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File #: 166395

May 22, 2017

VIA ELECTRONIC FILING

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

**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 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-2016-2571918**

**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 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-2016-2571923**

Dear Secretary Chiavetta:

Enclosed for filing is PPL Electric Utilities Corporation's Reply to Exceptions in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Rosemary Chiavetta, Secretary
May 22, 2017
Page 2

Respectfully submitted,



Christopher T. Wright

CTW/jl
Enclosure

cc: Certificate of Service
Honorable Elizabeth Barnes

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
Dunmore, PA 18512
*Counsel for Dalton Equity, Inc.
& Heirs of Davis Dean*

Date: May 22, 2017



Christopher T. Wright

**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 :

Application Of PPL Electric Utilities :
Corporation Under 15 Pa.C.S. §1511(c) For A :
Finding And Determination That The Service : Docket No. A-2016-2571923
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 :

**PPL ELECTRIC UTILITIES CORPORATION
REPLY TO EXCEPTIONS**

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Date: May 22, 2017

I. INTRODUCTION

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) herein submits this Reply to the Exceptions of Dalton Equity, Inc., (“Dalton Equity”). In its Exceptions, Dalton Equity argues that the Initial Decision of Administrative Law Judge Elizabeth H. Barnes (the “ALJ”) erred in granting PPL Electric’s request to withdraw the above-captioned Applications. In the Initial Decision, the ALJ found that the above-captioned Condemnation Applications are unnecessary and should be withdrawn because PPL Electric acquired voluntary right-of-way permitting the use of an alternative route that avoids the need to condemn a right-of-way across the properties that are the subject of the Applications. (*See* Initial Decision, p. 4)

In its Exceptions, Dalton Equity opposes the withdrawal of the above-captioned Condemnation Applications as recommended in the Initial Decision. In support, Dalton Equity asserts that the Condemnation Applications should not be withdrawn because Dalton Equity has incurred costs opposing the request for eminent domain authority on the basis that PPL Electric cannot condemn property to construct a high voltage transmission line necessary to serve a new industrial customer. (See Exceptions, ¶¶ 3-4) Dalton Equity also asserts that the Applications should not be withdrawn “before the expiration of twenty days from the notice filed by PPL.” (See Exceptions, ¶ 4) Finally, Dalton Equity argues that withdrawing the Applications deprives Dalton Equity and other members of the public of a decision on the merits in this case and future applications by the Company. (See Exceptions, ¶ 4)

Dalton Equity’s Exceptions to the Initial Decision are untimely and entirely without any merit. Dalton Equity failed to file any answer or otherwise object to PPL Electric’s request to withdraw the Applications and, as such, Dalton Equity has waived its right to oppose the withdrawal of the Condemnation Applications. Moreover, even if Dalton Equity had timely filed an answer or objection to the request to withdraw the Condemnation Applications, there is no

present case or controversy to be adjudicated. Indeed, Dalton Equity's property will not be condemned and, therefore, the Condemnation Applications are completely unnecessary. Continuing the litigation, as requested by Dalton Equity, would be a complete waste of the Commission's, the ALJ's, and parties' time and resources.

For these reasons, as more fully explained, Dalton Equity's Exceptions are without merit and should be denied.

II. REPLIES TO EXCEPTIONS

A. DALTON EQUITY'S OBJECTIONS TO PPL ELECTRIC'S PETITION TO WITHDRAW ARE UNTIMELY AND HAVE BEEN WAIVED.

This matter arose from two Condemnation Applications filed by PPL Electric on October 14, 2016. In the Condemnation Applications, PPL Electric requested that the Commission determine that the service to be furnished by PPL Electric through the proposed exercise of the power of eminent domain to acquire rights-of-way across the Dalton Equity property is necessary for the construction of a new 69 kV transmission line needed to supply electric power to a new industrial customer located in Clinton Township, Wyoming County.

On November 23, 2016, Dalton Equity's legal counsel filed a Petition to Intervene. In its Petition to Intervene, Dalton Equity opposed the condemnation of the Dalton Equity property. Similarly, in a Protest filed on February 21, 2017, Dalton Equity again asserted that it opposed the condemnation of its property.

On December 14, 2016, the ALJ issued a Procedural Order that granted Dalton Equity's Petition to Intervene and adopted a litigation schedule. In accordance with its standard practice in eminent domain proceedings, PPL Electric continued to attempt to negotiate and acquire a voluntarily right-of-way that would avoid the need to exercise eminent domain authority. This is

consistent with prior cases where PPL Electric has initially filed condemnation applications and later withdrawn the applications if an agreement can be reached that avoids the need to condemn the subject property. PPL Electric's practice is entirely consistent with the Commission's policy to encourage settlements and resolve issues informally. *See* 52 Pa. Code § 69.401.

On or about April 10, 2017, PPL Electric acquired a voluntary right-of-way that permits the use of an alternative route for the proposed new 69 kV transmission line that avoids the need to condemn rights-of-way across the Dalton Equity property. The voluntary right-of-way and alternative route renders the above-captioned Condemnation Applications unnecessary. Indeed, as a result of the voluntary right-of-way, PPL Electric has no intention of condemning a right-of-way across the Dalton Equity property. As a result, on April 11, 2017, PPL Electric filed a Petition for Leave to Withdraw and Terminate the Condemnation Application in its entirety ("Petition to Withdraw").

PPL Electric advised counsel for Dalton Equity that it was filing the Petition to Withdraw and provided Dalton Equity's counsel with a copy of the Petition to Withdraw in advance of filing. PPL Electric served a copy of its Petition to Withdraw on Dalton Equity, along with the notice required by 52 Pa. Code § 5.94(a) that Dalton Equity may "object to the petition within 10 days of service." Further, on April 11, 2017, the ALJ specifically instructed counsel for Dalton Equity to advise whether Dalton Equity had no objection to PPL Electric's request to withdraw the Condemnation Application or file objections within ten days. A true and correct copy of the ALJ's instruction is attached hereto as Appendix A.

As noted in the Initial Decision, Dalton Equity did not file any objections to PPL Electric's Petition to Withdraw. (*See* Initial Decision, p. 4) As such, on April 22, 2017, the ALJ

issued an Initial Decision granting PPL Electric's unopposed Petition to Withdraw and closing the docket.

Instead of filing objections, Dalton Equity waited until the ALJ issued an Initial Decision to express its opposition to PPL Electric's Petition to Withdraw. Dalton Equity, which is represented by legal counsel, has waived its objections to the Petition to Withdraw by failing to timely file its objections as required by the Commission's regulations and the ALJ's clear instructions.

Perhaps recognizing its error and in an effort to avoid the waiver issue, Dalton Equity now claims in its Exceptions that the Petition to Withdraw the Condemnation Applications should not have been granted before the expiration of twenty days from the notice filed by PPL Electric. (See Exceptions, ¶ 4) Dalton Equity's proposed procedural error is misplaced. Indeed, 52 Pa. Code § 5.94(a) clearly provides that a "party may object to the petition within 10 days of service." Further, Dalton Equity has provided no justification for its failure to comply with the Commission's regulations and the ALJ's instructions.

Based on the foregoing, Dalton Equity's objections to the Petition to Withdraw the Condemnation Applications are untimely and have been waived. Exceptions to the ALJ's Initial Decision is not the proper procedure for opposing PPL Electric's Petition to Withdraw and, therefore, Dalton Equity's Exceptions should be denied.

B. WITHDRAWING THE CONDEMNATION APPLICATION DOES NOT RESULT IN ANY HARM TO DALTON EQUITY OR THE PUBLIC.

In granting PPL Electric's Petition to Withdraw, the ALJ concluded that withdrawing the Condemnation Application would not impact the public interest, stating that "the Commission has no interest in mandating that an applicant pursue litigation in order to provide public utility service where it may not be prepared to do so." (I.D., p. 4). In its Exceptions, Dalton Equity

argues that withdrawing the Condemnation Application without a “formal finding” would “deprive[] Dalton, and other members of the public of a decision on its merits in this case and future such applications by PPL or other utilities.” (Dalton Equity Exec. ¶ 4).

As preliminary matter, Dalton Equity does not having standing to represent unnamed members of the public who are not parties to this proceeding. The above-captioned Condemnation Applications applied only to Dalton Equity’s property. No other members of the public would in any way be harmed if the Commission granted the Condemnation Applications. Further, despite being published in the *Pennsylvania Bulletin*, 46 Pa.B. 7054, no other members of the public expressed any interest, concerns, or opposition in the Condemnation Applications. Finally, this is not a class action. Dalton Equity has not presented anything to suggest that it is somehow authorized to represent unnamed members of the public, and Dalton Equity has not been granted representational standing in this proceeding. Accordingly, despite Dalton Equity’s unsupported assertion to the contrary, no “other members of the public” will be harmed or otherwise affected by the withdrawal of the now completely unnecessary Condemnation Applications.

Throughout this proceeding, Dalton Equity has opposed the proposed condemnation of its property. As explained above, the Condemnation Applications have been withdrawn because they are no longer needed and PPL Electric has no intention of condemning a right-of-way across any portion of Dalton Equity’s property. In essence, Dalton Equity has prevailed in the outcome because its property will not be condemned. Remarkably, however, Dalton Equity still submits that it will be somehow be harmed if a decision on the merits of the Condemnation Application is not reached.

Dalton Equity's Exceptions essentially request an advisory opinion. However, it is well settled that the Commission does not issue advisory opinions. *See, e.g., Petition of Peoples TWP, LLC for Approval of a Distribution System Improvement Charge*, 2014 Pa. PUC LEXIS 140, *14 (April 2, 2014) *citing Joint Petition of Metropolitan Edison Co., et al for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Opinion and Order entered August 3, 2010); *Application of Exelon Corporation, Exelon Xchange Corporation and PECO Energy Company For Certificates of Public Convenience*, Docket Nos. A-2009-2093057, 2009 Pa. PUC LEXIS 1533, *21 (Order entered June 25, 2009) (refusing to issue advisory opinion on issue that was not ripe for review).

Further, Dalton Equity's contention that a decision on the merits would benefit future applications by PPL Electric is misplaced. The above-captioned Condemnation Applications were limited to the instant facts of this case and, more importantly, pertained only to the Dalton Equity property. Even if a decision on the merits were reached in this now unnecessary proceeding, it would not be binding on future condemnation applications with an entirely different set of facts, properties, and parties.

Moreover, Dalton Equity's opposition to the Condemnation Applications is based on a legal argument that is fundamentally flawed and has already been rejected by the Commission. In this proceeding, Dalton Equity argued that PPL Electric cannot condemn a right-of-way for a transmission line necessary to provide electric service to an industrial customer.¹ The flaw with Dalton Equity's position is that Commission has interpreted Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, to impose upon a certificated public utility an obligation (as opposed to

¹ It should be noted that, although the Procedural Order issued by the ALJ provided for Dalton Equity to submit written testimony and exhibits in support of its opposition to the Condemnation Applications, Dalton Equity failed to submit any testimony in support of its position. Thus, Dalton Equity did not and could not refute any facts and, as explained herein, its sole legal argument in opposition to the Condemnation Applications is flawed and has already been rejected.

a mere right) to provide service in its certificated service territory.² The Pennsylvania appellate courts have likewise found that “[a] Certificate of Public Convenience and Necessity makes it lawful for a public utility to provide service within a defined territory, and imposes on the public utility an obligation to provide service in that territory.” *Lukens Steel Co., Div. of Lukens, Inc. v. Pennsylvania Public Utility Com.*, 499 A.2d 1134, 1136 n. 1, (Pa. Cmwlth. 1985) (citing *Bland v. Tipton Water Co.*, 222 Pa. 285, 71 A. 101 (Pa. 1908)).³ The flaw in Dalton Equity’s argument is further demonstrated by the fact that Commission has previously approved numerous transmission line projects completed by PPL Electric that initially supplied only the commercial or industrial customer requesting service.⁴ Therefore, even if a decision on the merits were

² See e.g., *Application of Leatherstocking Gas Company, LLC, for Approval to Supply Natural Gas Service to the Public in Northern Susquehanna County, in the Townships of Bridgewater, Forest Lake, Great Bend, Harmony, New Milford, and Oakland, and in the Boroughs of Great Bend, Hallstead, Lanesboro, Montrose, New Milford, Oakland and Susquehanna*, Docket No. A-2011-2275595, 2012 Pa. PUC LEXIS 1391 (August 30, 2012) (“fixed utility certificates of public convenience nearly always provide an exclusive franchise to serve a given territory in return for a utility’s obligation to serve”); *Supplement No. 23 to Pennsylvania Power and Light Company Tariff Electric Pa.P.U.C. No. 200*, Docket No. R-891506, 1989 Pa. PUC LEXIS 212; 71 Pa. PUC 646 (December 28, 1989) (“Sections 1501 and 1502 of the Public Utility Code, 66 Pa. C.S. §§ 1501 and 1502, under which we concluded that a certificate of public convenience authorizing the provision of service to customers located within a utility’s service territory carries with it the obligation to serve customers in that market”); *Pennsylvania Public Utility Commission, et al. v. Pennsylvania Gas and Water Company*, 1986 Pa. PUC LEXIS 113, at *14-15 (April 25, 1986). (“[i]t is beyond cavil that every public utility has a statutory duty to provide safe and adequate service”); *Re Morris-Rospond Associates*, 1986 Pa. PUC LEXIS 97, 61 Pa. PUC 560 (June 30, 1986) (“a certificate, giving a utility a monopoly in a defined market both makes it lawful to provide service and imposes an obligation to provide service in that market”).

³ See also *Rubin v. Pa. PUC*, 177 A.2d 128 (Pa. Super. 1962) (certificated public utility has an obligation to serve anyone who will pay the applicable tariff rates and abide by the reasonable regulations of the company, limited to lawful use of the public utility’s service); *Colombo v. Pa. PUC*, 48 A.2d 59, 61, (Pa. Super. 1946) (“[t]he obligation to serve the public is inherent in every certificate of public convenience”) (citing *Hoffman v. Pa. P.S.C.*, 99 Pa. Super. 417, 429 (Pa. Super. 1930)).

⁴ PPL Electric has previously obtained Commission approval, including eminent domain authority, for numerous transmission line projects that initially supplied a single commercial or industrial customer, including, but not limited to: *Letter of Notification of PPL Electric Utilities Corporation, filed pursuant to 52 Pa. Code §57.72 57 Subchapter G for Approval to Construct Approximately 0.4 Miles of New 500 kV Transmission Lines to Interconnect a New Independent Power Producer to the Electric Grid*, Docket No. A-2016-2572293 (Order entered December 8, 2016); *Letter of Notification of PPL Electric Utilities Corporation, filed pursuant to 52 Pa. Code §57.72 57 Subchapter G for Approval to Build an Approximately 1,760-Foot New 500 kV Gas Insulated Line in Shamokin Dam Borough, Snyder County, Pennsylvania to Interconnect a New Independent Power Producer to the Electric Grid*, Docket No. A-2016-2553851 (Order entered August 11, 2016); *Letter of Notification of PPL Electric Utilities Corporation, filed pursuant to 52 Pa. Code §57.72 57 Subchapter G for Approval to Reconstruct Approximately 3.1 Miles of an Existing 230 kV Transmission Line and to Construct Two New Segments of 230 kV Transmission Lines in Archbald, Blakeley, and Jessup Boroughs, Lackawanna County, Pennsylvania to Interconnect a New Independent Power Producer to the Electric Grid*, Docket No. A-2015-2514647 (Order entered February 11, 2016);

reached in this now unnecessary proceeding, Dalton Equity’s legal argument in opposition to the Condemnation Applications is without merit and has previously been rejected by the Commission.

PPL Electric no longer seeks to condemn any portion of Dalton Equity’s property and, therefore, withdrawing the Condemnation Applications would have no impact whatsoever on Dalton Equity or the public. Accordingly, Dalton Equity’s Exceptions are without merit and should be denied.

C. DALTON EQUITY’S EXCEPTIONS ARE MOOT.

Dalton Equity requests that the Commission “grant its Exceptions and require a finding by the Administrative Law Judge that PPL’s Applications were improper under the Public Utility Code.” (Dalton Equity Exec., ¶ 4). Dalton Equity’s Exception to the Initial Decision are moot and should be denied.

As explained above, the Condemnation Applications have been withdrawn because they are no longer needed and PPL Electric has no intention of condemning a right-of-way across any portion of Dalton Equity’s property. Because the condemnation of the Dalton Equity property is unnecessary, there is no case or controversy to be adjudicated. As such, Dalton Equity’s Exceptions to the withdrawal of the Condemnation Applications are moot. *See Pilchesky v. Lackawanna Cnty.*, 88 A.3d 954, 964 (Pa. 2014) (“[T]he mootness doctrine requires an actual case or controversy to be extant at all stages of a proceeding . . .”). Because PPL Electric no

Letter of Notification of PPL Electric Utilities Corporation filed pursuant to 52 PA Code Chapter 57 with respect to approval of the Siting & Reconstruction of a Portion of the Existing Mack Macungie #1 & #2 138/69 kV Line in Lower Macungie Township, Lehigh County, Pa., Docket No. A-2012-2301049 (Order entered July 19, 2012); Letter of Notification of PPL Electric Utilities Corporation filed pursuant to 52 PA Code Chapter 57 Subchapter G with respect to the Tobyhanna #1 and #2 138/69 kV Tap Line to serve the United States Army Depot in Coolbaugh Township, Monroe County, Docket No. A-2011-2230589 (Order entered December 15, 2011); Letter of Notification of PPL Electric Utilities Corporation filed pursuant to 52 PA Code Chapter 57 with respect to the proposed Victaulic 138/69 kV supply line to be located, constructed, operated, and maintained in Lower Macungie Township, and the Borough of Alburdis, Lehigh County, Pa., Docket No. A-110500 F141 (Order entered September 24, 1991); Re Pennsylvania Power and Light Company, Docket Nos. A-110500F040, et al. (Order entered April 15, 1991).

longer seeks to condemn Dalton Equity's property, there simply is no justiciable issue remaining for the Commission to address.

In its Exceptions, Dalton Equity remarkably suggests that allowing the withdrawal of the now unnecessary Condemnation Applications would result in a waste of time, expense, and effort on the part of the Commission and Dalton Equity. Under Dalton Equity's theory, no settlement should be granted or entered to resolve a dispute because the parties to the settlement initially incurred time and expense in their litigation efforts before the settlement was reached. Dalton Equity's theory is nonsensical and entirely inconsistent with the Commission's policy to encourage settlements and resolve issues informally. *See* 52 Pa. Code § 69.401.

Furthermore, to continue with an unnecessary and moot proceeding, as Dalton Equity suggests, would only exacerbate the issue by further wasting the Commission's, ALJ's, and parties' time and resources to adjudicate a meaningless proceeding. The Commission has clearly advised that parties and the ALJ should not be required to spend scarce public and private resources by considering transactions or proposals that may not come to fruition. *Application of Exelon Corporation and PECO Energy Company For Certificates of Public Convenience*, Docket Nos. A-2009-2093057, 2009 Pa. PUC LEXIS 1533 at *21 (Order entered June 25, 2009).

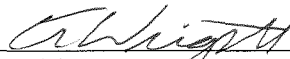
Based on the foregoing, there simply is no justiciable issue for the Commission to address. As such, Dalton Equity's Exceptions to the Initial Decision are moot and, therefore, should be denied.

III. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission (i) deny the Exceptions of Dalton Equity, Inc., and (ii) adopt the Initial Decision of Administrative Law Judge Elizabeth H. Barnes in its entirety.

Respectfully submitted,

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Of Counsel:

Post & Schell, P.C.

Dated: May 22, 2017

Attorneys for PPL Electric Utilities Corporation

Appendix “A”

Berkstresser, Lindsay

From: Barnes, Elizabeth <EBARNES@pa.gov>
Sent: Tuesday, April 11, 2017 11:59 AM
To: Wright, Christopher; Michael R. Mey (mmey@meysullalaw.com); Kimberly Klock (kklock@pplweb.com); Amy E. Hirakis (aehirakis@pplweb.com); MacGregor, David; Berkstresser, Lindsay
Subject: RE: Applications of PPL Electric Utilities Corporation re: Heirs of Davis Dean and Dalton Equity (Nos. A-2016-2571918 & A-2016-2571923)

All:

Tomorrow's consolidated hearing regarding the two Applications is cancelled. Mr. Mey, if your client (Dalton Equity) has no objection to the petitions to withdraw applications, please advise and I will begin drafting an Initial Decision. Otherwise, I will wait 10 days for any objection to be filed before addressing the Petitions. Thank you all.

Elizabeth H. Barnes
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17015
phone: (717)772-5408
e-mail: ebarnes@pa.gov.

From: Rosario, Susan [<mailto:srosario@postschell.com>] **On Behalf Of** Wright, Christopher
Sent: Tuesday, April 11, 2017 12:45 AM
To: Barnes, Elizabeth; Michael R. Mey (mmey@meysullalaw.com); Wright, Christopher; Kimberly Klock (kklock@pplweb.com); Amy E. Hirakis (aehirakis@pplweb.com); MacGregor, David; Berkstresser, Lindsay
Subject: Applications of PPL Electric Utilities Corporation re: Heirs of Davis Dean and Dalton Equity (Nos. A-2016-2571918 & A-2016-2571923)

Attached please find the Petitions of PPL Electric Utilities Corporation ("PPL Electric") for Leave to Withdraw the Dean Condemnation Application and the Dalton Equity Condemnation Application in the above-referenced proceedings. Copies will be provided as indicated on the Certificates of Service.

Through these Petitions, PPL Electric is requesting to (i) withdraw the Applications and terminate the proceedings docketed at Docket Nos. A-2016-2571918 and A-2016-2571923, and (ii) cancel the hearings currently scheduled for April 12, 2017.

Susan K. Rosario
Secretary
Post & Schell, P.C.
17 North Second Street
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Harrisburg, PA 17101

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