

STATEMENTS OF POLICY

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Interim Guidelines for the Filing of Electric Transmission Line Siting Applications

Public Meeting held
November 4, 2010

Commissioners Present: James H. Cawley, Chairperson; Tyrone J. Christy, Vice Chairperson; John Coleman; Wayne E. Gardner; Robert F. Powelson

Interim Guidelines for the Filing of Electric Transmission Line Siting Applications;
M-2009-2141293

Final Order Establishing Interim Guidelines

By the Commission:

By order of the Commission entered February 2, 2010, the Commission issued a Tentative Order establishing proposed Interim Guidelines for the Filing of Electric Transmission Lining Siting Applications. Notice of this Tentative Order was published at 40 Pa.B. 953 (February 13, 2010). The Tentative Order established a 45-day period for filing comments. By this order, the Commission establishes Interim Guidelines governing the siting of electric transmission facilities.

Background

The current regulatory filing requirements utilized by this Commission for the siting of high voltage electric utility transmission lines are governed generally by sections 1501 and 2805 of the Public Utility Code and section 1511 of the Business Corporation Law, 66 Pa.C.S. §§ 1501, 2805; 15 Pa.C.S. § 1511. Detailed filing requirements for transmission siting applications appear in Chapter 57 of the Commission's regulations—specifically §§ 57.71—57.76. 52 Pa. Code §§ 57.71—57.76 (relating to Commission procedures for siting and construction of electric transmission lines). However, the Commission's current regulatory requirements for the siting of electric transmission lines are over 30 years old and, although these regulations have been periodically revised (with the last revision occurring in 1999), the Commission believes that these regulations need to be further updated and revised to accurately reflect recent developments in transmission planning occurring at the federal level, and in general, to ensure that appropriate information accompany each transmission siting application.

There have been many significant developments that require this Commission to undertake a revision of its transmission siting regulations. Congress recently enacted section 216 of the Energy Policy Act of 2005 (EPAAct of 2005) which greatly expands the role of the federal government in transmission siting including the creation of federal backstop siting authority that requires state commissions to review and rule upon large transmission siting projects within one year. The EPAAct of 2005 also authorizes the U. S. Department of Energy (DOE) to study congestion on a national level and to designate National Interest Electric Transmission Corridors to promote transmission development. The EPAAct of 2005 also

expands the role of the Federal Energy Regulatory Commission (FERC) in permitting and siting of transmission facilities. Increasingly, FERC is encouraging, through pronouncements such as Order 890, regional transmission planning which has spurred greater regional planning initiatives at the RTO/ISO level. Most recently, FERC has issued a Notice of Proposed Rulemaking at RM10-23-000 that will examine how costs for regional transmission projects should be allocated within and between planning regions.

Additionally, a number of new multi-state backbone transmission projects, such as the TrAILCo and Susquehanna-Roseland projects, have been recently approved by the Commission and other transmission projects have been filed in neighboring states that have regional reliability and rate implications for the ratepayers of Pennsylvania.

As stated in the Tentative Order issuing proposed Interim Guidelines at p. 2, the Commission indicated its intent to initiate a general rulemaking proceeding under separate order inviting comments from interested parties to revise the Chapter 57 regulations for the siting of large transmission facilities. This rulemaking proceeding will be complex and time consuming covering a broad array of topics and potentially involving many stakeholders. The Commission anticipates that the entire rulemaking process may take from 12 to 18 months. The Commission wishes, at the outset, to underscore its interest and commitment in developing a regulatory approval process that is timely, efficient and fair to all parties including those private and public parties whose properties are affected by the siting of these transmission facilities.

On February 2, 2010, the Commission issued its Tentative Order proposing Interim Guidelines which requested submission of additional information to supplement the existing filing requirements. These proposed Interim Guidelines were issued and established a 45-day filing period for the filing of comments.

Sixteen parties filed comments. The following parties filed comments on behalf of the electric utility sector: The Energy Association of PA (EAPA), PPL Electric Utilities (PPL), PECO Energy Company (PECO), Duquesne Light Company (Duquesne), FirstEnergy (on behalf of Pennsylvania Electric Company, Metropolitan Edison Company and Pennsylvania Power) (FirstEnergy) and Allegheny Power d/b/a West Penn Power (Allegheny). Governmental parties filing comments included the Commission Office of Trial Staff (OTS), Office of Consumer Advocate (OCA), PA Game Commission (PGC), PA Dept. of Conservation and Natural Resources (DCNR) and the Montgomery County Planning Commission (MCPC). A number of environmental and resource preservation non-governmental organizations filed comments including the PA Chapter of The Nature Conservancy (TNC), the Audubon Society (Audubon) and the Brandywine Conservancy (Brandywine). We have reviewed and addressed these comments below.

Designation of Interim Guidelines

For purposes of discussing the comments received on the proposed Interim Guidelines, the numbering references contained in the Tentative Order are utilized. At the conclusion of each discussion, each Interim Guideline is cross-referenced to the corresponding section reference as contained in Chapter 69 of the Pa. Code where these Interim Guidelines will be published.

The Need for Interim Guidelines

There was a divergence of opinion on the need to establish Interim Guidelines during the pendency of the formal rulemaking. A number of electric utility sector comments including EAPA and Duquesne questioned the need for Interim Guidelines at all, terming them unnecessary, duplicative and potentially confusing to electric utilities filing transmission applications. The EAPA is concerned that the Interim Guidelines may discourage investment in transmission infrastructure and requests modifications to the Interim Guidelines or, alternatively, scrapping the concept of Interim Guidelines entirely. EAPA proposes the Commission continue to process transmission proceedings on a case by case basis. Duquesne echoes these concerns stating there is no reason to either subvert the prescribed rulemaking procedure dictated by law or to modify a legally prescribed methodology to amend rules, e.g. the formal rulemaking process. PECO, FirstEnergy and Allegheny have similar concerns but nevertheless suggest constructive modifications to the proposed Interim Guidelines. PECO filed detailed comments seeking to improve language clarity and specificity. FirstEnergy advises that the Commission should only enact those Interim Guidelines that are clearly needed to provide the Commission with information to make an informed decision. PPL supports the concept of Interim Guidelines, stating that most of the information requested is typically gathered during the transmission application process and is either submitted as part of the transmission application or is available through discovery. PPL additionally offers a number of suggested changes which improve these guidelines as ultimately adopted.

A number of other parties filed detailed comments generally supportive of the Interim Guidelines including OTS, OCA, PGC, DCNR, Brandywine, MCPC, Audubon, and TNC. All of these parties support adoption of the proposed Interim Guidelines and make additional suggestions to enhance their effectiveness. The Commission has considered the suggestions offered by the non-utility parties and incorporated them where possible. However, a number of suggestions proposed by non-utility parties would significantly expand the scope of the Interim Guidelines beyond the original intent and would implement changes not fully subject to review and comment by all parties. In those circumstances, the Commission encourages the parties proposing these additional changes to submit these suggestions as part of the Proposed Rulemaking.

The Commission reiterates the need for a limited set of Interim Guidelines as being necessary and proper to the efficient functioning of the agency in the processing of transmission siting cases. The Commission has routinely utilized Interim Guidelines in other proceedings. See *Interim Guidelines for Abbreviated Dispute Resolution Process*, Dkt. No. M-00021685 (Order entered August 31, 2005); *Interim Customer Information Disclosure Requirements for Natural Gas Distribution Companies and Natural Gas Suppliers*, Dkt. No. M-00991249F0005 (Order entered August 27, 1999); *Final Interim Guidelines Regarding Notification by an Electric Generation Supplier of Operational Changes Affecting Customer Service and Contracts*, Dkt. No. M-00960890F0013 (Order entered August 14, 1998). Most recently the Commission has issued *Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers*, Dkt. No. M-2010-2185981 (Order entered July 15, 2010). In adopting the following Interim Guidelines, the Commission has carefully considered the comments of the electric utilities and non-utility parties and has modified the Interim Guidelines in a

manner which does not impose additional burdens on an already document-intensive process. In many instances, the Interim Guidelines have been modified to reflect valid utility concerns. Also as noted by a number of electric utilities, where a perceived conflict exists between a particular Interim Guideline and an existing regulation, the existing Chapter 57 regulation will govern.

The Commission has the authority to establish Interim Guidelines pursuant to 52 Pa. Code § 57.72(c)(15) to request additional information that it may require as part of a transmission application filing process. Additionally, while these Interim Guidelines are not mandatory, a failure to provide this information with the initial application may result in that information being requested through the discovery process. More importantly, it is essential and in the public interest for the Commission to obtain information necessary to make a fair and informed judgment regarding the merits of proposed transmission projects in Pennsylvania.

In the Commission's judgment, there are a number of reasons why Interim Guidelines are necessary and appropriate. First, as a number of parties noted, the current transmission siting regulations have been in existence for over 30 years and were designed in an era when transmission lines were largely intrastate in character and regional reliability issues were not a concern. The Commission believes that certain modifications to the filing requirements may be implemented which do not place excessive burdens on transmission applicants pending the issuance of final regulations. Second, the Commission has decided two major transmission siting proceedings in the past three years and more such proceedings are expected in the future. In recent transmission proceedings, issues arose relating to public outreach and education, landowner relations, coordination of federal and state permitting and eminent domain practices. Those issues are anticipated to arise in future transmission siting proceedings. OCA comments that they have observed first-hand "the confusion and difficulties experienced by members of the public affected by transmission line siting." (OCA Comments, p.2). The Interim Guidelines are designed to address those circumstances. Finally, the Commission has limited resources for managing complex transmission siting cases while operating under the federal requirement that major transmission siting cases be processed within one year. The Interim Guidelines are designed to provide the necessary additional information to enable the Commission to process transmission siting applications on a timely basis and meet the one year requirement. The Scope of the Interim Guidelines is contained in Annex A at § 69.3101.

Public Notice Filing Requirements

Section 2(i)

The purpose for implementing Interim Guidelines addressing public notice was two-fold: (1) to provide for an increased level of knowledge on the part of the public generally about the siting of electric transmission lines and (2) to ensure uniform, fair treatment of impacted landowners located along transmission line rights of way (ROW). Recent transmission line siting proceedings have demonstrated to this Commission that improvements in the filing requirements and notification procedures are necessary.

Section 2(i) of the proposed Interim Guidelines provides that applications for electric transmission siting authority include a Code of Conduct or Internal Practices governing the manner in which public utility employees and/or their

agents interact with affected property owners. Standardized utility practices governing interactions with landowners ensure fair, open and equitable treatment of landowners during the transmission siting process and can enhance future communications between landowners and the public utility.

Electric utility comments varied on the need for this requirement. Duquesne Light questioned the need for such a requirement indicating that the existing notice requirements are sufficient. PECO suggests that Codes of Conduct be company-specific reflecting the particular procedures of the utility. FirstEnergy considers the requirement to be vague and suggests that the Commission provide specific guidelines. PPL questions the need to provide the Code of Conduct with the notices of applications and/or letters of notification that go to individual landowners. PPL is also concerned about the scope of this requirement. In PPL's view, the requirement could be considered to apply to all landowners with a view of the transmission line and could require the public utility to craft a set of rules applicable to many different situations in which the utility interacts with the public relative to the transmission line project. Finally, no non-utility party opposed the guideline and OTS and OCA endorsed the guideline. OCA noted that the adequacy of notice to landowners and the behavior of utility representatives and land agents were raised at various junctures of specific transmission line proceedings thus justifying implementation of additional requirements.

Resolution

The Commission does not consider it either unreasonable or overly burdensome to require a public utility to make available a Code of Conduct/Internal Practices as part of the initial application which will enable all parties to better understand and assess the quality of public utility/landowner interaction during the siting process. Moreover, the Commission believes that this document should be made available to all affected landowners. Landowners situated along a proposed transmission corridor should be apprised of what practices the utility will employ as part of its ownership of or easement rights to the property. Reflecting PPL's concern over the scope of this requirement, we adopt PPL's clarification that the service of the Code of Conduct only be made to landowners physically located along the transmission corridor whose property may be subject to purchase or easement or simply border the transmission route. This requirement would not apply to all landowners who may have a "view" of the corridor. The document should also be available on the utility's website. Additionally, the parties to the proceeding and the Commission should have a means of gauging what standards and procedures the utility utilizes in either direct interactions with landowners or interactions between third party contractors and landowners. Additionally, such information will aid the Administrative Law Judge (ALJ) and Commission in addressing landowner complaints that arise during the public input process.

With regard to specific comments, the Commission encourages jurisdictional electric utilities to develop (if not already available) or update existing Codes of Conduct/Internal Practices governing their relationships with affected landowners. These documents should encompass a description of utility practices with regard to properties potentially subject to condemnation or purchase as well as utility practices in dealing with landowners adjacent to the route of the transmission line. The Commission is reluctant, as FirstEnergy suggests, to

prescribe the contents of such documents because, as noted by PECO, such information should be company-specific reflecting the unique practices of each public utility. This Interim Guideline is adopted at Annex A at § 69.3102(a)(1).

Sections 2(ii) and (iii)

Section 2(ii) of the Interim Guidelines requests the application filing include copies of information to impacted landowners by the public utility, including bill inserts, newspaper and website notices and radio and TV notices advising landowners to contact the Commission or OCA in the event of improper land agent or utility employee practices. The Interim Guidelines also request submission of notices sent pursuant to 52 Pa. Code § 57.91 which are the notices provided in the event of the electric utility seeking to exercise eminent domain authority. An additional provision of the Interim Guidelines requests provision of notice to the Commission Office of Communications regarding informational presentations to community groups by the public utility so that Commission representatives, OCA and other governmental entities can attend meetings or obtain copies of information being disseminated at the presentations. These additional filing requests were prompted by concerns raised in recent transmission siting proceedings about the adequacy of notice to impacted landowners on the land use impacts and eminent domain issues associated with the proposed facilities.

Electric utility comments largely questioned the need for these additional requirements pending completion of the proposed rulemaking. Duquesne does not believe any additional regulation of public notice requirements is warranted. The EAPA and PPL raised concerns about the scope of the term "affected landowners." These parties were concerned that this term could be construed to apply to any communication between the utility and landowners, a requirement that could be burdensome and impractical. PPL suggests that only information prepared for general notice to landowners be provided. PPL also is concerned that notices of public meetings occurring prior to the filing of the application would reflect a fundamental change in Commission procedures that are not appropriate for inclusion in Interim Guidelines. FirstEnergy raised concerns over the cost of providing additional notices. PECO claims that its standard practices in handling landowner notification issues renders additional notification requirements unnecessary. PECO indicates that it already provides detailed information in its applications about public outreach. Some electric utility comments indicated that these requirements would be feasible subject to language modifications and reasonable limitations on scope of notice. OCA commented that provision of public information such as bill inserts and newspaper notices to the Commission, during the course of the proceeding, would benefit the process through greater transparency, allow for monitoring of public statements by the statutory parties and lead to enhanced public confidence. No commenter objected to section 2(iii) of the Interim Guidelines requesting production of copies of all notices sent pursuant to 52 Pa. Code § 57.91.

Resolution

In establishing these Interim Guidelines, the Commission must balance concerns over proper notice to impacted landowners along the transmission route with minimizing additional costs and burdens to the public utility. The Commission agrees with EAPA and PPL that the term "affected landowner" be limited to communications by electric utilities to owners of land that will be

purchased for the transmission project or be subject to ROW or easement requirements. The requirement contained in section 2(ii) of the Interim Guidelines is only requesting the filing, with the application, of any publicly disseminated notices to landowners located along the route of the transmission line of the need to contact either the Commission or OCA in the event of any improper land agent practices. Interim Guidelines 2(ii) and (iii) as adopted are contained in Annex A at § 69.3102(a)(2) and (3).

Service of Copies of the Code of Conduct

The Commission strongly encourages utility applicants to take special efforts to inform landowners of the practices employed by the utility in its relationship with the landowner both during the negotiation process and after the property has been purchased or the easement rights obtained. Landowners whose properties merely border the transmission corridor should also have knowledge of the utility's standard practices. For this reason, we are requiring in § 69.3102(b) of the Interim Guidelines that each utility applicant make available and provide a written copy of its Code of Conduct/Internal Practices on each landowner along the proposed route. To be clear, the class of landowners potentially eligible for receipt of this document would be landowners whose properties are either subject to purchase or easement as well as properties that border the proposed transmission route. The utility should also make the Code of Conduct available on the utility website. This Interim Guideline is adopted at Annex A at § 69.3102(b).

Informational Presentations

The Interim Guidelines request that transmission siting applicants provide prior notice to the Commission's Office of Communications of informational presentations to community groups by the public utility regarding the proposed transmission line so that the Commission or other governmental parties can attend or at least obtain information regarding the type of information that is being distributed to the public by the electric utility. Virtually all the electric utility comments raised practical objections to the proposal which can be categorized as follows: (i) public utility informational outreach is very company-specific to the service area; (ii) informational public outreach and education about a proposed transmission project begins long before the formal application is made; (iii) this requirement may be burdensome as any type of communication between the utility and an individual landowner could come within the guideline; and (iv) the presence of Commission or other governmental personnel may have a "chilling effect" on the informational exchange and may render the meeting a public input hearing. On the other hand, the OCA supported provision of such information as a means of increasing transparency and public confidence in the administrative process.

Resolution

The Commission agrees with PECO that a prudent public utility transmission applicant begins the public outreach and educational process before the formal application is filed with the agency. Also, the type and quality of the communication process will vary by public utility service area. Additionally, public presentations on a subject as controversial as a transmission line have the potential to become contentious. Allowing potential parties to the case to attend before the formal filing of the application would be inconsistent with the Commission's Rules of Practice and Procedure. PPL notes that pre-filing

attendance of Commission or other governmental parties would reflect a fundamental change in the Commission's review and involvement in transmission siting cases. The Commission already provides for ample public input sessions after the case is filed and does not wish to duplicate that process.

However, the Commission does have a concern regarding the amount and quality of information provided by the utility applicants to the public generally about a proposed transmission project. As such, the provision of advance notice of informational sessions to the public, either to the general community or interest groups, after the filing of the formal application, is not inconsistent with the Commission's duties generally in reviewing and approving transmission siting applications and insuring that the entire public outreach/education process is transparent.

In recognition of the concerns raised by electric utility comments, the Commission narrows the scope of this particular Interim Guideline to require the provision of notice to the Commission's Office of Communications of publicly advertised meetings with large community or other interest groups by the public utility following the filing of the formal application for siting and construction of the transmission line. The Commission is not going to define the particular size of the group to which this Interim Guideline applies but will leave that to the discretion and judgment of each utility. Additionally, the public utility should also be prepared to produce, if requested, copies of information disseminated at these informational presentations. This Interim Guideline is adopted in Annex A at § 69.3102(c).

Eminent Domain Filing Requirements

A public utility's eminent domain power derives from section 1511(c) of the Business Corporation Law 15 Pa.C.S. § 1511(c). The Commission currently has authority for eminent domain powers under 66 Pa.C.S. § 1104 and 52 Pa. Code § 57.91. The proposed Interim Guidelines are designed to assist the Commission in evaluating applications for eminent domain authority pending a general review of the scope of the Commission's condemnation powers during the upcoming rulemaking process.

Section 3(i)

Section 3(i) requests the filing of applications for eminent domain authority separate from but simultaneously with the associated transmission siting application. The Interim Guideline also recommends the filing of written testimony in support of the eminent domain application.

Electric utility comments suggested that certain modifications be made to the guideline. A number of public utility comments (EAPA, PPL, PECO, Duquesne, FirstEnergy) raised concerns that the simultaneous filing requirement may disrupt ongoing negotiations with landowners and unnecessarily complicate land acquisition. Duquesne notes that 52 Pa. Code § 57.75(i) permits but does not require the filing of eminent domain applications at the same time as the siting application. Allegheny notes that landowners often do not begin to seriously negotiate until after the siting application is filed. Negotiations or even preliminary evaluations may be ongoing with the need to actually file for eminent domain authority arising after the filing of the transmission siting application. Eminent domain proceedings may not even come into play until the end of the transmission siting process after the line has been approved. PECO notes that synchronization of the filings of transmission siting applications and eminent domain applications may not

always be feasible or necessary. Synchronized filings may also change the tenor of negotiations that were largely harmonious and now may become contentious. PPL suggests that the simultaneous filing requirement be clarified to require that the public utility file for all known eminent domain authority when it files its transmission siting applications. Non-utility parties were uniformly in favor of this Interim Guideline. The OCA requests that the Interim Guidelines be modified to require filing of separate petitions for each property with precise locations and a prominent notice to landowners to file responses which would improve the process and provide potentially affected landowners enhanced information compared to what has been required in the past.

Resolution

The Commission recognizes the concerns raised by electric utilities about both the timing constraints associated with simultaneous filings as well as the preference of avoiding condemnation proceedings entirely in favor of negotiated settlements. Condemnation proceedings are costly and time-consuming legal proceedings that should be considered as a last resort after all efforts at negotiation fail. The Commission is not seeking to prematurely accelerate the condemnation process by the utility nor is it precluding utilities from filing for condemnation authority in advance of filing for transmission siting authority. Utilities should maintain the maximum flexibility in their real estate acquisition practices. At the same time, the Commission is concerned, for case scheduling purposes, that it be able to process the eminent domain applications in a parallel timeline with the transmission siting proceeding. The Commission already establishes fairly detailed filing requirements for eminent domain applications at 52 Pa. Code § 57.75(i) and the proposed Interim Guidelines are designed to supplement those requirements.

The Commission will modify section 3(i) of the Interim Guidelines to request the filing of all known eminent domain applications to the extent the filing utility needs such condemnation authority at the time of filing of the siting application. We will request that utilities file any additional required eminent domain applications, as soon as reasonably known and practicable during the course of the siting proceeding. Additionally, all eminent domain applications should be supported by written testimony. The Commission believes that supporting testimony to the eminent domain application should address the reasons for the filing and the precise location of the property.

PPL additionally suggests that the Commission establish a date, perhaps 45 days, by which individual property owners must file a protest or petition to intervene in a public utility's application for eminent domain authority. OCA makes a similar suggestion for filing of separate petitions for each property with more prominent notices of the right of landowners to respond. The Commission can require publication of eminent domain approval applications with a 60 day protest period under section 5.53 of the Rules of Practice and Procedure. The Commission would be interested, as part of the upcoming rulemaking, in learning whether additional changes should be made to the existing provision to provide for more specific notice and response requirements. This Interim Guideline is adopted in Annex A at § 69.3103(1).

Section 3(ii)

Section 3(ii) requires provision of notice of eminent domain proceedings to affected landowners prominent enough to put the landowner on notice to file a response

or objection. PECO notes that there is an existing detailed notice in the regulations at 52 Pa. Code § 57.91 that must be served on affected landowners by registered or certified mail when an application for eminent domain is filed. PPL suggests that the Commission require provision of a Notice to Plead and to specify a defined number of days for answers and/or interventions. OCA notes that making a notice of initiation of eminent domain proceedings to affected landowners can be problematic referencing the TrAILCo proceeding where the ALJs noted that a single page notice was buried under "six pounds of paper." Application of TrAILCo, Dkt. No. A-110172 (R.D. at 205-206).

Resolution

This Interim Guideline was developed in response to issues in recent transmission siting cases about the adequacy of notice provided to landowners whose property was subject to condemnation proceedings. The Commission notes that the existing regulation at 52 Pa. Code § 57.91 currently provides for service by registered or certified mail of a detailed notice to property owners. However, § 57.91 does not require the notice to include a list of pleadings which can be filed in response to such an application. While the format prescribed in the regulation may be sufficient, the nature and timing of the notice in conjunction with other materials received by the landowners may need to be modified. Modification of this regulation may be appropriate including adding a Notice to Plead and a defined period to file a responsive pleading. However, the extent of these proposed changes may be inappropriate for an Interim Guideline. The Commission will delete this Interim Guideline but will revisit the current 52 Pa. Code § 57.91 as part of the proposed rulemaking. Copies of notices provided under this regulation should continue to be filed with the siting application pursuant to that provision. Utilities should continue to comply with 52 Pa. Code § 57.91 but make best efforts to insure proper notice to affected landowners of the pendency of the eminent domain action.

Section 3(iii)

Section 3(iii) requires the public utility applicant present with specificity the reason for exercise of condemnation power for each location, the precise location of the affected property, details of the status of negotiations with landowners and supporting maps or legal descriptions of the property to be condemned. The Commission believes this additional information is necessary to enable the evaluation of the propriety of exercise of condemnation power.

A number of public utilities, while raising concerns about the requirement, suggested several modifications to this Interim Guideline. EAPA and Allegheny are concerned about the requirement of providing "metes and bounds" legal descriptions as opposed to the more practical language in the Interim Guidelines requesting "supporting maps or legal descriptions of the easement/right-of-way... to the extent feasible." Both comments also express concern that the requirement is inconsistent with existing siting requirements at 52 Pa. Code § 57.72(c)(3) and § 57.76(b). Section 57.72(c)(3) requires the filing of a general description of the property included within the transmission corridor. Section 57.76(b) states a grant of transmission siting authority is deemed to encompass an area of 500 feet along either side of the centerline of the transmission corridor. Allegheny notes that a specific property description may not be available at the time the transmission siting application is filed. Finally, PECO highlights a potential inconsistency between the require-

ment in section 3(iii) to file information regarding the precise location of the impacted property and the requirement under the Eminent Domain Code at 26 Pa.C.S. § 302(b)(5) which requires a public utility to file with the Court of Common Pleas specific narrative descriptions or plans of the property condemned. In support of the Interim Guideline, OCA comments that section 3(iii) would provide a much-needed greater specificity concerning eminent domain applications and would greatly benefit those members of the public whose property lies within the property to be acquired.

Resolution

The Commission's intent in proposing this guideline was to address issues that arose in recent transmission siting proceedings regarding the type and adequacy of notice to impacted landowners who own property that will be subject to condemnation proceedings. Although the Commission appreciates the concerns raised in comments of the electric utilities about potential conflicts with existing regulations, we must balance that concern with the need to provide fairness and transparency to affected landowners who may not be familiar with the potential interference with utilization of their property and the legal implications on their property from the siting of transmission facilities. Moreover, proposed section 3(iii) of the Interim Guidelines is not intended to conflict with but to supplement the information required in the existing regulations at 52 Pa. Code § 57.75(i). Further, in response to a concern raised by EAPA, the language of the Interim Guideline takes precedence over the language of the Tentative Order recognizing that "defined widths" and "specific metes and bounds" are not necessarily available at the time the siting application is filed.

In addition, the additional detail requested as part of the application in section 3(iii), including the reason for the condemnation and the precise location of the property, is only requested for that property that is known to be subject to condemnation at the time the siting application is filed. This additional information can be easily addressed in the eminent domain application by direct testimony with supporting exhibits. Moreover, the number of properties that need to be described for condemnation purposes will be a subset of the properties identified for the entire transmission corridor so the additional burdens associated with this requirement should not be significant. If additional properties are identified as potential candidates for condemnation later in the transmission siting process, the public utility applicant should include the same information as part of a later filed eminent domain application. The language of the Interim Guideline will also be modified to incorporate PECO's concern that the Guideline not conflict with 26 Pa.C.S. § 302(b)(5).¹

Finally, no concerns were raised regarding the requirement that there be, as part of the section 3(iii) submission, a brief description of the reason for the condemnation which can be addressed in testimony. However, there was a concern raised by some electric utilities regarding provision of information with the application on the status of negotiations with landowners. This informational request is not designed to inquire into the confidential details of ongoing negotiations but merely to provide, for the good of the record and for case management

¹ The relevant language of section 302(b)(5) of the Eminent Domain Code states that the eminent domain filing to the Common Pleas Court must contain: "A description of the property condemned, sufficient for identification, specifying the municipal corporation and the county or counties where the property is located, or reference to the place of recording in the office of the recorder of deeds of plans showing the property condemned or a statement that plans showing the property condemned are on the same day being lodged for record or filed in the office or recorder of deeds."

purposes, a summary status of those properties where negotiations may be ongoing so that the presiding officer and the parties can gauge the potential likelihood of additional condemnation actions during the course of the siting proceeding. The language of this guideline has been revised to address these concerns. For purposes of clarity, these Interim Guidelines will be adopted and designated as § 69.3103(2) and (3) in Annex A.

Section 3(iv)

Section 3(iv) requests a public utility applicant file a Code of Conduct or Internal Operating Procedures applicable to employees or agents responsible for interacting with impacted landowners. This Interim Guideline is largely identical to proposed Interim Guideline Section 2(i) under the Public Notice Interim Guideline. Comments filed in response to that proposed Interim Guideline were addressed previously. The Code of Conduct to be filed in response to Interim Guideline § 69.3102(a)(1) is designed to be broad enough to encompass communications with landowners affected by condemnation proceedings. To minimize the need for duplicative filings, this Interim Guideline will be deleted.

Exemption from Municipal Zoning Standards

The Commission has proposed a number of Interim Guidelines which expand the quantity of information which should be submitted in support of applications for exemption from municipal zoning requirements. A number of electric utilities, while questioning the need for these guidelines generally, have offered suggested modifications to these Interim Guidelines. Other comments from governmental and other parties were generally supportive of these guidelines.

Section 4(i)

Section 4(i) requests production of land use plans, zoning ordinances and other documentation relevant to the "facilities" impacted by the exemption request. This Interim Guideline was proposed to require production of additional information that the ALJ and the Commission may find useful in evaluating requests for exemption from zoning requirements.

A number of electric utility parties (EAPA, PPL, Allegheny, PECO) note that the use of the term "facilities" in the Interim Guideline may be too broad. Section 619 of the Municipal Planning Code (MPC), 53 Pa. Code § 10619, specifically limits the scope of Commission jurisdiction for the grant of exemptions from local zoning requirements to "buildings." The Pennsylvania appellate courts have long held that the Commission has exclusive jurisdiction over the siting and construction of transmission lines and municipalities have no residual local jurisdiction over such utility construction activities. See *Duquesne Light Company v. Upper St. Clair Township*, 103 A. 2d 287 (Pa. Supreme 1954). PPL and other electric utilities recommend that the word "facilities" be replaced with the word "building" to more properly conform to section 619 of the MPC and appellate case-law.

Resolution

The proposed modification by several electric utilities is appropriate and will be adopted. The term "facility" in section 4(i) will be changed to "building." The term "facility" in section 4(iii) will also be replaced by the term "building" consistent with the comments received.

Section 4(i) also requests production of land use plans, zoning ordinances and other documentation relevant to the "facilities" impacted by the exemption request. As noted previously, the term "facilities" will be changed to

“building.” This change narrows considerably the scope of the filings associated with section 4(i). The Commission believes that the requested information may be necessary and useful to the parties and the ALJ in evaluating the request for zoning exemption and should be available. However, PPL notes that local ordinances and land use plans as they relate to “buildings” may be voluminous and burdensome to provide in hard-copy form. PPL suggests that such information be made available electronically. The Commission agrees with this suggestion and will modify Interim Guideline 4(i) to allow the option to supply this information in either hard-copy or electronic format. This Interim Guideline is adopted in Annex A at § 69.3104(1).

Section 4(ii)

Section 4(ii) requests production of a detailed strategy for compliance with the comprehensive plans and ordinances that demonstrates the applicant’s best efforts to comply with the plan. As previously modified, the Interim Guideline, if adopted, would only apply to exemptions sought for “buildings” as required under section 619 of the MPC. It should also be noted that the Commission is required, under its Policy Statement at 52 Pa. Code § 69.1101(2), (3) to “consider the impact of local comprehensive plans and zoning ordinances” in siting both electric transmission lines as well as buildings under MPC § 619.

Several electric utilities filed comments expressing concern over the Commission possibly exceeding the scope of its jurisdiction through this Interim Guideline in requiring the production of strategies for compliance with comprehensive plans and ordinances. Allegheny comments that this requirement “oversteps the long-standing rule that utilities are not subject to local regulation.” (Allegheny comments, p. 6). PECO is concerned that imposition of this Interim Guideline could be the first step in elevating the consideration given to local zoning ordinances and comprehensive plans to a level that would subject PECO to a miscellaneous collection of local regulations. Other electric utilities voiced similar concerns. OCA supports the guidelines asserting that more specific information would be required which would enhance the information available to impacted municipalities, constitute more effective notice and allow for more timely evaluation of proposed projects by municipalities. The MCPC supports this Interim Guideline and further requests provision of county and regional comprehensive plans.

Resolution

The concerns raised by PECO and Allegheny are entirely valid given the Interim Guideline’s reference to “facilities.” The current Interim Guideline could potentially be interpreted as inviting the Commission to consider the impact of local ordinances on transmission siting facilities generally in contravention to well-settled court precedent. Moreover, the current version of the guideline may, as noted by PECO, be a change that is too significant to implement outside of the rulemaking process.

The Commission has limited the scope of the Interim Guideline to “buildings” consistent with MPC § 619. With this limitation, there is no need for the public utility to demonstrate compliance with plans or ordinances under a provision that already entitles it to an exemption. Moreover, the types of “buildings” for which exemptions are sought do not typically involve the need for “detailed compliance” with land use plans due to the limited nature

of the “footprint” of the structure. As such, the Commission will delete from the Interim Guidelines § 4(ii). This issue raises considerations regarding the proper scope of the Policy Statement at 52 Pa. Code § 69.1011. The comments raised by PECO and Allegheny further suggest that a more thorough examination be given to the meaning of Policy Statement 52 Pa. Code § 69.1101 in the context of transmission siting applications. In the formal rulemaking proceeding that follows, interested parties should be prepared to present their positions on this issue in greater detail.

Section 4(iii)

Section 4(iii) requests production of metes and bounds or maps of facility sites. As noted previously, the term “facility” will be changed to “building.” This modification considerably narrows the scope of the request and the associated burden voiced by some public utilities regarding the burden of providing metes and bounds descriptions. Some utility comments suggested this guideline conflicted with 57 Pa. Code § 57.72(c)(3). The Commission does not view this regulation, which relates to the route of the transmission line generally, as precluding submission of metes and bounds descriptions of the building site or alternatively a site map of the proposed building whichever is available. This information should be readily available. Consequently, this Interim Guideline will be implemented as proposed in Annex A as § 69.3104(2).

Section 4(iv)

Section 4(iv) of the Interim Guidelines requests production of a procedure for providing notice to affected municipalities of the request for an exemption. The Commission has a valid concern in ensuring that municipalities that are impacted by a request for a municipal zoning exemption for a building associated with a transmission line receive adequate notice. Electric utilities did not generally object to this requirement. PPL notes that it routinely serves its requests for exemption on impacted municipalities. PECO asserts that it has a very well-developed outreach procedure for informing impacted municipalities about proposed transmission lines generally including associated structures. Non-utility parties were generally supportive of this guideline.

Resolution

The Commission proposed this Interim Guideline to ensure proper communication between the transmission siting applicant and the municipality affected by the location of the proposed structure. The prior modification of the term “facility” to “building” reduces the scope of the guideline to only those municipalities where structures will be located. The details of compliance with this Interim Guideline can be incorporated into either the petition for exemption or supporting testimony. The Commission will adopt this Interim Guideline and designate this provision as § 69.3104(3) at Annex A.

Route Evaluation and Siting

Route evaluation and siting is the most contentious issue in transmission siting cases. The Commission has drafted Interim Guidelines addressing route evaluation and siting to reflect the increased concerns expressed by various parties in recent transmission siting applications about the placement of transmission lines through areas that are sensitive from an environmental, agricultural, historical or cultural perspective. These Interim Guidelines are designed to supplement the types of information required under 52 Pa. Code § 57.72(c)(3) and (10) and are not intended to supersede or conflict with those established regulations. As with the other Interim Guidelines,

the Commission expects public utility transmission applicants to make best efforts to comply with these informational requests but recognizes these Interim Guidelines do not have the force and effect of regulations.

Section 5(i)

Section 5(i) recommends that utilities should utilize a combination of transmission route evaluation procedures including high-level GIS data, traditional mapping and analysis of site-specific constraints. In response, some electric utility comments (EAPA, Duquesne) questioned the need for any interim guidelines related to route evaluation and siting. FirstEnergy complains that this requirement is overly prescriptive and increases burdens to applicants. FirstEnergy also states that some of the language in section 5(i) is too vague. PPL does not object to this requirement. No non-utility parties objected to this provision. OCA supports utilization of mapping data including GIS and other sources. MCPC supports the use of GIS data, traditional mapping and analysis of site-specific constraints. MCPC suggests that applicants map features that are identified as having environmental or other sensitive land impacts. MCPC also proposes that maps show property lines beneath and adjacent to proposed right of ways (ROWs) and municipal/county ROWs which may serve as utility ROW. TNC and Audubon support the use of GIS data on a prospective basis.

Resolution

It is not the Commission's intent to impose unreasonable burdens on public utilities in the preparation of transmission siting applications. However, the Commission, the presiding ALJs and the parties have a right to obtain the detailed information required to fully evaluate transmission siting requests including the reasonableness of the site chosen for the transmission line. Also, there is a need to insure that uniform, current technologies are utilized by electric utility transmission siting applicants. Geographic Information System (GIS) mapping technologies, for example, are widely employed by a number of industries including utilities. The two recent major siting applications (TrAILCo, Susquehanna-Roseland) made extensive use of GIS technology and traditional mapping techniques in their siting presentations. The Commission does not consider that this requirement will unduly burden the application process since prudent utility practices appear to rely on a variety of mapping procedures. Additionally, other mapping procedures should also be utilized such as aerial and U. S. Geological Survey maps to the extent applicable. The Commission believes this Interim Guideline will enhance the agency's ability to process siting applications, evaluate the reasonableness of the site selection and will provide a measure of standardization of filings among the jurisdictional applicants. Section 5(i) is reasonable and will be adopted subject to PPL's suggested modification. That modification clarifies Interim Guideline 5(i) to refer to "physical" site specific constraints raised by affected landowners and not encompass other "constraints" that simply reflect landowner opposition to transmission lines generally. This Interim guideline is adopted in Annex A at § 69.3105(1).

Section 5(ii)

Section 5(ii) is designed to provide additional information to the Commission and parties to the extent legal disputes over property acquisition and or easements may impact the transmission siting process. This requirement is consistent with the Commission's existing limited authority to review and rule upon eminent domain applications involving the siting of transmission facilities.

There is currently a regulation at 52 Pa. Code § 57.72(c)(14) requesting similar information.

Electric utility comments generally oppose this Interim Guideline. EAPA is concerned that the requirement is overly vague, broad and the party to whom the requirement is directed is not clearly stated. EAPA complains this information is ancillary to the Commission's jurisdiction over eminent domain issues. Allegheny contends that the requirement is establishing a burden of proof to show "with a reasonable degree of certainty" the legal status of claimed ROW that constitutes a "vast extension of the current informational practice." (Allegheny comments, p. 7). Allegheny recommends revising the provision to state that utilities should provide a general statement of the status of property siting acquisitions (including both fee simple and ROW transactions) in their transmission siting applications. No non-utility parties object to this provision.

Resolution

The information requested in section 5(ii) is only asking for a summary description of the legal status of easements/ROW matters to the extent known at the time of the filing of the transmission line application. This section has been revised to make this clear. The Commission is requesting that a status report of property acquisitions (whether fee simple or easement) be provided with the initial application in summary form, with updates as needed during the course of the case as an aid to the ALJ and parties in the management of information associated these often contentious issues. No sensitive, confidential information regarding details of negotiations with parties is being sought. This information request is not designed to be vague or overbroad. It can be supplied in a simple matrix format. Individual utilities can make the necessary judgments as to the format in which they provide this information. Section 5(ii) will be adopted with the modification suggested by Allegheny that the proposed Interim Guideline be revised to request that the utility summarize the status of property acquisitions as part of the application. This Interim Guideline is adopted at Annex A at § 69.3105(2).

Section 5(iii)

Section 5(iii) requests provision of all alternative routes considered together with a discussion of the relative merits of each route as part of the testimonial support that accompanies the transmission siting application. As stated, the Interim Guideline requests description of alternative routes and discussion of the relative merits of each route according to a set of defined factors and the comparative construction cost for each alternative should be provided. Descriptions of proximity to residential and non-residential structures should also be provided.

As with other proposed provisions, this Interim Guidelines invited a variety of comments from electric utilities. The general theme of the electric utility comments was that existing regulation 52 Pa. Code § 57.72(c)(10) governing provision of information on alternative routes is adequate and need not be altered. FirstEnergy views the Interim Guideline as a requirement to document all identified routes with the same level of scrutiny as the proposed route, a requirement that may be extremely burdensome. Such a requirement could result in the utility considering fewer not more routes with a reduction in the thoroughness of the evaluative process. Other public utility comments voiced similar concerns. No non-utility comments objected to this provision. The OCA and Audubon support this requirement.

Resolution

Upon thorough consideration of the comments, the Commission is concerned that existing regulation 52 Pa. Code § 57.72(c)(10) may not provide sufficient information on alternative routes to enable this Commission to properly evaluate the utility applicant's evaluation process by which it concluded that the proposed route is the most appropriate. The Commission recognizes that transmission route selection is a complicated process involving many factors and requiring expensive and time-consuming surveys and analyses. Initially, many potential routes may be identified and then successively narrowed as the internal selection process progresses. Ultimately, the utility will identify a final group of transmission corridor alternatives from which its proposed route will be selected. The Commission therefore believes that sufficient details on the routes that the utility actively considered in the final phase of its route selection process should be included in the transmission siting application to enable the Commission to fully evaluate the reasonableness of the utility's route selection process. We note that PPL utilized this particular type of presentation in its application for the Susquehanna-Roseland route. Additionally, we note that proximity of proposed transmission routes to residential and non-residential structures as well as the utility's willingness to utilize existing ROWs are relevant considerations. Interim Guideline 5(iii) is revised consistent with the discussion above and requests the following information for each alternative route considered in the utility's final phase of selection: (1) the environmental, historical, cultural and aesthetic considerations of each route; (2) the proximity of these alternative routes to residential and non-residential structures; (3) the applicant's consideration of relevant existing rights-of-way; and (4) the comparative construction costs associated with each route. The Commission considers these additional informational requests to be consistent with the regulatory requirement at 52 Pa. Code § 57.72(c)(10). This Interim Guideline is adopted in Annex A at § 69.3105(3).

Section 5(iv)

Section 5(iv) requests provision of summary information addressing efforts made to contact and solicit assistance from local governments and other organizations on the identification of sensitive areas along the proposed routes. The Commission has proposed this Interim Guideline based on increased involvement of local municipalities and non-governmental organizations in transmission siting cases. For example, in the TrAILCo proceeding there was active involvement and interest by representatives of Greene and Washington Counties as well as a coalition of environmental organizations represented by the Environmental Conservation Counsel. Some of the witnesses appearing at the public input hearings in the TrAILCo case testified on behalf of either municipal governments or a non-governmental organization. Similarly in the PPL Susquehanna-Roseland case, Saw Creek Estates, a homeowners association was an active participant.

This Interim Guideline resulted in a number of comments. EAPA and Duquesne contend this requirement is unnecessarily vague and adds no clarity to the existing requirement contained in § 57.72(c)(8) which enumerates the information to be contained in the application regarding the location and identification of archeological, geological, historic, scenic or wilderness areas of significance. PECO is concerned this Interim Guideline confers standing to private special interest groups and that, if it is required to engage such groups, then the dynamic that

currently exists with such groups will change. PECO asserts that it already has an active outreach program that it currently utilizes in anticipation of transmission siting applications. PPL does not object to this Interim Guideline. OCA and Audubon support the Commission's efforts to seek out more information about local concerns in evaluating routes. No non-utility parties object to this provision. TNC offers some useful suggestions on identification of sensitive habitat that could be valuable to the utility in site selection.

Resolution

As referenced previously, involvement of local governments and non-governmental organizations in transmission siting proceedings has increased as evidenced in two recent transmission applications. This trend can be expected to continue. The Commission believes transmission siting applicants should identify and inform local governments, homeowner associations and certain non-governmental organizations such as land conservancies and historic preservation groups among others who may serve to identify public concerns with locating a transmission line along a specific route. The Commission believes that public outreach is an important part of the public utilities' responsibility to responsibly site transmission lines.

The Commission notes that public utilities such as PECO already utilize a public outreach process that informs and educates impacted parties of a proposed transmission line. PPL also employs similar educational procedures. We believe other public utilities employ similar practices to varying degrees depending on the level of transmission construction and the characteristics of the service territory. Moreover, the Commission believes local governments and non-governmental organizations can provide valuable input during the siting process to identify those impacts enumerated within § 57.72(c)(8). Affirmative outreach efforts to municipal governments may in fact make the transmission applicant aware of impacts (environmental, land use, historical, cultural, etc.) in siting transmission lines that its own consultants may have overlooked. Such affirmative efforts during the planning stage may even result in avoidance of an intervention or complaint during the application process. In recognition of the concerns raised by EAPA, this Interim Guideline will be adopted with the language modified to reflect contacts and assistance solicited from local governments and non-governmental organizations regarding identification of areas encompassed within the requirement of § 57.72(c)(8). This Interim Guideline is adopted in Annex A at § 69.3105(4).

Environmental Filing Requirements

The Commission, at Interim Guideline No. 6, requests public utility applicants provide a matrix showing all required federal, state and local government regulatory permitting and/or licensing requirements. The Commission requests similar information in less specific form at 52 Pa. Code § 57.72(11) and this guideline is designed to supplement that requirement. The Commission has proposed this guideline in recognition of the fact that the governmental licensing and permitting and the timelines associated with obtaining these licenses and permits may impact the ultimate completion of a transmission line project. For example, in the PPL Susquehanna-Roseland proceeding at Dkt. No. A-2009-2082652 (Order entered February 12, 2010), the Commission approved the siting of the Susquehanna-Roseland line but imposed some conditions relating to other regulatory approvals needed from the National Park Service.

Comments filed by electric utilities, including PPL, FirstEnergy, Allegheny and PECO, all noted that the scope of regulatory licensing and permitting approvals may not be fully known at the time of the transmission siting application filing and that such approvals can proceed at an unpredictable pace and not be complete at the time the Commission must rule on the application. Allegheny notes that the nature of environmental permitting and licensing is not known until the transmission route is selected. Further, agency contacts often change during the course of the permitting process. FirstEnergy and PPL are concerned that this requirement could impede the progress of a transmission line siting case since environmental licensing and permitting determinations often proceed on separate timelines than the siting application process.

PECO is concerned that imposition of this Interim Guideline not prejudice any public rights to participate in the environmental review process. PECO also requests that: (1) the matrix of permits reflect the utility's state of knowledge at the time of filing the application and that later permitting requirements not require a re-filing of the siting application and (2) that the utility not be required to obtain all environmental permits as a condition of obtaining Commission approval. Duquesne does not object to this Interim Guideline. No non-utility parties object to this requirement. OCA, Audubon and Brandywine affirmatively support these guidelines as enhancing the agency's ability to evaluate the feasibility of the project and allow for better coordination of agency efforts.

Resolution

The Commission is sensitive to all the concerns raised in the comments. First, the Commission reiterates that this Interim Guideline is largely for informational purposes to inform the Commission, the ALJ and the parties of potential impacts of other needed regulatory approvals. It should be reiterated that the Commission, although not an environmental permitting agency, is required, under 57 Pa. Code § 57.72(e)(7) and (8), to consider environmental impacts of proposed transmission lines. One of the most valuable ways to fulfill this requirement is to request information addressing environmental licensing and permitting. Second, the Commission appreciates the fact that environmental permitting is a wholly different process than the transmission siting procedures employed by the Commission. Third, we are also cognizant that the complete universe of environmental permitting may not be fully known at the time of the application filing. Fourth, there is a benefit to the Commission, as the site approval agency, to having knowledge of the scope of regulatory approvals that are required. As was noted in the Susquehanna-Roseland case, there may be a need to place conditions on the siting approval due to the need to obtain other permits. Further, the intent of this guideline is not to delay the Commission approval process nor, as PECO warns, will a failure to provide such information be a reason either to delay processing of the application or require a re-filing of the application. Finally, this Interim Guideline is designed to implement the existing practices of most jurisdictional utilities such as PPL that currently supply a list of expected major permits and licenses most likely to be required by federal, state and local agencies.

As suggested by both PPL and FirstEnergy, the Interim Guideline is modified to provide for public utility applicants to file a matrix or list which shows all expected federal, state and local government regulatory permits

and approvals that may be required for the project at the time of the application, the issuing agency, a timeline for approval and current status. This information need only be supplied on a best efforts basis. Additional information such as names of contact persons need not be provided. Additionally, periodic updates on the status of expected permits and licenses should be supplied during the course of the proceeding. The Interim Guideline in Annex A is modified accordingly and adopted as § 69.3106(1).

Health and Safety Considerations

(a) Interim Guidelines for Use of Herbicides and Pesticides

Section 7(a) of the Interim Guideline requests the suggested filing of a vegetation management plan that seeks to impose reasonable limits on the use of aerial chemical spraying. The Interim Guideline as issued requested the filing of information that includes the following components: (1) use of Environmental Protection Agency (EPA) approved chemicals only in suitable portions of the ROW on an infrequent basis; (2) application of chemicals only by trained professionals; (3) aerial spraying as a last resort and on an infrequent basis with defined zones around aquatic areas; (4) provision of notice to affected landowners; and (5) provision of landowner maintenance agreements that describe the duties and responsibilities of landowners and the utility.

The Commission notes that vegetation management practices have been and continue to be a controversial issue in transmission siting proceedings. For example in the TrAILCo case, vegetation management practices provoked significant public interest during the course of the case.

These proposed Interim Guidelines elicited a number of objections from public utilities. EAPA, Allegheny and FirstEnergy state that the proposed guidelines unduly restrict public utilities' flexibility to choose the most appropriate and cost-effective vegetation maintenance practices. FirstEnergy and Duquesne reference certain North American Electric Reliability Corporation (NERC) reliability standards that recommend the use of aerial vegetation maintenance and herbicide use in certain circumstances. FirstEnergy highlights PA Game Commission procedures that employ aerial vegetation management practices. PECO filed detailed comments that make the following points: (1) the Interim Guidelines contain an embedded assumption that less use of herbicides is better; (2) the use of herbicides is adequately regulated by the EPA; (3) the guidelines are not implementable; (4) no cost-benefit analysis was performed; and (5) the guidelines "lock in a protocol" which cannot be altered. PPL does not object to provision of the maintenance plan but cautions that it should not be provided as part of Letter of Notification (LON) applications. The OCA explicitly supports the requirements of the Interim Guideline noting the continuing controversy surrounding the use of herbicides.

Resolution

In response, the Commission notes that aerial herbicide use has been and will continue to be a controversial issue especially near aquatic areas and agricultural and livestock facilities. Further, 52 Pa. Code § 57.72(e)(7) authorizes the Commission to examine environmental impacts of transmission lines including vegetation maintenance. Section 57.72(6) requires the filing of a statement of safety considerations that will be incorporated into the maintenance of the proposed line. Thus, it is reasonable for the Commission to require provision of information

from transmission siting applicants regarding public utility vegetation maintenance practices to establish a baseline of knowledge on these issues. Finally, it is reasonable to require public utilities to provide educational information to affected landowners along the ROW including the option of landowner maintenance agreements to allow landowners to understand their rights and obligations with respect to public utility maintenance practices. The Interim Guidelines were narrowly designed to accomplish these goals.

Conversely, it is not the Commission's intent, in proposing these guidelines, to act as a "local EPA" nor is it seeking to impose additional costs on public utilities where aerial (or other forms of vegetation application) are both safe and cost-effective. The Commission notes that a sister agency, the PA Game Commission, has recognized the benefits of prudent aerial application of herbicides on state game lands. The Commission is not establishing binding requirements in the nature of regulations that require use of a particular form of vegetation maintenance practice.

However, our obligation to review siting applications does require a certain level of information regarding environmental impacts and responsiveness to public concerns over vegetation maintenance practices along ROWs where transmission lines are located. The Commission would be neglecting its statutory responsibilities if it did not examine the environmental impacts associated with transmission line maintenance.

In recognition of valid concerns raised by the electric utility comments, some modifications to the Interim Guidelines are appropriate. The Commission will refrain from dictating where and when certain herbicides should be used and the manner of application including aerial application but will expect a detailed explanation of these practices be provided with the siting application. The Commission will propose that public utility applicants file, as part of their siting application, a vegetation maintenance plan that fully describes the types of herbicides used, factors relevant to each type of application and herbicide application practices utilized when engaging in aerial spraying near aquatic areas and other sensitive locations such as agricultural zones. The vegetation management plan should also describe the manner of informing and interfacing with landowners regarding vegetation management and should include a sample notice provided to affected landowners. As stated in the Interim Guidelines, there should also be included, with the transmission siting application, a sample landowner agreement that describes the duties and responsibilities of landowners and the utility with reference to ROW maintenance practices. This matter will be addressed in greater detail in the Proposed Rulemaking.

Therefore, the Commission will modify the Interim Guideline to request the filing of information regarding the utilities' detailed vegetation maintenance program which includes: (i) a general description of the utility's vegetation management plan; (ii) factors that dictate when each method including aerial spraying is utilized; (iii) vegetation management practices near aquatic areas and other sensitive locations; (iv) provision of reasonable notice to affected landowners regarding vegetation management practices; and (v) provision of a landowner maintenance agreement to the extent utilized. This Interim Guideline is adopted in Annex A at § 69.3107(a).

Electromagnetic Field (EMF) Mitigation Practices

Section 7(b) of the proposed Interim Guidelines request the filing of a detailed EMF mitigation plan that includes

design alternatives and routing of lines to minimize exposure to populated areas. Inclusion of this guideline was prompted by expert and public input testimony primarily in the TrAILCo and Susquehanna-Roseland proceedings. The Commission currently requires at 52 Pa. Code § 57.72(c)(6) the filing of a statement of the safety considerations incorporated into the design, construction and maintenance of the proposed line which can include consideration of EMF effects.

This Interim Guideline invited a number of opposing comments from the electric utility sector. Duquesne opposes the Commission imposing "new regulations" regarding EMF because such a requirement pre-supposes there is a standard regarding EMF that should be met. Duquesne also contends that controversy still exists regarding the actual health effects of EMF. Allegheny contends that imposition of this guideline will lead to additional costs for ratepayers such as more expensive taller lines. PECO states that this Commission has had opportunities to examine the possible health effects of EMF, most recently in the Susquehanna-Roseland proceeding, and has never concluded demonstrative health effects on the public from EMF. PECO suggest using a "prudent avoidance" policy as opposed to the procedure prescribed in the Interim Guideline. OCA supports this guideline.

Resolution

The Commission believes that EMF, while an unsettled and controversial issue, continues to raise much concern in the minds of those landowners situated near a transmission line. The Commission agrees that no definitive scientific proof of a "cause and effect" nature exists which connects EMF with public health hazards although research on the subject continues. The Commission must balance the need to address valid public health issues raised by transmission line siting against the potential for greater cost to public utilities from having to re-design or alter routes to reduce EMF exposure. The Commission understands that its regulated utilities are aware of the potential hazards and do incorporate EMF mitigation procedures in the design of their lines.

Upon consideration of the various comments, we recommend adoption of PECO's suggested "prudent avoidance" policy in place of the language appearing in the Tentative Order. Adoption of a "prudent avoidance" policy provides the utility applicant with the flexibility to describe how its transmission design practices are related to its efforts to mitigate EMF impacts. Parties can then explore these policies in the course of hearings. We have basically adopted the language proposed by PECO with some modifications. The Commission will request additional input from the parties on this issue in the upcoming rulemaking proceeding. This Interim Guideline is adopted at § 69.3107(b).

Additional Issues Raised by the Comments

A number of parties raised issues in their comments which were not included within the parameters established for the Interim Guidelines in the Tentative Order. Many of these comments are relevant to the transmission siting process generally and the Commission appreciates their submission. Additionally, many of these issues, while well-considered, have not been subject to review and comment by all parties and the unilateral inclusion of additional Interim Guidelines would have been unfair to certain parties and procedurally improper. Nevertheless, the Commission appreciates these comments, encourages their re-submittal and will give full consideration to these issues in the Proposed Rulemaking.

Formatting Changes

OTS has proposed a number of minor formatting changes to the Interim Guidelines. These changes, while helpful, could not be adopted given the revisions made to the final version of the guidelines in Annex A.

Reliability, Solutions and Costs

OTS requests that transmission siting applications include “documentation for each and every present and projected individual reliability criteria violation sought as justification for or otherwise related to the construction and siting of the proposed high voltage transmission line.” OTS contends that inclusion of this information will: (1) give the Commission the opportunity to consider whether the proposed construction and siting will enhance reliability; (2) require applicants to describe available alternatives; and (3) require applicants to provide cost comparisons between construction of high voltage transmission, lower voltage lines or non-transmission alternatives.

The Commission notes this proposal with interest and believes information of this nature may have useful application in future transmission siting proceedings. OTS’ proposal addresses an issue that was not referenced as part of the Interim Guidelines and has not been subject to full review and comment. It would be inappropriate to include this proposed change in the Interim Guidelines at this time. The Commission believes the forthcoming Proposed Rulemaking would be the appropriate forum for consideration of this issue.

Public Need

OCA and the Brandywine Conservancy suggest that the Interim Guidelines incorporate a requirement for submission of additional information by the electric utility applicant in support of a “public need” requirement that currently exists in a very generalized form in 52 Pa. Code §§ 57.75(e)(1) and 57.76(a)(1). OCA further comments that the Tentative Order’s failure to include guidelines addressing “public need” may indicate intent by the Commission not to consider this issue in future transmission siting cases.

The Commission agrees with OCA and Brandywine that “public need” is a critical issue and that the current regulations do not adequately address the evolving nature of transmission planning from a fundamentally intrastate activity to a regional planning process. The Commission intentionally avoided addressing this important issue in the Tentative Order establishing Interim Guidelines due to its complexity, the significant volume of comments expected to be filed and the extensive amount of time necessary to formulate the necessary regulations addressing this important issue. The Commission assures interested parties that the issue of “public need,” in the context of regional transmission planning, will be fully and completely addressed in the Proposed Rulemaking.

Applicability of Interim Guidelines to Letters of Notification (LON)

The Commission has adopted regulations at 52 Pa. Code § 57.72(d) which establish procedures for obtaining approval of smaller transmission line projects utilizing LON procedures. Duquesne filed comments suggesting modification of the Commission’s LON process to more precisely describe which projects are subject to LON procedures. Allegheny filed comments suggesting the LON regulations be modified to accommodate anticipated increased construction of short transmission lines to serve industrial customers and projects necessitated by the Marcellus Shale development. The Commission agrees

with the comments of both Duquesne and Allegheny regarding the need to update its LON regulations. The Commission was not aware of those specific concerns at the time of issuance of the Interim Guidelines. The Commission will incorporate into the Proposed Rulemaking proceedings consideration of the need to update its regulations governing the LON process.

Environmental Impacts

Both TNC and the Game Commission filed limited comments generally supportive of the Interim Guidelines. The TNC recommended a number of additional items designed to minimize ecological damage during the siting of transmission lines including conducting inventories of ecological resources along proposed routes, identification of areas of conservation importance, minimizing impacts on resources and evaluation of existing ROWs as part of the route selection process. TNC also suggests that the impacts of transmission line “noise” be considered. The Game Commission recommended consideration of a document prepared by the Western Governors Association and the U.S. Department of Energy that integrates environmental considerations into energy resource planning.

The Commission appreciates the comments of both TNC and Game Commission. It should be noted that the existing regulations at 52 Pa. Code § 57.73(c)(7), (8) already require electric utilities to consider a number of environmental factors in the siting of transmission lines. Electric utilities currently seek to use existing ROWs to the extent possible to avoid costly land acquisition and/or condemnation processes. This practice minimizes environmental impacts. The upcoming rulemaking will revisit the Commission’s existing regulations regarding the types of environmental, conservation and land-use factors that should be considered in the siting process.

Additionally, the comments of both TNC and the Game Commission are well-considered but go beyond the scope of the Interim Guidelines. Because these suggestions have not been subject to notice and comment, the Commission cannot unilaterally incorporate these suggestions at this time. The TNC and Game Commission are encouraged to re-submit their suggestions during the upcoming rulemaking.

Publication of Interim Guidelines in the Pennsylvania Code

In the Tentative Order, it was the original intent of the Commission to implement these Interim Guidelines exclusively through a Commission order. In light of the volume of comments received and the expected timeline to complete the Proposed Rulemaking, we have reconsidered the manner of publication of these guidelines. We are publishing the Interim Guidelines both in the *Pa. Bulletin* and the *Pennsylvania Code* at § 69 which encompasses Policy Statements and Guidelines. Publication of these guidelines in the *Pennsylvania Code* is appropriate since the rulemaking process may take in excess of a year to complete. Additionally, publication of these provisions in the *Pennsylvania Code* will enable public utility applicants and other interested parties to easily locate these guidelines in a single location.

Conclusion

The Commission adopts the Interim Guidelines as set forth in Annex A as final under 66 Pa.C.S. §§ 1501 and 2805 and 52 Pa. Code §§ 57.72—57.76; *Therefore,*

It Is Ordered That:

1. The Interim Guidelines in §§ 69.3101—69.3107 are hereby adopted.

2. These Interim Guidelines in §§ 69.3101—69.3107 become effective upon publication in the *Pennsylvania Bulletin*.

3. These Interim Guidelines in §§ 69.3101—69.3107 shall be published in the *Pennsylvania Code*.

4. A copy of this order and Annex A shall be served on all jurisdictional electric utilities, the Office of Consumer Advocate and the Office of the Small Business Advocate and all parties that filed comments at Docket M-2009-2141293.

ROSEMARY CHIAVETTA,
Secretary

Fiscal Note: Fiscal Note 57-282. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

INTERIM GUIDELINES FOR THE FILING OF ELECTRIC TRANSMISSION LINE SITING APPLICATIONS

§ 69.3101. Scope.

(a) The Commission adopts this section and §§ 69.3102—69.3107 regarding the additional information that should be provided with a transmission siting application by an electric utility under §§ 57.71—57.76 (relating to Commission review of siting and construction of electric transmission lines). The Commission encourages future applicants to file applications that comply with the existing regulations as supplemented by this section and §§ 69.3102—69.3107 to ensure that adequate additional information is provided and to ensure the efficient and expeditious processing of transmission siting applications. In the event an applicant determines there to be a conflict between the information requested in this section and §§ 69.3102—69.3107 and the existing regulations, the applicant should follow the requirements in §§ 57.71—57.76.

(b) The Commission emphasizes that this section and §§ 69.3102—69.3107 do not alter the legal standards to be met by prospective applicants under relevant provisions in 66 Pa.C.S. (relating to Public Utility Code) or the existing regulations in §§ 57.71—57.76.

§ 69.3102. Public notice filing requirements.

(a) Applications for electric transmission siting authority should provide the following information with the initial application for siting approval demonstrating its efforts to fully notify landowners who are either owners of land that will be purchased for the transmission project or will be subject to right of way/easement requirements:

(1) A Code of Conduct/Internal Practices governing the manner in which public utility employees or their agents interact with landowners along proposed rights of way.

(2) Copies of information provided to landowners by the public utility of any publicly disseminated notices advising landowners to contact the Commission or the Office of Consumer Advocate (OCA) in the event of improper land agent practices.

(3) Copies of all notices sent under § 57.91 (relating to disclosure of eminent domain power of electric utilities).

(b) Applicants for transmission siting authority should serve a copy of the Code of Conduct on all landowners along the proposed route whose property is to be purchased, subject to easement rights or borders the transmission corridor. The Code of Conduct should also be available on the applicant's website.

(c) Applicants for transmission siting authority should provide prior notice to the Commission's Office of Communications of informational presentations to community groups by the public utility scheduled after the filing of the transmission siting application so that the Commission, OCA and other interested parties can attend meetings or obtain copies of information being disseminated at the presentations.

§ 69.3103. Eminent domain filing requirements.

Applicants for eminent domain authority should follow the following requirements and provide the following information as part of the application:

(1) Applicants for transmission siting authority should file applications for all known eminent domain authority as separate filings, but simultaneously with the associated transmission siting applications. Testimonial evidence in support of an eminent domain application should be filed with the application. Subsequent eminent domain authority applications should be filed as soon as reasonably known during the course of the transmission siting application.

(2) As part of an eminent domain application, the public utility applicant should present, for those properties subject to condemnation at the time the transmission siting application is filed or later in the siting proceeding, the reason for the exercise of condemnation power for each property and the precise location of the affected property. Supporting maps or legal descriptions of the property to be condemned should be supplied to the extent feasible. Submission of information pursuant to this guideline should be consistent with the filing requirements for the exercise of eminent domain powers under 26 Pa.C.S. § 302(b)(5) (relating to declaration of taking).

(3) A public utility transmission siting application should include a summary status report for those properties along the proposed transmission route where negotiations for either property acquisition or rights of way/easements may be ongoing. This information should be supplemented as requested by the administrative law judge or the parties during the course of the transmission siting proceeding.

§ 69.3104. Exemption from municipal zoning standards.

Applications for exemption from municipal zoning requirements should provide the following information with the application:

(1) Copies of comprehensive land use plans, zoning ordinances and other documentation relevant to the buildings affected by the exemption request. This information may be filed in either hard copy or electronic format.

(2) Provision of metes and bounds or site maps of building sites.

(3) A procedure for providing notice to affected municipalities of the request for exemption.

§ 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).

§ 69.3106. Environmental filing requirements.

Applications for siting of electric transmission lines should include as part of the filing requirement under § 57.72(e)(7) the following information: A matrix or list

showing all expected Federal, state and local government regulatory permitting or licensing approvals that may be required for the project at the time the application is filed, the issuing agency, approximate timeline for approval and current status. The applicant should provide an update on the status of the regulatory permitting/licensing approvals as the case progresses.

§ 69.3107. Health and safety considerations.

(a) *Interim guidelines for the use of herbicides and pesticides.* Applicants for transmission line siting authority should provide a detailed vegetation management plan that includes the following components:

(1) A general description of the utility's vegetation management plan.

(2) Factors that dictate when each method, including aerial spraying, is utilized.

(3) Vegetation management practices near aquatic and other sensitive locations.

(4) Notice procedures to affected landowners regarding vegetation management practices.

(5) Provision of a copy of a landowner maintenance agreement that describes the duties and responsibilities of landowners and the utility for vegetation management to the extent utilized.

(b) *Interim guidelines for Electromagnetic Field (EMF) impacts.* Transmission siting applications should include the following: A description of the EMF mitigation procedures that the utility proposes to utilize along the transmission line route. This description should include a statement of policy approach for evaluating design and siting alternatives and a description of the proposed measures for mitigating EMF impacts.

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