

TRANSMISSION INFRASTRUCTURE PLANNING, PROCESSES, AND PUBLIC PARTICIPATION IN PA

INFORMATIONAL MEETING

HOSTED BY:

**Representative Charity Grimm Krupa, 51st Legislative District and
Representative Bud Cook, 50th Legislative District**

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Smithfield, PA

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Consumer Advocate

PA Office of Consumer Advocate



Pennsylvania Office of Consumer Advocate (PA OCA)

- Created by the PA General Assembly in 1976 (71 P.S. § 309-1, et seq.)
- Independent state agency that is administratively housed within the PA Office of Attorney General
- Represent the interests of utility ratepayers in matters before the Pennsylvania Public Utility Commission (PUC), the Federal Energy Regulatory Commission (FERC), PJM Interconnection, LLC (PJM), and state and federal courts

Structure of the PA OCA

- The Consumer Advocate is appointed by the Attorney General to lead the Agency, subject to confirmation by the PA Senate.
- Darryl Lawrence currently serves as the Consumer Advocate of Pennsylvania.
- PA OCA Staff includes: Assistant Consumer Advocates, Support and Administrative Staff, a Consumer Liaison, Consumer Service Representatives, Regulatory Analysts and many outside expert witnesses with varied expertise who work under contract.

The Role of the PA OCA in Transmission Line Cases

- The PA OCA represents the interests of ratepayers who will ultimately bear the cost of any new lines. The PA OCA does not represent the *individual* concerns of property owners or practice in the area of eminent domain.
- The PA OCA focuses on whether there is a need for the transmission line, and if so, whether this project is the best alternative considering all relevant facts.
- The PA OCA will also evaluate and consider, among other things, technical issues raised in a Company's proposal and compliance with the applicable statutory and regulatory standards.

For Directly Impacted Landowners

- As stated above, the PA OCA is not your private attorney, but we can help.
- Landowners should review:
 - Eminent Domain power of utilities, 52 Pa. Code Section 57.91:
<https://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/052/chapter57/subchapItoC.html&d=reduce>
 - Land Agent Code of Conduct, 52 Pa. Code Section 69.3102:
<https://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/052/chapter69/s69.3102.html&d=reduce>

For Directly Impacted Landowners

- * In Pennsylvania, a public utility operating within their own territory may enter your land for surveying or inspection purposes, without your consent, providing they give you 10-days notice, and they are liable for any damage they may create. *See* 26 Pa.C.S. § 309.
- * At this point in time, NextEra is not a public utility in Pennsylvania. Accordingly, as a landowner you may either give permission for land agents and other employees of NextEra to access your property, or not.

High Voltage Power Line Project Planning at PJM

PJM

- PJM is a Regional Transmission Organization that coordinates the movement of wholesale electricity in all or parts of 13 states, including PA, and the District of Columbia and operates the wholesale electricity market in this region.
- PJM is responsible for ensuring the safety, reliability, and security of the bulk electric system.

PJM

- PJM conducts the Regional Transmission Expansion Planning Process (RTEP) on an on-going basis to identify reliability needs for the bulk power system and areas of transmission system constraint that are increasing wholesale market prices.
- The RTEP process results in projects that are submitted to the PJM Board of Directors for approval to be included in the Regional Transmission Expansion Plan.
- There are several categories of projects with the primary ones being **baseline projects**, network projects, supplemental projects and merchant transmission project requests.

NextEra's MidAtlantic Resiliency Link (MARL) Transmission Line Project

What we know at this point about NextEra's MARL Project

- NextEra is proposing to build a 107.5-mile, bidirectional, 500kv transmission line that connects to a substation in Dunkard Township, Pennsylvania.
- The interstate transmission line also traverses the states of Maryland, Virginia and West Virginia.
- NextEra is proposing to construct this line using new right-of-way (ROW), including, where possible, new ROW that parallels and abuts existing ROW.

What we know at this point about NextEra's MARL Project

- NextEra is not a PUC-certificated public utility as of today.
- NextEra intends to seek the PUC's approval to become a certificated public utility.
- Unless and until NextEra becomes a certificated public utility, NextEra does not have the power of eminent domain to obtain ROW for the MARL transmission line.

What we know at this point about NextEra's MARL Project

- PJM identified the need for this transmission line as part of its 2022 RTEP process.
- The PJM Board approved the MARL project as part of its approval of the 2022 RTEP to reinforce the reliability of the regional power grid.
- Under existing law, given that the PJM Board approved the MARL Project in the 2022 RTEP, the PUC, in its review of the state siting application, cannot conflict with PJM's decision on the question of whether there is a "need" for this transmission line.

What we know at this point about NextEra's MARL Project

- In connection with the MARL Project, it is the PA OCA's understanding that NextEra plans to file two applications with the PUC in very near future:
 1. an application for a certificate of public convenience to operate in PA as a public utility; and
 2. a siting application for the transmission line.

Certificate of Public Convenience (CPC) Application Process

Before the Pennsylvania PUC

CPC Application Process Before the PUC

- To make a Siting Application before the PUC for the transmission line, NextEra must make an application to the PUC and obtain a PUC-issued certificate of public convenience (CPC) to operate as a public utility.
- To grant CPC authority to an applicant, the PUC must “ find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” In granting a CPC, the PUC may impose “just and reasonable” condition.
- The PUC or the assigned ALJ may consolidate the CPC Application with the transmission line Siting Application.

Transmission Line Siting Application Process

Before the Pennsylvania PUC

Siting Application Process Before the PUC

- Prior to constructing any transmission line(s) in Pennsylvania, NextEra must get approval from the PUC by filing a Siting Application with the PUC.
- In its Siting Application, the applicant must provide, among other things, a general description of the proposed route, the public need for the project, safety considerations, available alternative routes, environmental impacts and the estimated cost of construction.
- 52 Pennsylvania Code (Pa. Code) § 57.72 provides a description of the form and content of the application.

<https://www.pacode.com/secure/data/052/chapter57/s57.72.html>

Siting Application Process Before the PUC

- The applicant also must file any application(s) for Eminent Domain necessary to construct its proposed transmission line at the same time it files its Siting Application. These proceedings will likely be consolidated into one proceeding at the PUC.
- The Siting Application must be served on all of those owning property within the proposed ROW, the governing body for planning in each township, borough or city where the line is to be located, and on several state agencies.
- There is no legal deadline in Pennsylvania for the PUC to review and issue a final order on the proposed Siting Application.

Siting Application Process Before the PUC

- The PUC must consider the burden on the property vs. the public benefit. See 52 Pa. Code § 57.76.

<https://www.pacode.com/secure/data/052/chapter57/s57.76.html>

- In order to approve the Siting Application, the Commission must find:
 - That there is a need for it;
 - That it will not create an unreasonable risk of danger to the health and safety of the public;
 - That it is in compliance with applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth, and
 - That it will have minimum adverse environmental impact, considering the electric power needs of the public, the state of available technology and the available alternatives.

CPC and Siting Applications Process Before the PUC

- Once the CPC and Siting Applications are filed, any interested persons can file a response to the Application. Responses can include:
 - Protest – a formal pleading that states your objections and concerns. A Protest must be filed, usually within 60 days and will make you a party to the proceeding. The Commission’s website provides instructions for filing a Protest:
 - <https://www.puc.pa.gov/electricity/transmission-lines/>
 - Petition to Intervene – A request to become a party to the case by showing a direct interest in the case. See 52 Pa. Code §§ 5.71-5.76. <https://www.pacode.com/secure/data/052/chapter5/subchapAtoc.html>
 - Objection Letter or Comments – A written statement of your concerns without becoming a party to the case.

CPC and Siting Applications Process Before the PUC

- Protests, Petitions to Intervene, Objection Letters and Comments should include the name of the case and the docket number, and be mailed to the Public Utility Commission at the following address:

Matthew Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

- * The PUC also encourages electronic filings. Directions for creating an e-filing account can be found here:
 - * <https://www.puc.pa.gov/filing-resources/efiling/>

CPC and Siting Applications Process Before the PUC

- Individuals who file a Protest or a Petition to Intervene will become a party to the proceeding. Individuals who become parties to the proceeding can determine how active they want to be in the litigation process.
- If you do not wish to file any of these documents, an opportunity for public input at a public input hearing will also be provided during the course of the proceeding. We will discuss the Public Input Hearing process in more detail a little later in the slides.

PUC Proceedings

- The case will be assigned to an Administrative Law Judge (ALJ)
- The ALJ will initially hold a prehearing conference to organize the conduct of the proceeding and establish a procedural schedule so as to complete the case for Commission review.

PUC Proceedings

Discovery Phase:

Parties to the proceeding will have the opportunity to submit discovery questions to the Company and its expert witnesses and possibly engage in informal discovery and site views.

PUC Proceedings

- Evidentiary Phase:
 - Expert witnesses provide pre-filed, written testimony. An opportunity is presented for direct testimony and several rounds of responsive testimony. The ALJ will hold hearings for parties to cross-examine the pre-filed written testimony.
 - Landowners and other affected groups may choose to submit pre-filed, written testimony and will need to be available for cross-examination at the times scheduled for hearings on the written testimony.
 - The ALJ may also conduct Site Views to establish evidence for the record.
 - The ALJ will also conduct Public Input Hearings so members of the public can provide their views and evidence on the siting Application.

PUC Proceedings

- Evidence accepted can include information on the need for the line, the safety of the line, alternative routes, and the impact on land use, soil and sedimentation, plant and wildlife habitats, terrain, hydrology landscape, archaeologic areas, geologic areas, historic areas, scenic areas, wilderness areas. See 52 Pa. Code § 57.75.

<https://www.pacode.com/secure/data/052/chapter57/s57.75.html>

PUC Proceedings

- Briefing and Decision Phase
 - At the conclusion of the evidentiary phase, the parties will have an opportunity to file Briefs setting forth their respective positions.
 - The presiding ALJ issues a Recommended Decision and the parties can file Exceptions to that Decision.
 - The Commission then issues an Order on the proceeding.

PUC Public Input Hearings

- Regardless of your involvement in the proceeding, members of the public will have the opportunity to provide non-expert testimony at a Public Input Hearing regarding PPL's Siting Application.
- Details of the location, date, and time of the Public Input Hearing(s) will be determined by the Commission at a later date and made available to the public.

What exactly happens at the PUC Public Input Hearing?

- ALJs place sign-up sheet at the door for those who wish to testify.
- ALJs call the hearing to order.
- The ALJs state a summary of the proceedings:
 - What the utility filed and when
 - What has happened so far
 - What options you have to participate.
- ALJs allow participants' counsel to introduce themselves and make a brief statement about their involvement.

What are your options to participate in a PUC Public Input Hearing?

- You can testify under oath. Each of the lawyers will have an opportunity to ask you questions after you testify. Your testimony will be transcribed and will become part of the evidentiary record.
- You can make an unsworn statement. The lawyers will not have the opportunity to ask you questions. Your statement will not be made part of the evidentiary record.
- The ALJ may limit the time for testimony, depending on the number of people signed up to testify. Additionally, to save time, if somebody has already provided the same testimony that you intend to provide, you can go on the record and adopt his/her testimony as your own.

Any other options?

Of course, people may simply sit and listen or provide information to the OCA or PUC lawyers off-the-record, for use as they see fit.

What does the ALJ do then?

- After the instructions to consumers, the ALJ will call the first witness, administer the oath (swear the witness in) and the testimony will begin.
- The court stenographer records every word the witness says.
- The stenographer later creates a “transcript” which is the record of all of the ALJs, lawyers and witnesses’ statements at the hearing.

Issues Raised in Public Testimony

- Individuals can object to the Company's proposals for any relevant reasons.
- In past cases, public witnesses have raised such issues as
 - The cost & need for the project
 - Safety & health concerns
 - Effects on the environment & the community
 - Effects on your individual property

Public Input Hearing Adjournment

- When every witness has had a chance to speak, the ALJ declares the hearing “adjourned.”
- A few days later, the lawyers receive copies of the transcript, which is also placed in the formal PUC file.

Can reporters attend the PUC Public Input Hearings?

- Yes. Anyone, including TV and newspaper reporters, can attend.
- Is there any limitation?
 - The ALJs can impose limits.
 - Individual rights to control information about oneself or dissemination of one's image is also important.
 - If a person objects to being photographed, videotaped or recorded by a reporter, the ALJ may instruct the reporter to turn off equipment during that person's testimony.

Other Opportunities for Participation

- You may have an opportunity to request a site view.
- A site view is an on-the-record hearing that takes place in the area affected by the proposed transmission line.
- During a site view, the ALJ presides over the taking of testimony by the affected landowner in the presence of the Company, its counsel, and other interested parties.

Questions?

Contact Information

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