that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that the Commission is not required to consider, expressly or at length, each contention or argument raised by the Parties. [Consolidated Rail Corporation v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1993103587&pubNum=0000162&originatingDoc=I64b023550b6311e490d4edf60ce7d742&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=02c7ee438ff74fec91a3f99622f539b8&contextData=(sc.History*oc.Search)); see also, generally, [Univ. of Pa. v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1984161326&pubNum=0000162&originatingDoc=I64b023550b6311e490d4edf60ce7d742&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=02c7ee438ff74fec91a3f99622f539b8&contextData=(sc.History*oc.Search)).[[12]](#footnote-13)

We further advise that presiding ALJ Long reached eighty-six (86) Findings of Fact in this matter. We, hereby, adopt said Findings of Fact unless said finding are expressly rejected or modified, or rejected or modified by necessary implication from our disposition, and shall refer to such findings in our discussion.

## **A**. **Legal Standards**

The applicable legal standards concerning burden of proof under the Public Utility Code (Code) were addressed by ALJ Long in the Initial Decision. We shall adopt said discussion consistent with our disposition of the Duquesne Applications. *See* I.D. at 19-23.

**1. Burden of Proof**

Duquesne, as the Applicant in this proceeding, is the proponent of a rule or order from the Commission concerning approval of its consolidated Applications for the authority to site and construct a transmission line as well as obtain the grant of authority to acquire property by eminent domain in connection with the Project. As Applicant, Duquesne bears the burden of proof pursuant to Section 332(a) of the Code, [66 Pa. C.S. § 332(a)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000262&cite=PA66S332&originatingDoc=I64b023550b6311e490d4edf60ce7d742&refType=LQ&originationContext=document&transitionType=DocumentItem&ppcid=fd02c1a64d0c4ea49b6cf1abd76cbf11&contextData=(sc.Search)).

Duquesne, therefore, has the burden of proving that the proposed line meets all the relevant statutory and regulatory requirements by a preponderance of the evidence. [Samuel J. Lansberry, Inc. v. Pa. PUC, 578 A.2d 600 (Pa. Cmwlth. 1990)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1990113436&pubNum=0000162&originatingDoc=I64b023550b6311e490d4edf60ce7d742&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=fd02c1a64d0c4ea49b6cf1abd76cbf11&contextData=(sc.Search)), alloc. denied, [529 Pa. 654, 602 A.2d 863 (1992)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1992044746&pubNum=0000162&originatingDoc=I64b023550b6311e490d4edf60ce7d742&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=fd02c1a64d0c4ea49b6cf1abd76cbf11&contextData=(sc.Search)); *see also* *Application of Pennsylvania Electric Company for Approval to Locate and Construct the Bedford North-Osterburg East 115 kV HV Transmission Line Project Situated in Bedford and East St. Clair Townships, Bedford County, Pennsylvania*, Docket Nos. A-2011-2247862, *et al*. (Order entered June 7, 2012), citing [Energy Conservation Council of Pennsylvania v. Pa. PUC, 995 A.2d 465 (Pa. Cmwlth. 2010)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2021926931&pubNum=0000162&originatingDoc=I5fd444d7b6b811e1b66bbd5332e2d275&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=eca7a7fe66744bcd91cd9bbbb940ebc6&contextData=(sc.Keycite)) (affirming the Commission’s approval of a transmission line[[13]](#footnote-14)) (Energy Conservation Council I); *Energy Conservation Council of Pa. v. Pa. PUC*, 25 A.3d 440 (Pa. Cmwlth. 2011) - affirming the Commission's approval of the Susquehanna-Roseland transmission line proposed by PPL Electric Utilities Corp.) (Energy Conservation Council II).

Preponderance of the evidence means that Duquesne’s evidence must be more convincing, by even the smallest amount, than that presented by any opposing Party.  [Se-Ling Hosiery, Inc. v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1950109677&pubNum=0000162&originatingDoc=I64b023550b6311e490d4edf60ce7d742&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=fd02c1a64d0c4ea49b6cf1abd76cbf11&contextData=(sc.Search)). Additionally, the Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.  [Norfolk & Western Ry. Co. v. Pa. PUC, 489 Pa. 109, 413 A.2d 1037 (1980)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1980106500&pubNum=0000162&originatingDoc=I64b023550b6311e490d4edf60ce7d742&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=fd02c1a64d0c4ea49b6cf1abd76cbf11&contextData=(sc.Search)).

If the applicant sets forth a *prima facie* case, by a preponderance of the evidence, then the burden (burden of going forward with the evidence) shifts to the opponent. 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. *See* I.D. at 20 and citations.

Based on the foregoing, the “burden of proof” is composed of two distinct burdens: the burden of production and the burden of persuasion. *See* *Transource*, *infra*,citing [*Hurley v. Hurley*, 754 A.2d 1283 (Pa. Sup. Ct. 2000)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2000387513&pubNum=0000162&originatingDoc=I4939a845be9211ebaa829251c41d9359&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=c87957cc01de4f7ab03c41163686ceae&contextData=(sc.Keycite)). The burden of production, also called the burden of producing evidence or the burden of coming forward with evidence, determines which party must come forward with evidence to support a particular proposition. This burden may shift between the parties during the course of a trial. The burden of production goes to the legal sufficiency of a party's case. Having passed the test of legal sufficiency, the party with the burden of proof must then bear the burden of persuasion to be entitled to a verdict in his/her favor: “[T]he burden of persuasion never leaves the party on whom it is originally cast, but the burden of production may shift during the course of the proceedings.”  *Id*., citing [*Riedel v. County of Allegheny*, 633 A.2d 1325, 1328 n. 11 (Pa. Cmwlth. 1993)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1993213694&pubNum=0000162&originatingDoc=I4939a845be9211ebaa829251c41d9359&refType=RP&fi=co_pp_sp_162_1328&originationContext=document&transitionType=DocumentItem&ppcid=c87957cc01de4f7ab03c41163686ceae&contextData=(sc.Keycite)#co_pp_sp_162_1328). The burden of persuasion, usually placed on the complainant, applicant, or petitioner, determines which party must produce sufficient evidence to meet the applicable standard of proof. In order to bear the burden of proof and be entitled to a decision in his or her favor, a party must bear both the burden of production and the burden of persuasion. *Id*.

While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. [Milkie v. Pa. PUC, 768 A.2d 1217 (Pa. Cmwlth. 2001)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2001174252&pubNum=162&originatingDoc=I64b049e10b6311e490d4edf60ce7d742&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=84c1e5d3358f4cc4bfe4fdd9f48981fe&contextData=(sc.Keycite))

### **2. Legal Standards for the Approval of Transmission Lines**

ALJ Long addressed the statutory and Commission Regulatory requirements for approval of siting applications. I.D. at 20-22.

The threshold issue in the siting of a transmission line that a utility must establish is whether the upgraded or additional transmission line is “needed” in order to furnish the adequate facilities mandated by Section 1501 of the Code, 66 Pa. C.S.

§ 1501;[[14]](#footnote-15) *see*, *e.g*., *Application of Trans-Allegheny Interstate Line Company* . . . , Docket Nos. A-2010-2187540, and A-2010-2187542 (Order entered March 15, 2012); 2012 WL 961232 (Pa.P.U.C.). The Commonwealth Court has determined that a transmission line should not be approved unless the electric utility proposing the line demonstrates that the line is “necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public.”  [*Pa. Power & Light Co. v. Pa. PUC*, 696 A.2d 248, 250 (Pa. Cmwlth. 1997)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1997121399&pubNum=0000162&originatingDoc=Ife074db0579511e097a4a9f0a6e10efc&refType=RP&fi=co_pp_sp_162_250&originationContext=document&transitionType=DocumentItem&ppcid=b4e795f396cd4cdfa6b51cf2d2e52349&contextData=(sc.Search)#co_pp_sp_162_250), quoting Section 1501 of the Code. In applying this standard, the Commonwealth Court held that the Commission should consider the “electric power needs of the public, the state of the available technology and the available alternatives.”  *Id.*, quoting [52 Pa. Code § 57.76](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS57.76&originatingDoc=Ife074db0579511e097a4a9f0a6e10efc&refType=LQ&originationContext=document&transitionType=DocumentItem&ppcid=b4e795f396cd4cdfa6b51cf2d2e52349&contextData=(sc.Search)).

If an applicant establishes that the proposed project is necessary and proper within the meaning of [Section 1501](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000262&cite=PA66S1501&originatingDoc=Ia415a3dc0bd811e4a795ac035416da91&refType=LQ&originationContext=document&transitionType=DocumentItem&ppcid=fc2a3362289d4e41a483fda9dc36509e&contextData=(sc.History*oc.Search)), then the Commission must determine whether the route selected is appropriate in terms of location, safety, health and environmental impacts, and costs. This determination must be made by examining the application in the context of Sections 57.75 and 57.76 of the Commission's Regulations, *infra*,which enumerate specific criteria which must be considered. *Id*.

Commission Regulations at [52 Pa. Code §§ 57.71](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS57.71&originatingDoc=Ife074db0579511e097a4a9f0a6e10efc&refType=LQ&originationContext=document&transitionType=DocumentItem&ppcid=b4e795f396cd4cdfa6b51cf2d2e52349&contextData=(sc.Search))-[57.77](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS57.77&originatingDoc=Ife074db0579511e097a4a9f0a6e10efc&refType=LQ&originationContext=document&transitionType=DocumentItem&ppcid=b4e795f396cd4cdfa6b51cf2d2e52349&contextData=(sc.Search)) (siting regulations), address the construction of high voltage (HV) transmission lines. The Commission will grant an application for approval of the siting and construction of a HV transmission line if it finds and determines, pursuant to [52 Pa. Code § 57.76(a)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS57.76&originatingDoc=I64c7452656fb11e7bfb79a463a4b3bc7&refType=LQ&originationContext=document&transitionType=DocumentItem&ppcid=d732a34948364df39cee7d9c3bcbbfd4&contextData=(sc.Search)), the following:

(1) That there is a need for the high voltage transmission line.

(2) That the high voltage transmission line will not create an unreasonable risk of danger to the health and safety of the public.

(3) That the high voltage transmission line is in compliance with applicable statutes and regulations providing for the protection of the natural resources of the Commonwealth.

(4) That the high voltage transmission line 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)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS57.76&originatingDoc=I64c7452656fb11e7bfb79a463a4b3bc7&refType=LQ&originationContext=document&transitionType=DocumentItem&ppcid=d732a34948364df39cee7d9c3bcbbfd4&contextData=(sc.Search)).

The Commission's siting regulations, and in particular [52 Pa. Code § 57.76](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS57.76&originatingDoc=Ife074db0579511e097a4a9f0a6e10efc&refType=LQ&originationContext=document&transitionType=DocumentItem&ppcid=b4e795f396cd4cdfa6b51cf2d2e52349&contextData=(sc.Search)), were promulgated, *inter alia*, to meet the requirement for a consideration of environmental impacts mandated by [Article I, Section 27 of the Pennsylvania Constitution](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000427&cite=PACNART1S27&originatingDoc=Ife074db0579511e097a4a9f0a6e10efc&refType=LQ&originationContext=document&transitionType=DocumentItem&ppcid=b4e795f396cd4cdfa6b51cf2d2e52349&contextData=(sc.Search)),[[15]](#footnote-16) and to apply the three-part test enunciated in [*Payne v. Kassab*, 312 A.2d 86 (Pa. Cmwlth. 1973)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1973102662&pubNum=0000162&originatingDoc=Ife074db0579511e097a4a9f0a6e10efc&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=b4e795f396cd4cdfa6b51cf2d2e52349&contextData=(sc.Search)), which implements the Constitutional requirements. *See, e.g*.,I.D. at 21-22.

The three-part test of *Payne v. Kassab* requires the consideration of the following: (1) Was there compliance with all applicable statutes and regulations relevant to the protection of the Commonwealth’s environment; (2) Does the record demonstrate a reasonable effort to reduce the environmental incursion to a minimum; (3) Does the environmental harm which would result from the challenged decision or action so clearly outweigh the benefits to be derived therefrom that to proceed further would be an abuse of discretion.  [Payne *v. Kassab*, 312 A.2d at 94](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1973102662&pubNum=0000162&originatingDoc=I64b023550b6311e490d4edf60ce7d742&refType=RP&fi=co_pp_sp_162_94&originationContext=document&transitionType=DocumentItem&ppcid=fd02c1a64d0c4ea49b6cf1abd76cbf11&contextData=(sc.Search)#co_pp_sp_162_94).

The Commission uses the test enunciated in *Payne v. Kassab* to determine whether a proposed transmission line having environmental impacts should be approved. *See Application of PPL Electric Utilities Corporation filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for approval of the siting and construction of transmission lines associated with the Northeast-Pocono Reliability Project in Portions of Luzerne, Lackawanna, Monroe, and Wayne Counties, Pennsylvania*, Docket Nos. Docket No.

A­­‑2012-2340872, *et al*. (Order entered January 9, 2014); 2014 WL 120300 (Pa.P.U.C.); also Energy Conservation Council I; *Re: Proposed Electric Regulation*, 1976 Pa. PUC LEXIS 114 at \*6, 49 Pa. PUC 709 at 712 (March 2, 1976).

The four elements cited in Section 57.76 set forth above provide the structure for the Commission’s evaluation of a siting application. In determining whether the applicant has satisfied the four prongs of the Commission Regulations, the Commission will consider evidence on the matters set forth in Section 57.7531 of the Commission’s Regulations, 52 Pa. Code § 57.7531, 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.

(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.

Further, the Commission has adopted a Policy Statement setting forth considerations applicable to review whether a proposed route selected by an applicant comports with the Statutory, Regulatory and caselaw directives. The Commission’s Policy Statement provides, as follows:

#### § 69.3105. Route evaluation and siting*.*

Applications for the siting of electric transmission lines should provide the following information as part of the § 57.72(c) (relating to form and content of application) requirements:

(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.

(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).

52 Pa. Code § 68.3105.

**3. Legal Standards for Eminent Domain**

A public utility may condemn property to provide electricity under Section 1511 of the Business Corporation Law of 1988 (BCL), 15 Pa. C.S. § 1511. Section 1511(b) of the BCL, contains certain restrictions on the ability to exercise eminent domain, for “ . . . aerial electric transmission . . . lines: [a]ny dwelling house . . .’ and [a]ny place of public worship or burying ground. [15 Pa. C.S. § 1511(b)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000262&cite=PA15S1511&originatingDoc=I4939a845be9211ebaa829251c41d9359&refType=LQ&originationContext=document&transitionType=DocumentItem&ppcid=efb05df09e78473281376c72a6b5fe60&contextData=(sc.Keycite)).

The Commission will grant an application for approval of eminent domain authority if it finds and determines, pursuant to [15 Pa. C. S. §1511(c)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000262&cite=PA15S1511&originatingDoc=I64c7452656fb11e7bfb79a463a4b3bc7&refType=LQ&originationContext=document&transitionType=DocumentItem&ppcid=d732a34948364df39cee7d9c3bcbbfd4&contextData=(sc.Search)), the following:

1. That the transmission or distribution of electricity to or for the public that will be provided if the subject property is condemned, is necessary for the service, accommodation, convenience or safety of the public; and

(2) That the route selection route was reasonable, considering all of the factors involved in the selection of a route.[[16]](#footnote-17)

## **B.** **Description of the BI-Crescent Project**

The background and need for the BI-Crescent Project was explained through Duquesne witnesses: Jason A. Harchick, (Duquesne St. 1; 1-R; St. 1-A (Amended Application)); Direct Testimony of Aimee Kay (Duquesne Light Statement No. 2; 2-R; 2-A); and Direct Testimony of Meenah Shyu (Duquesne Light Statement No. 3; 3-R; 3-A).

The BI-Crescent Project addresses and replaces aged transmission infrastructure that is reaching the end of its useful life and cannot be permanently repaired. *See* I.D. at 8; Finding of Fact No. 7. The structures associated with the Project are some of the oldest in-service steel lattice towers in Duquesne’s system and were originally constructed in 1914. *See* I.D. at 8, Finding of Fact No. 8, citing Duquesne Light St. 1A at 5; Amended Application, Attachment 2 at 5-6.

Under the original Application, Duquesne proposed to construct the Bl-Crescent Project such that one circuit, capable of operation at 345 kV, (after the necessary approvals are acquired) would be built. The reasoning behind this was explained, *inter alia*, that such construction would avoid a later need for construction activities in the event that the circuit was required to operate at 345 kV in the future. Duquesne St. 1-R at 4.

Based upon changes in circumstances, including input received from its customers through multiple channels and forums, including the feedback received at the Public Input hearing, Duquesne re-engineered the Bl-Crescent Project to eliminate the proposal to build the circuits to 345 kV standards. The changes in circumstances included deactivation of certain generating stations which would alleviate certain reliability criteria violations that Duquesne initially contemplated addressing by building one of the circuits associated with the Bl-Crescent Corridor to 345 kV standards.

On consideration of the foregoing, Duquesne amended its plans to rebuild both circuits at the existing 138 kV capacity. Duquesne St. 1-A, at 7. The proposed in-service date was also revised to May 31, 2027. *Id.*, at 8.

Therefore, the proposed Amended Project involves the siting and rebuilding of the double-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, Paragraph 5. 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. *See* Finding of Fact Nos. 2-3. The Brunot Island-Crescent 138 kV Transmission Line will be rebuilt as a 138 kV overhead transmission line along existing right-of-way or ROW.

The Proposed Route for the project was described by Duquesne Light witness, Aimee Kay:[[17]](#footnote-18)

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

I.D. at 24.

**C. Need**

**1. ALJ’s Recommendation**

ALJ Long concluded that Duquesne sustained its burden of proving that the Project meets the need requirement of Section 57.76(a)(1) of the Commission’s Regulations, 52 Pa. Code § 57.76(a)(1). I.D. at 25-27.

Two, primary, considerations were identified by the presiding ALJ, that established Duquesne’s burden of proof on the issue of need, recognizing that “need” is not defined in the Code. I.D. at 25.

First, 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. I.D. at 26. Therefore, while the Courts have explained that nowhere in any of the statutory or regulatory provisions of the law is there a requirement that a utility demonstrate a “need” for the installation of the transmission line from an “engineering” perspective, the Commission and the Courts acknowledge that reasonably developed reliability standards are important considerations supporting a conclusion of need. I.D. at 26, citing *Hess v. Pa. PUC*, 107 A.3d 246, 262-263 (Pa. Cmwlth. 2014), *appeal denied*, 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*., Docket Nos. A-2014-2430565 *et al*., (Order entered February 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.

Further, 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. *See* I.D. at 25, discussing Section 2802(12)(20) and Section 2803 of the Code, 66 Pa. C.S. §§ 1 2802(12); (20) and 2803.

In the Amended Application and testimony, Duquesne explained that the 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’s system and were originally constructed in 1914. Further, according to the ALJ, the Company offered substantial credible evidence which supports the development of the project as consistent with reliability planning. I.D. at 26. 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[[18]](#footnote-19) stakeholders. *Id*.

**2. Disposition**

## On consideration of the record, we shall adopt the reasoning and discussion of the presiding ALJ concerning need. We conclude that Duquesne has met its burden of proving that the Project satisfies Section 57.76(a)(1) of the Commission ‘s Regulations.

As found by the ALJ, in pertinent part:

\* \* \*

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

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.

I.D. at 7-8; (note omitted).

The aging infrastructure – dating back to 1914, in conjunction with the PJM reliability evaluative criteria used by Duquesne, supports the need element of our regulations. As explained by the Company, “[i]t is critical that the interconnected transmission system be planned and designed to be highly reliable so that service can be provided under peak loading conditions and when certain elements of the system are out of service due to planned or forced outages.” *See* Duquesne M.B. at 18.

Based on our review of the record, we agree that Duquesne has demonstrated by a preponderance of the evidence, that the project is necessary to meet its reliability standards, and the facilities associated with the transmission line must be replaced because they have reached the end of their useful lives and can no longer be efficiently repaired.

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

**1. ALJ’s Recommendation**

Based on her review of the evidence, ALJ Long determined that Duquesne satisfied the criteria in 52 Pa. Code § 57.76(a)(2) by showing that the Amended BI-Crescent Project will not create an unreasonable risk of danger to the health and safety of the public. I.D. at 30. The ALJ observed that 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. *See* I.D. at 27, citing Duquesne Light St. 3A at 6-9; Duquesne Light Exh. 3, Attachment 11. The ALJ stated that in addition to the safety features incorporated by designing the line in accordance with the NESC, Duquesne designs all of its transmission lines for “Grade B construction,” which has more stringent design standards, including the BI-Crescent Project. Duquesne also surpasses NESC standards for clearance requirements and structure overload or multiplying factors. The ALJ noted that for the BI-Crescent Project, Duquesne’s design loading conditions for structures, wires, and clearances exceed NESC standards.

ALJ Long reasoned that 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. I.D. at 27, n. 45.

**2. Disposition**

The areas of concern particularly raised by Protestants Gable and Zona, in addition to their dissatisfaction with the route chosen by Duquesne in light of alternative routes that were not considered, involves the nature of the topography around the project route. These Protestants raised concerns over potential landslides in the area of the Project.

ALJ Long found, as follows:

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.

\* \* \*

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.

I.D. at 9; 10-11.

While the concerns of the Protestants are valid, we find that Duquesne has reasonably addressed the concerns with, *inter alia*, extra attentiveness to the engineering challenge of the topography of the Project. The facilities will be designed to withstand potential landslides and will support reliable electric service of the Bulk Electric System. *See* Finding of Fact No. 18; *also* Finding of Fact Nos. 24-26:

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.

I.D. at 10.

Again, Protestants Gable and Rabosky also raised concerns regarding EMF mitigation. Duquesne presented evidence which demonstrated that the Project includes measures for EMF mitigation. I.D. at 29. The following Findings of Fact were cited regarding the EMF concerns:

35. To reduce EMFs, 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.

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.

I.D. at 11-12.

Finally, we note that Duquesne witness Shyu expressly addressed the issues raised by Protestant Zona at the September 10, 2019, hearing in rebuttal testimony. *See* Duquesne Light St. 2-R, pages 3-4. We shall adopt the recommendation of ALJ Long.

## **E. Route Selection and Minimizing Environmental Impacts**

**1. ALJ’s Recommendation**

The considerations for the route selected by Duquesne in its Amended Application were extensively addressed in the Initial Decision. I.D. at 31-39. ALJ Long appropriately considered Duquesne’s responsiveness to the factors of the Commission Policy Statement. Further, ALJ Long noted that we 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, *inter alia*,have minimum adverse environmental impacts. I.D. at 31.

## On review of the proposed route for the Project, and the considerations evaluated by Duquesne, ALJ Long recommended adoption of the route contained in the Amended Application. Her pertinent reasoning is reprinted below:

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.

\* \* \*

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 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.

I.D. at 33-34.

Based on the above-cited considerations, the presiding ALJ recommended that the route selected was reasonable and in compliance with Commission Regulations.[[19]](#footnote-20)

**2. Disposition**

The selection of the proposed route for the Project created the most controversy as identified by the statements of the Protestants. Particularly, Protestant Zona criticized the criteria used to evaluate the proposed route and the alternative routes in the Siting Study[[20]](#footnote-21) and the Company’s calculation of the impact score for each respective route. Mr. Zona also contested, *inter alia*, the SCC[[21]](#footnote-22) criteria and additional criteria used in the Siting Study of Duquesne to evaluate the routes considered and argued that the criteria were biased in favor of the proposed route. *See* Duquesne Light St. 2-R at 11, citing N.T. at 181-182; *also* Exhibit Zona 4.[[22]](#footnote-23) Mr. Zona further criticized the selection and weighting of the criteria used in the Siting Study and attacked the underlying data as “arbitrary” and based on unreasonable assumptions. *Id*.

The methodology used by the Company to arrive at its determination of the Proposed Route was extensively detailed in the testimony of Duquesne witnesses, particularly, witness Kay. Duquesne Light St. 2-R and 2-A. While the considerations evaluated by the Company involved a “trade-off” of values, the Proposed Route was selected based on an overall impact the Project would have on the environment. The witness dispelled the notion of the weighing of alternatives having a tendency toward a bias in favor of the selected route. The SCC weights were based upon the sensitivity and frequency of the resources potentially affected by the construction and operation of the Project. The resources and their sensitivity were not related to the voltage of the Project and the weights established by the SCC. Also, the weights established are considered an industry standard for evaluating transmission line projects. Duquesne Light St. 2-R at 14-15; 2-A at 7-10. Mr. Zona did not, asserts Duquesne, propose an alternative to the route selected for the project.

On consideration of the Initial Decision, we shall adopt the recommendation of ALJ Long. The considerations addressed by Duquesne, and ultimately adopted, have been thoroughly considered and reviewed pursuant to the criteria of the Commission’s Regulations and the Policy Statement. We note the concerns of the Protestants in this area, but further observe that substantial construction will take place on existing ROWs. *See* Duquesne Light St. 2-R, at 4. The Superior Court explained the selection of a route for electric transmission lines as follows:

“[T]he selection of routes for transmission lines is a matter for the utility in the first instance and, unless it is shown that it proposes to exercise the powers conferred upon it wantonly or capriciously, or that the rights of the landowner have been unreasonably disregarded, the Commission is not required to withhold its approval merely because another route might have been adopted.”

*See Laird v. Pa. PUC*, 133 A.2d. 579, 581 (Pa. Super. 1957).

*See also Application of PPL Electric Utilities Corporation Under 15 Pa. C.S. s 1511(c)* . . . , Docket Nos. A-2011-2267349, *et al.* (Order entered July 16, 2013)[[23]](#footnote-24) - the applicable legal standards for review of the selection of a route for utility lines are whether the powers conferred upon the public utility have been wantonly, capriciously or arbitrarily exercised; citing [West Penn Power Co. v. Pa. PUC, 184 A.2d 143 (Pa. Super. 1962)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1962108360&pubNum=162&originatingDoc=I64b049e10b6311e490d4edf60ce7d742&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=84c1e5d3358f4cc4bfe4fdd9f48981fe&contextData=(sc.Keycite)); based on the standard announced in West Penn, the “degree of inconvenience to the landowner” would not overcome a showing by the utility that the route selection was reasonable considering all of the factors involved. See also, [Stone v. Pa. PUC, 162 A.2d 18 (Pa. Super. 1960)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1960106697&pubNum=162&originatingDoc=I64b049e10b6311e490d4edf60ce7d742&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=84c1e5d3358f4cc4bfe4fdd9f48981fe&contextData=(sc.Keycite)); [Paxtowne v. Pa. PUC, 398 A.2d 254 (Pa. Cmwlth. 1979)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1979100512&pubNum=162&originatingDoc=I64b049e10b6311e490d4edf60ce7d742&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=84c1e5d3358f4cc4bfe4fdd9f48981fe&contextData=(sc.Keycite)); *See* 2013 WL 3787567 (Pa.P.U.C.).

We find that the Company’s proposal is reasonable and will adopt the Initial Decision.

**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. I.D. at 39.

Duquesne 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 and ALCOSAN is set forth in the Joint Petition for Settlement filed on March 2, 2021.

**1. Settlement Terms**

Duquesne and ALCOSAN, as Joint Petitioners, agreed to the following terms to resolve their positions in this matter:

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.

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.

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,

Settlement at 5-10; I.D. at 39-42.

**2. Statements in Support**

Duquesne cites the applicable Commission Regulations at 52 Pa. Code § 5.231 and 52 Pa. Code § 69.401, to note that the Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. Thus, advises Duquesne, in order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *See* Statement in Support, citing *Pa. PUC v. York Water Co*., Docket No. R‑00049165 (Order entered Oct. 4, 2004); *Pa. PUC v. C.S. Water and Sewer Assocs*., 74 Pa. P.U.C. 767 (1991).

Duquesne further states, in support of the Settlement, that the Settlement is reasonable and in the public interest in that Duquesne, ALCOSAN, and their respective customers will benefit from the avoidance of future conflicts and, potential, proceedings. The Joint Petitioners was achieved after an investigation of Duquesne’s applications, including discovery and the service of written direct testimony by Parties. The Parties were able to reach a reasonable compromise that adequately protects their respective interests as the Settlement establishes 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 Settlement commits ALCOSAN and Duquesne to an open, timely and efficient process for the communication of material changes to engineering plans, specifications, calculations, foundation locations, and construction plans as it relates to utility facilities on or near specifically identified parcels and addresses concerns regarding whether and to what extent the Brunot-Crescent Project would overlap with ALCOSAN’s existing and planned facilities.

Finally, from the position of Duquesne, the Settlement makes clear that Duquesne does not anticipate the need to exercise eminent domain authority on the parcels identified by ALCOSAN. Duquesne indicated that the exercise of this authority was not anticipated or needed at this time in its rebuttal testimony.

ALCOSAN, in its Statement in Support, advises that the Joint Petition reflects a reasonable balance and appropriate compromise of the Settlement Parties’ positions. The Settlement achieves compromise by requiring the Settlement 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 and ALCOSAN could overlap.

**3. ALJ’s Recommendation**

On consideration of the Settlement, ALJ Long recommended that it be approved as in the public interest. ALJ Long found that the Settlement reflected 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. ALJ Long also found that the Settlement ensures that ALCOSAN will be able to plan the expansion of its facilities and meet its legal obligations and that Duquesne will be able to appropriately engineer its facilities to meet its service obligations. ALJ Long further noted that it is the policy of the Commission to promote settlements. Settlements achieve a resolution of contested issues that is, in many instances, preferable to any outcome to be obtained through litigation. I.D. at 44-45.

**4. Disposition**

On consideration of the Settlement, the Initial Decision, and the Parties’ Statements in Support, we shall approve the Settlement finding it to be in the public interest. As noted by ALJ Long, it is the policy of the Commission to promote settlements. *See* 52 Pa. Code § 5.231; 52 Pa. Code § 69.401. Settlements achieve a resolution of contested issues that is, in many instances, preferable to any outcome to be obtained through litigation.

The key to our finding that the resolution achieved between the Parties should be approved as in the public interest, is that the Parties agree to work together in good faith and on a best-efforts basis, to site Duquesne’s transmission lines in a manner that will minimize the likelihood of any adverse impact on ALCOSAN’s existing and planned sewer/sanitation facilities roll out. The Parties agree to a free and transparent exchange of information to anticipate and preemptively avoid conflicts in existing or proposed construction and facilities. Duquesne agrees to provide ALCOSAN advanced notice and an opportunity to attend the pre-construction conference and contractor progress meetings in addition to other exchanges and contacts for the purposes of the Settlement. We find this resolution to be in the public interest.

## **G. Eminent Domain Application**

**1. ALJ’s Recommendation**

Duquesne seeks to exercise the power of eminent domain to acquire rights- of-way for property that would run approximately 1,079 feet over and across the property identified in the Schaefer Condemnation Application. I.D. at 45; Duquesne Light St. 1 (Schaefer) at 4. Although Duquesne filed an Amended Application with respect to the BI-Crescent Project, the Proposed Route was not changed. Duquesne explained that the Schaefer Condemnation Application is interrelated with the consideration of the Amended Application, and it requested that the proceedings remain consolidated.

Duquesne detailed its efforts to ensure the potential owners of the Schaefer property received notice of the Schaefer Condemnation Application. The owner of the property is deceased. Duquesne Light St. 1-R (Schaefer) at 16-17. Through its review of intestacy law and estates of record, Duquesne 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 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 St. 1-R (Schaefer) at 18; see also Duquesne Exh. LG-5 (Schaefer).

No Party to this proceeding has opposed the request for condemnation. None of these potential property owners have submitted any evidence in this proceeding in opposition to the requested condemnation. Also, 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, the ALJ found as explained above, that Duquesne did not act wantonly, capriciously, or arbitrarily in selecting the proposed right-of-way. I.D. at 46 (citing *Dep’t of Env’t Re. v. Pa. PUC*, 335 A.2d 860 (Pa. Cmwlth. 1975). Rather Duquesne properly considered the factors required by the Commission’s Regulations using qualitative and quantitative criteria.

ALJ Long concluded that Duquesne demonstrated that the Project is necessary and that the service to be provided by Duquesne through the proposed transmission lines and related facilities is necessary or proper for the service, accommodation, convenience or safety of the public. I.D. at 46-47. Accordingly, she recommended that Duquesne’s proposed exercise of the power of eminent domain to acquire rights-of-way and easements for the proposed BI-Crescent Project over the land identified in the Schaefer Condemnation Application be approved. *Id*.

**2. Disposition**

On consideration of the recommendation of ALJ Long, we shall adopt said recommendation and approve the request of Duquesne pursuant to 15 Pa. C.S. § 1511(c) to exercise the power of eminent domain over the tract of land identified in the Schafer Condemnation. After a review of the record in this proceeding, we concur with ALJ Long’s findings that Duquesne: (1) did not act wantonly, capriciously, or arbitrarily in selecting the proposed right-of-way; and (2) properly considered the factors required by the Commission’s Regulations using qualitative and quantitative criteria.

**H. Gable Exceptions and Replies**

Mr. Gable, as noted, was an active participant in the proceedings. As we can discern, Mr. Gable appears to raise six Exceptions to the Initial Decision.

First, Mr. Gable sites page 7, Finding of Fact No. 5 of the Initial Decision. Specially, he mentions Brunot Island – Crescent as a 345 kV line rather than a 138 line, but does not offer any further explanation. Finding of Fact No. 5 states. “The BI‑Crescent Project, as amended, does not involve facilities designed to operate at 345 kV.” I.D. at 7.

Second, Mr. Gable cites Findings of Fact Nos. 27, 31 and 33:

\* \* \*

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.

\* \* \*

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.

\* \* \*

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.

I.D. at 10-11.

In connection with the reference to the above Findings of Fact, Mr. Gable states that Duquesne plans to use 176 and 195 feet poles which are “capable” of 345 kV, rather than 155 feet poles described in the proceeding.

Third, Mr. Gable asserts that the structure, which was built in 1914, has been upgraded three times and is in good shape.

Fourth, Mr. Gable cites Findings of Fact Nos. 18-20, and Nos. 22-24, to argue that the proposed building site on his property is on a partial shelf of exposed rock and shale, that no core samples have been taken for his property, and that “they core drilled for road only.”

Fifth, Mr. Gable cites Findings of Fact Nos. 35-36 to assert that Duquesne has “made no base number for EMF [Electromagnetic Field] ratings safe for humans and wildlife.”

Sixth, Mr. Gable cites Finding of Fact No. 80 to assert that Duquesne is designing access roads without input from stakeholders. Specifically,Finding of Fact No. 80 states:

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.

Exc. at 2.

In Replies to the Exceptions, Duquesne addresses the Exceptions of Mr. Gable. Duquesne responds that the ALJ correctly found the following: (1) that the tower structures and conductors of the Amended Application are not designed to operate at 345 kV (Reply Exception (R. Exc.) at 3-4); (2) that the average (emphasis upon *average*) of the tower structures proposed in the Amended Application is 155 feet (R. Exc. at 4-5); (3) that the structures that will be replaced by the proposed line in the Amended Application are some of the oldest on the Duquesne system (R. Exc. at 6-7); (4) that the proposed facilities will be designed and constructed to withstand landslides and surface movement (R. Exc. at 7-8) and, specifically, Mr. Gable’s claim that “no core samples have been taken for this site” is not correct. *Id*., at 8, citing Duquesne Exhs. MS-3 and MS-4; (5) that Duquesne’s described, EMF mitigation features are consistent with the Commission’s Policy Statement (R. Exc. 8-9); and (6) that the Company has worked with landowners to route access roads (R. Exc. at 9-10).

**2. Disposition**

On consideration of the Exceptions and Replies, we conclude that the issues raised by Mr. Gable have been thoroughly addressed in the Initial Decision. In pertinent part, the ALJ concluded:

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.

I.D. at 26.

Furthermore, after reviewing the record, we find that Mr. Gable did not and has presented or offered any evidence or information to support his assertions. In fact, as Duquesne notes in its Replies Exceptions, the record contains evidence to the contrary. Therefore, we will deny the Exceptions consistent with the discussion in this Opinion and Order.

**VI. Conclusion**

After fully reviewing the evidence presented by Duquesne in support of the request for approval of the Project, the Initial Decision of ALJ Long and the Exceptions, we conclude that Duquesne has met its burden of proof to demonstrate by a preponderance of the evidence, that the Project meets the statutory and regulatory requirements for approval. Based on the foregoing, the applications for the BI-Crescent Project will be approved and the Initial Decision is adopted as the action of the Commission; **THEREFORE**

**IT IS ORDERED:**

1. That the Exceptions of Mr. Richard Gable filed on June 28, 2021, to the Initial Decision of Administrative Law Judge Mary D. Long issued June 16, 2021 (as corrected) in the following Commission Dockets, Nos. A-2019-3008589 and A‑2019‑3008652, are denied consistent with the discussion in this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Mary D. Long issued June 16, 2021 (as corrected) issued June 16, 2021, in the following Commission Dockets, Nos. A-2019-3008589 and A-2019-3008652, is adopted by the Commission, consistent with the discussion in this Opinion and Order.
3. 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.

1. 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.

1. 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.

1. 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.
2. The dockets at Docket Nos. A-2019-3008589, and A-2019-3008652 be marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: October 28, 2021

ORDER ENTERED: October 28, 2021

1. The Exceptions of Mr. Gable did not contain a Certificate of Service. By Secretarial Letter dated June 28, 2021, the Commission Secretary served a copy of the Exceptions on Duquesne. [↑](#footnote-ref-2)
2. Duquesne, as discussed below, subsequently filed an amended application, which modified the original proposal regarding the construction of one circuit and the height of certain poles. [↑](#footnote-ref-3)
3. Duquesne, as noted, subsequently filed an Amended Application on

   August 10, 2020. The testimony and exhibits of Protestants were noted at the hearing of September 10, 2019, concerning the original Application. Protestants did offer testimony concerning the Amended Application on December 21, 2020, but no exhibits were sponsored for inclusion into the record. I.D. at 4. [↑](#footnote-ref-4)
4. Attachments 5a and 5b were filed pursuant to the Commission’s Regulations for confidential and proprietary treatment as including sensitive information about critical energy infrastructure. *See* Duquesne Light Confidential Exhibit No.: 2 (Full Siting Application with Confidential Exhibits 5A and 5B) \*CONFIDENTIAL EXHIBIT - NOT ATTACHED\* 4 (Amended Full Siting Application with Confidential Exhibits 5A and 5B) \*CONFIDENTIAL EXHIBIT - NOT ATTACHED. [↑](#footnote-ref-5)
5. Some of the protests were originally filed as Formal Complaints however, the Secretary of the Commission noted that the filings would be considered as protests given our procedural regulations on applications. *See* 52 Pa. Code § 5.51. [↑](#footnote-ref-6)
6. National Electric Safety Cody (NESC). [↑](#footnote-ref-7)
7. ALCOSAN noted that, pursuant to the Consent Decree, it is under certain deadlines and milestones for completion of its obligations thereunder. Petition ¶ 7; ¶ 8. [↑](#footnote-ref-8)
8. Protestants Wilson and Duquesne entered into a settlement agreement under which they agreed not to further oppose the Project. *See* Duquesne Brief at 3, n. 2. [↑](#footnote-ref-9)
9. 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. [↑](#footnote-ref-10)
10. The presiding ALJ advised the Protestants that they were not bound by the strict rules of practice under Commission Regulations concerning briefs and were invited to file statements in support of their positions. [↑](#footnote-ref-11)
11. *See* November 17, 2020 Letter from Gable, “ . . . Duquesne Light has chosen to construct a tower on my property, which has recently been involved in a land slide which is causing Rte 51 to close for over a month;” *also* I.D. at 28. [↑](#footnote-ref-12)
12. *See also, In Re: Application of PPL Electric Utilities Corporation (PPL) for Approval of the Siting and Reconstruction of the Proposed Coopersburg #1 and #2 138/69 kV Tap in Upper Saucon Township, Lehigh County and Springfield and Richland Townships, . . .*  Docket Nos. A-2008-2022941, *et a*l (Order entered July 24, 2009); 2009 WL 2475423 (Pa.P.U.C.), *affirmed Bd. of Supervisors Springfield Twp. v. Pa. PUC*, 41 A.3d 142 (Pa Cmwlth. 2012). [↑](#footnote-ref-13)
13. *In Re: Application of Trans-Allegheny Interstate Line Company* (*TrAILCo*) . . . Docket Nos. A-110172, A-110172F0002, et al (Order entered December 12, 2008); 103 Pa.P.U.C. 554 (2008); 2008 WL 5786507 (Pa.P.U.C.).  In *TrAILCo*, the entity seeking authority for siting and construction of transmission lines was not previously designated as a public utility. In *TrAILCo*, the applicant sought a certificate of public convenience and designation as a public utility as part of the application to construct transmission lines. *See TrAILCo*; *also Applications of Transource Pennsylvania, LLC for approval of the Siting and Construction of the 230 kV Transmission Line Associated with the Independence Energy Connection - East and West Projects in portions of York and Franklin Counties, Pennsylvania*, Docket Nos. A-2017-2640195, et al. (Order entered May 24, 2021); 2021 WL 143699 (Pa.P.U.C.) (*Transource*). [↑](#footnote-ref-14)
14. 66 Pa. C.S. § 1501, provides, in pertinent part:

    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. . . .  [↑](#footnote-ref-15)
15. 11 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.” [↑](#footnote-ref-16)
16. *See*, *e.g.* *Application of Mid-Atlantic Interstate Transmission, LLC filed pursuant to 52 Pa. Code Chapter 57 Subchapter G, for Approval to Locate and Construct the Pierce Brook-Lewis Run 230 kV Transmission Line Project in Lewis Run Borough, and Keating, Bradford and Lafayette Townships, McKean County, Pennsylvania*, *et al.*,Docket Nos. A-2015-2513898, *et al.* (Order entered June 14, 2017); 2017 WL 2669818 (Pa.P.U.C.). [↑](#footnote-ref-17)
17. *See* Duquesne Light St. 2-A p. 11. Duquesne Light witness Ms. Aimee Kay is employed by GAI Consultants, Inc. (GAI) 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. [↑](#footnote-ref-18)
18. 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; I.D. at 7. [↑](#footnote-ref-19)
19. The ALJ acknowledged a number of residential dwellings involved in the selected route. I.D. at 34; Finding of Fact No. 59. [↑](#footnote-ref-20)
20. Duquesne retained GAI to prepare the Siting Study. *See,* Duquesne Light St. 2A at 3.

    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.

    *See* Duquesne Light St. 2A at 3; I.D. at 12. [↑](#footnote-ref-21)
21. Siting Criteria Council (SCC) for the GPU-DQE 500 kV Transmission Line Project. *See* Duquesne Light St. No. 2A; Amended Application, Attachment 3; Finding of Fact No. 44. [↑](#footnote-ref-22)
22. *See also* Finding of Fact Nos. 29-32 concerning the modifications to the height of poles which would be replaced on the property of Protestant Zona. [↑](#footnote-ref-23)
23. The application involved in these proceedings involved a request to exercise the power of eminent domain for the siting of 69kv transmission lines and not HV lines. [↑](#footnote-ref-24)