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File #: 166395

March 6, 2017

VIA HAND DELIVERY

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

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Re: Application of PPL Electric Utilities Corporation Under 15 Pa.C.S. § 1511(c) For A Finding And Determination That The Service To Be Furnished By The Applicant Through Its Proposed Exercise Of The Power Of Eminent Domain To Acquire Right-of-Way And Easement Over A Certain Portion Of The Lands Of the Heirs of Davis Dean In West Abington, Lackawanna County, Pennsylvania Is Necessary Or Proper For The Service Accommodation, Convenience, Or Safety Of The Public - Docket No. A-2016-2571918

Application of PPL Electric Utilities Corporation Under 15 Pa.C.S. § 1511(c) For A Finding And Determination That The Service To Be Furnished By The Applicant Through Its Proposed Exercise Of The Power Of Eminent Domain To Acquire Right-of-Way And Easement Over A Certain Portion Of The Lands Of Dalton Equity, Inc. In West Abington, Lackawanna County, Pennsylvania Is Necessary Or Proper For The Service Accommodation, Convenience, Or Safety Of The Public Docket No. A-2016-2571923

Dear Secretary Chiavetta:

Enclosed for filing is the Joint Answer and Motion to Strike of PPL Electric Utilities Corporation to the Protest of Dalton Equity, Inc. in the above-referenced proceedings. Copies will be provided as indicated on the Certificate of Service.

Rosemary Chiavetta, Secretary

March 6, 2017

Page 2

Respectfully submitted,

Lindsay A. Berkstresser
Lindsay A. Berkstresser

LAB/jl

Enclosures

cc: Certificate of Service

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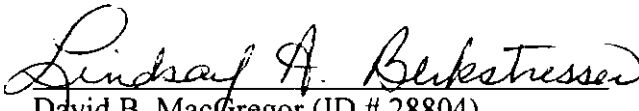
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application Of PPL Electric Utilities :
Corporation Under 15 Pa.C.S. § 1511(c) For A :
Finding And Determination That The Service :
To Be Furnished By The Applicant Through : Docket No. A-2016-2571918
Its Proposed Exercise Of The Power Of :
Eminent Domain To Acquire Right-of-Way :
And Easement Over A Certain Portion Of The :
Lands Of **Dalton Equity, Inc.**, In West :
Abington, Lackawanna County, Pennsylvania :
is Necessary or Proper for the Service, :
Accommodation, Convenience, or Safety of :
the Public :

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.103(c), YOU MAY FILE A REPLY TO THE ENCLOSED MOTION WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE. YOUR REPLY SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY OF YOUR REPLY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

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**BEFORE THE
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**JOINT ANSWER AND MOTION TO STRIKE OF
PPL ELECTRIC UTILITIES CORPORATION
TO THE PROTEST OF DALTON EQUITY, INC.**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

PPL Electric Utilities Corporation (“PPL Electric”), by and through its attorneys, hereby files this Joint Answer and Motion to Strike, pursuant to 52 Pa. Code §§ 5.61 and 5.103, in response to the Protest of Dalton Equity, Inc. (“Dalton Equity”). As explained below, the Protest should be stricken and the relief requested therein denied. PPL Electric responds to each of the separately numbered paragraphs of Dalton Equity’s Protest as follows:

ANSWER

1. Admitted in part and denied in part. It is admitted that Dalton Equity previously filed a Petition to Intervene in this proceeding, which was granted by Administrative Law Judge Elizabeth H. Barnes (the “ALJ”) on December 14, 2016. To the extent Dalton Equity incorporates by reference “all of the allegations and exhibits contained in its Petition to Intervene,” those allegations and exhibits are denied. By way of further response, there is no

need for Dalton Equity to file a Protest that incorporates the allegations and exhibits contained in its Petition to Intervene. The Dalton Equity Petition to Intervene has been filed with the Pennsylvania Public Utility Commission (“Commission”). Further, the allegations and exhibits contained in the Petition to Intervene are not part of the evidentiary record in this proceeding.

2. Denied. Paragraph 2 of Dalton Equity’s Protest is a legal conclusion to which no responsive pleading is required. To the extent a response is deemed necessary, PPL Electric denies the same.

By way of further response, the Protest filed by Dalton Equity is duplicative of its Petition to Intervene. Dalton Equity states that the purpose of its Protest is to “clarify that Dalton opposes the Application. . . .” The Protest is not needed to clarify Dalton Equity’s position because Dalton Equity has already stated its position in the Petition to Intervene.

Moreover, Dalton Equity’s Protest is completely unnecessary “to ensure that Dalton has full party status” because Dalton Equity was named as a party in the above-captioned applications, and Dalton Equity’s request to intervene was granted by the ALJ. Thus, Dalton Equity already has the right to fully participate in this proceeding as a party.

Dalton Equity further avers that the Protest will not adversely affect PPL Electric’s substantive rights. However, duplicative and unnecessary pleadings serve no purpose other than to waste the resources of opposing parties and the Commission.

3. Denied. Paragraph 3 of Dalton Equity’s Protest restates the averments contained in Dalton Equity’s Petition to Intervene, the contents of which speaks for itself. By way of further response, the averments contained in Paragraph 3 are not evidence in this proceeding and are therefore denied.

4. Admitted. It is admitted that PPL Electric has provided timely and complete responses to all discovery requests served in this proceeding. It is also admitted that the ALJ correctly denied Dalton Equity's application for the issuance of a subpoena pursuant to Section 309 of the Public Utility Code, 66 Pa.C.S. § 309.

5. Admitted in part and denied in part. It is admitted that PPL Electric has provided timely and complete responses to all discovery requests in this proceeding. However, PPL Electric cannot opine on what Dalton Equity did or did not do with the discovery responses PPL Electric provided.

6. Denied. Dalton Equity's Protest is unnecessary and duplicative of its Petition to Intervene. In fact, Dalton Equity admits that its Protest contains "no new allegations or issues." It is also denied that Dalton Equity's protest will not prejudice or delay this matter. Again, Dalton Equity's Protest serves no purpose other than to waste the resources of the parties and the Commission.

In response to Dalton Equity's averments regarding authentication of information provided by PPL Electric in discovery, this matter has already been resolved and is now moot. Indeed, on February 21, 2017, counsel for PPL Electric spoke with counsel for Dalton Equity and advised that for purposes of the evidentiary hearing PPL Electric will provide verifications and/or affidavits for any PPL Electric discovery responses that are attached to and submitted with Dalton Equity's written testimony.

7. Denied. The averments set forth in Paragraph 7 of Dalton Equity's Protest reference the Commission's regulations and Pennsylvania Commonwealth Court precedent, the terms of which speak for themselves. Any interpretation or characterization thereof is denied. By way of further response, the averments set forth in Paragraph 7 of Dalton Equity's Protest are

legal conclusions to which no responsive pleading is required. To the extent a response is deemed necessary, PPL Electric denies the same.

Further, Paragraph 7 contains a request for relief to which no responsive pleading is required. To the extent a response is deemed necessary, PPL Electric denies that Dalton Equity is entitled to the relief requested. PPL Electric's Application cannot be decided upon until a full evidentiary record has been developed. Dalton Equity's Protest does not constitute evidence in this proceeding and provides absolutely no basis for denying PPL Electric's Application. In addition, Dalton Equity's request to amend the title of its previously granted Petition to Intervene to "Protest" is completely unnecessary and a waste of the parties' and the Commission's resources because Dalton Equity already has full party status in this proceeding and has indicated its opposition to PPL Electric's Application in its Petition to Intervene previously granted by the ALJ.

MOTION TO STRIKE

1. For the reasons stated above in Paragraph 1-7 of PPL Electric's Answer, the Protest filed by Dalton Equity should be stricken.

2. Dalton Equity's Protest is duplicative of its Petition to Intervene and is a completely unnecessary pleading. Dalton Equity's Protest simply reiterates the position set forth in its Petition to Intervene, which has already been granted. Such pleadings serve no purpose other than to misuse the resources of opposing parties and the Commission. Dalton Equity's Protest should be denied on this basis alone. *See SBG Management Services, Inc./ Simon Gardens v. Philadelphia Gas Works*, Docket No. C-2012-2308460, 2012 Pa. PUC LEXIS 1713, *12 (Initial Decision November 1, 2012), *aff'd* by Commission Order entered December 31,

2012 (dismissing second complaint filed against same defendant alleging essentially the same facts as “waste of Commission resources”).

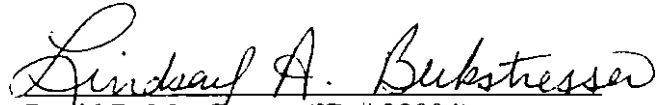
3. Further, Dalton Equity’s Protest is not and should not be considered evidence in this proceeding. It is well established that any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence of record. *Met-Ed Indus. Users Grp. v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Before the Commission may consider information, it must first be offered and admitted to the record. *Helsel v. Commonwealth, DOT*, 605 A.2d 454, 455 (Pa. Cmwlth. 1992). Indeed, for an agency to rely on facts withheld from the record is a denial of due process. *See Kyu Son Yi v. State Bd. of Veterinary Med.*, 960 A.2d 864, 873 (Pa. Cmwlth. 2008) (holding that information that has not been offered into the record cannot be used to sustain an adjudication); *see also Ohio Bell Telephone Co. v. Pa. PUC*, 301 U.S. 292, 302-03, 57 S. Ct. 724, 81 L. Ed. 1093 (1937) (explaining that due process requires that the party against whom evidence is presented must “see the evidence or hear it [or be able to] parry its effect ... and challenge the deductions made from them.”). Dalton Equity will have an opportunity to set forth its position in pre-served written testimony and exhibits that may be presented for admission to the evidentiary record in accordance with the litigation schedule adopted by the ALJ and subject to timely objections and cross-examination. However, Dalton Equity’s Protest is not and cannot be evidence of record and, therefore, should be stricken.

4. Finally, Dalton Equity’s request to deny PPL Electric’s Application based on the Protest is premature and without merit. PPL Electric’s Application cannot be ruled upon until a complete evidentiary record has been developed. Dalton Equity’s Protest provides no basis for

ruling upon PPL Electric's Application, fails to conform with the Commission regulations for dispositive motions and, therefore should be stricken.

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Protest of Dalton Equity, Inc. be stricken and the relief requested therein denied.

Respectfully submitted,



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Of Counsel:

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Date: March 6, 2017

Attorneys for PPL Electric Utilities Corporation

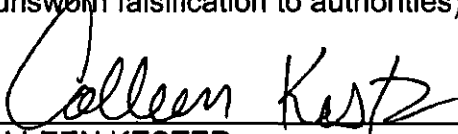
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VERIFICATION

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF LEHIGH

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



COLLEEN KESTER

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CERTIFICATE OF SERVICE

(Docket No. A-2016-2571918)

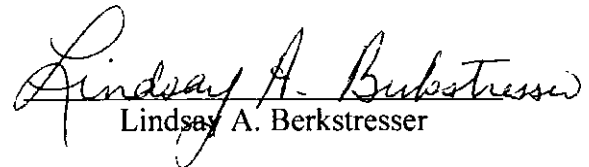
(Docket No. A-2016-2571923)

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

VIA E-MAIL & FIRST CLASS MAIL

Michael R. Mey, Esquire
Mey & Sulla, LLP
1144 East Drinker Street
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*Counsel for Dalton Equity, Inc.
& Heirs of Davis Dean*

Date: March 6, 2017


Lindsay A. Berkstresser

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