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ANDREW HOURIGAN, JR.
1948-1978

* ALSO MEMBER NY BAR
** ALSO MEMBER NJ BAR

ARTHUR L. PICCONE
1958-2019

March 1, 2022

DATE OF DEPOSIT

VIA OVERNIGHT DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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 A Certain Portion Of The Lands of August and Diana Baker in Dickson City Borough and Scott Township, Lackawanna County, Pennsylvania For the Proposed Rebuilding Of The Summit-Lackawanna #1 And #2 230 kV Associated With The Proposed Summit-Lackawanna Project Is Necessary or Proper For The Service, Accommodation, Convenience, Or Safety Of The Public
Docket No. A-2022-3031013

Dear Secretary Chiavetta:

Please allow this letter to serve as the formal **PROTEST TO AN APPLICATION** of August W. Baker and Dianna M. Baker.

1. The Protestants are August W. Baker and Dianna M. Baker ("Mr. & Mrs. Baker"), 178 East Pine Street, Dunmore, Lackawanna County, PA 18512; Telephone: 570-507-1397; Email Address: awb248@yahoo.com.
2. In accordance with 52 Pa. Code § 5.52(a)(1), Mr. & Mrs. Baker are the owners of the property at issue in the present application. (See, e.g., Application, ¶8).
3. In accordance with 52 Pa. Code § 5.52(a)(2), Mr. & Mrs. Baker state the following grounds for the filing of this Protest:

MAR 1 2022

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**GROUND FOR PROTEST**

4. The averments set forth in the Application are materially inaccurate. PPL Electric Utilities Corporation ("PPL") does not enjoy an easement across Mr. & Mrs. Baker's property as set forth in the Application. In fact, the validity of such easement currently is at issue in that certain action titled, *August Baker and Diana Baker v. PPL Electric Utilities Corp. and T&D Power, Inc.*, docketed with the Lackawanna County Clerk of Judicial Records to No.: 15- CV- 4264.

5. Mr. & Mrs. Baker are the owners of approximately 77 acres of property (the "Property") located in Dickson City Borough and Scott Township, Lackawanna County, Pennsylvania.

6. Mr. & Mrs. Baker obtained title to the Property in accordance with that certain deed dated December 30, 2009, and recorded in the Lackawanna County Recorder of Deeds Office in Instrument No.: 201000311.

7. In or about April 1970, PPL installed its electrical lines and towers on the Property commonly referred to as the "Peckville-Stanton Line.

8. PPL bases its right to the installation of the towers and electrical lines in 1970 and in 2013 on a purported easement agreement dated June 12, 1969. The purported easement agreement, which is recorded in the Lackawanna County Recorder of Deeds Office in Book 721, at Page 26, reflects a purported grant by the County of Lackawanna, a municipality in the Commonwealth of Pennsylvania, by its duly elected Commissioners, Patrick J. Mellody, E.J. Zipay, and Charles R. Harte to PPL.

9. Notably, the purported easement agreement provides, in pertinent part:

It is understood and agreed, by the acceptance of this indenture that there is no representation or warranty of title and that this indenture is made subject to the rights of redemption, if any, that may now or hereafter remain in any former owner or other person interested in said premises. ...

10. PPL bases the validity of the purported easement agreement, and the ownership of the Property by Lackawanna County, on a 1965 Treasurer's sale conducted pursuant to the provisions of the Act of May 29, 1931, P.L. 280.

11. The purported sale of the Property is reflected in Lackawanna County Treasurers Deed Book No. 5.

12. County Treasurers Deed Book No. 5 merely describes the property sold at the Treasurer's Sale as follows: "Unknown Owner"; "Bell Mountain Edington Tr."; "\$346.46".

13. Notice of the 1965 County Treasurer's sale appeared in the August 6, 1965, August 13, 1965, and August 20, 1965, *Scranton Times*.

14. All three advertisements merely identify the Property as “Unknown Owner”; “Bell Mt. Edington Tr.”; “348.42”.

15. None of the advertisements reference a portion of the Property being located within Scott Township.

16. Subsequent to the purported Treasurer’s sale of the Property in 1965, the Property was again exposed to a tax sale on December 10, 1975, as evidenced by “Tax Claim Docket No. 1”.

17. The Property was thereafter redeemed on October 1, 1984, by Frank and Irene Riefinberg as noted by the Lackawanna County Tax Claim Bureau on “Tax Claim Docket No. 1”.

18. Commencing on or about August 26, 2013, PPL commenced the installation of a second transmission line on the Property.

19. PPL’s purported easement across the Property is invalid as follows.

A. The Lackawanna County Commissioners could not grant an easement interest in the Property to PPL because the Lackawanna County Treasurer’s attempted conveyance of the Property to the Lackawanna County Commissioners in 1965 was void.

20. In violation of Pennsylvania law, the County Treasurer’s Deed purportedly conveying the Property to Lackawanna County Commissioners entirely failed to identify the property with any sufficiency or clarity.

21. The deed merely describes the property as “Unknown Owner”; “Bell Mountain Edington Tr.”; “\$346.46”.

22. At the time of the 1965 tax sale, however, the Property was owned by Bruce Edginton and Audrey Edginton, his wife (not Edington), and Charles H. Davis, Berton E. Davis and Margaret A. Davis, Widow. Thus, the owners were known at the time of the 1965 tax sale.

23. In addition, the deed specifically references assessment block and lot numbers for *other* properties being conveyed by the County pursuant to the sale.

24. The deed entirely fails to reference any lot and block numbers for the Property.

25. The mere description of the Property in County Treasurer’s Deed Book No. 5 as “Unknown Owner”; “Bell Mountain Edington Tr.”; “\$346.46” was not sufficient to pass title to the Lackawanna County Commissioners as a matter of law.

26. In addition, notice of the 1965 County Treasurer’s sale appeared in the August 6, 1965, August 13, 1965, and August 20, 1965, *Scranton Times*.

27. All three advertisements merely identify the Property as “Unknown Owner”; “Bell Mt. Edington Tr.”; “348.42”.

28. None of the advertisements reference a portion of the Property being located within Scott Township.

29. Moreover, a 1975 document titled “Tax Claim Docket No. 1” reflecting a purported sale of the Property on December 10, 1975, identifies the Property as being within Dickson City Ward #1 despite the County Treasurers Deed Book No. 5 identifying the Property as being in Ward #3.

30. The fact that Lackawanna County identifies separate and conflicting locations for the Property being located in Ward I in one instance and Ward III in the other and fails to reference Scott Township is *prima facie* evidence that the description was entirely deficient.

B. The Lackawanna County Commissioners could not grant an easement interest in the Property to PPL because the 1965 tax sale was void due to lack of sufficient notice.

31. The notice of the 1965 tax sale wherein the Property was sold did not comply with statutory due process requirements.

32. Notice of the 1965 County Treasurer’s sale appeared in the August 6, 1965, August 13, 1965, and August 20, 1965, *Scranton Times*.

33. All three advertisements merely identify the Property as “Unknown Owner”; “Bell Mt. Edington Tr.”; “348.42”. In addition, none of the advertisements reference a portion of the Property being located within Scott Township. The advertisements also reference the property as the “Bell Mountain Edington Tr.” despite the correct reference being “Edginton”.

34. In addition, the Property at the time of the 1965 tax sale was owned by: (i) Bruce Edginton and Audrey Edginton, his wife; and (ii) Charles H. Davis, Berton E. Davis and Margaret A. Davis, Widow.

35. No entry of these record owners was ever made.

C. The instrument purporting to grant an easement interest is invalid as it does not sufficiently identify and describe the easement area.

36. In order for an easement to be valid under Pennsylvania law, the description “must be clear and sufficiently precise to enable a surveyor to locate and identify the property.” Dickson v. Pennsylvania Power and Light Co., 283 Pa. Super. 53, 56, 423 A.2d 711,712-13 (1980).

37. The purported instrument granting PPL an easement interest does not meet the standards required by Pennsylvania law.

D. Even if valid, PPL's right of way is deficient as it is approximately short 394 feet on the westerly side of the Property.

38. Even if valid, PPL's purported easement/right of way is approximately short 394 feet on the westerly side of the Property and has been constructed 20 feet outside of the of the boundary of the purported easement/right of way along the entire northerly line of the Property.

39. In accordance with 52 Pa. Code § 5.52(a)(3), Mr. & Mrs. Baker have standing to file this protest as they are the owners of the property at issue in the present application. (See, e.g., Application, ¶8).

Very truly yours,


Richard M. Williams

RMW/sh

cc: David B. MacGregor, Esquire
Garrett P. Lent, Esquire
Michael J. Shafer, Esquire
Richard Huffsmith, Esq. (via email)
August Baker (via email)

VERIFICATION

I swear that the facts I am presenting in this Protest are true and correct to the best of my knowledge, information and belief. I understand that the statements I am making in this Protest are made subject to the penalties of 18 Pa. C.S. Section 4904 (relating to unsworn falsification to authorities)

August W Baker
August W Baker

Feb. 25, 2022
Date

Diana M. Baker
Diana M. Baker

2-25-2022
Date

DATE OF DEPOSIT

MAR 1 2022

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I certify that I have this day served a true copy of the Protest of August W. Baker and Diana M. Baker on the following:

David B. MacGregor, Esquire
Garrett P. Lent, Esquire
Post & Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101-1601

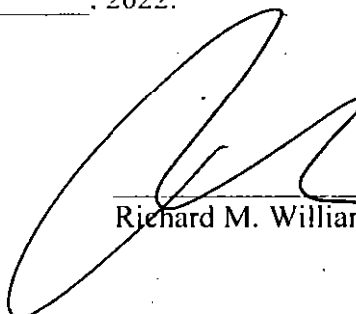
Michael J. Shafer, Esquire
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101

DATE OF DEPOSIT

MAR 1 2022

Date: This 12th day of March, 2022.

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



Richard M. Williams, Esquire

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