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August 19, 2022

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

RE: Application of PPL Electric Utilities Corporation
Docket No. A-2022-3030969; and
Application of PPL Electric Utilities Corporation
Docket No. A-2022-3031013;
Our File No.: F0251-001

Dear Secretary Chiavetta:

Enclosed for filing is the Principal Brief of August W. Baker and Diana M. Baker with attached Certificate of Service. Copies will be provided as indicated on the Certificate of Service.

Very truly yours,

Richard M. Williams

RMW/sh
Enc.
cc: Certificate of Service

CERTIFICATE OF SERVICE

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

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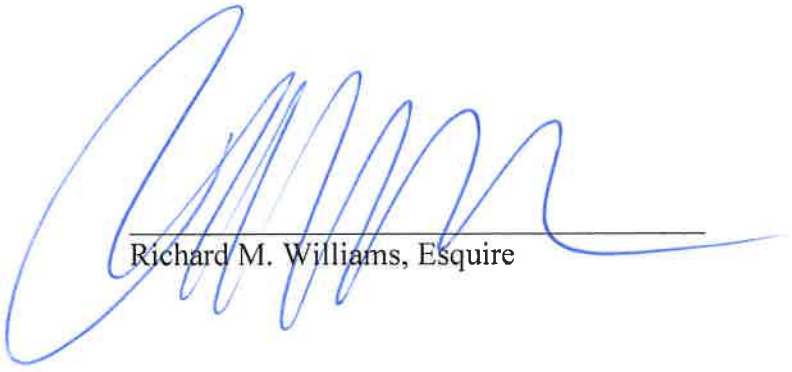
Date: This 19th day of August, 2022.



Richard M. Williams, Esquire

BEFORE
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of PPL Electric Utilities Corporation Filed Pursuant to 52 Pa. Code Chapter 57 Subchapter G, For Approval To Rebuild The Existing Summit-Lackawanna #1 And #2 230 Kv Transmission Lines Connecting The Summit 230-69 kV Substation And the Lackawanna 500-230-69 kV Substation in Lackawanna County, Pennsylvania	:	A-2022-3030969
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	:	A-2022-3031013

PRINCIPAL BRIEF
OF AUGUST W. BAKER AND DIANA M. BAKER

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Pursuant to the Interim Order Admitting Evidence and Amending Briefing Schedule dated July 26, 2022, August W. Baker and Diana M. Baker ("Mr. & Mrs. Baker"), hereby submit their Principal Brief.

I. STATEMENT OF THE CASE

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. (See Baker Testimony, p. 2, lines 6-10).[1] 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; and (ii) that certain deed between John J. Dunn, Sr. and Joanne M. Dunn, his wife, and August William Baker and Diana M. Magni-Baker, his wife, dated December 20, 2013, and recorded in the Lackawanna County Recorder of Deeds Office in Instrument No.: 201326062 (See Baker Testimony, p. 2, lines 11-17; Exhibit 1).

In or about April, 1970, PPL Electric Utilities Corporation ("PPL") installed its first set of electrical lines and towers on the Property. (See Baker Testimony, p. 2, lines 19-21). PPL bases its right to the installation of the towers and electrical lines on a purported easement agreement dated June 12, 1969. (See Baker Testimony, p. 2, lines 22-24; p. 3 lines 1-6; Exhibit 2). The purported easement agreement, which is recorded (but not indexed) in the Lackawanna County Recorder of Deeds Office in Book 721, at Page 26 reflects a purported grant by the

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1 "Baker Testimony" refers to the Testimony of August W. Baker filed in this matter and admitted into the record in accordance with that certain Interim Order Admitting Evidence and Amending Briefing Schedule, dated July 26, 2022.

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. (See Baker Testimony, Exhibit 2).

Notably, the purported easement agreement provides as follows:

> 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 rights of redemption, if any, that may now or hereafter remain in any former owner or other person interested in said premises. ...

(See Baker Testimony, p. 3, lines 7-13; Exhibit 2).

PPL bases the ownership of the Property by Lackawanna County, and the subsequent validity of the alleged easement agreement, on a 1965 Treasurer's sale conducted pursuant to the provisions of the Act of May 29, 1931, P.L. 280. (See Baker Testimony, p. 3, lines 14-18). The purported sale of the Property is reflected in County Treasurers Deed Book No. 5. (See Baker Testimony, p. 3, lines 19-22; Exhibit 3). However, County Treasurers Deed Book No. 5 merely describes the property sold at sale as follows: "Unknown Owner"; "Bell Mt. Edington Tr."; "$346.46". (See Baker Testimony, p. 4, lines 2-5; Exhibit 3).

Notice of the 1965 County Treasurer's sale appeared in the August 6, 1965, August 13, 1965, and August 20, 1965, *The Scranton Times* and all three advertisements merely identify the Property as "Unknown Owner"; "Bell Mt. Edington Tr."; "348.42". (See Baker Testimony, p. 4, lines 8-13; Exhibit 4). None of the advertisements reference a portion of the Property being located within Scott Township. (See Baker Testimony, p. 4, lines 21-24; Exhibit 4).

Similarly, and as required, notice in a second newspaper, *The Scranton Tribune*, omitted any properties located in Dickson City in the August 6, August 13 and August 20, 1965, advertisements of the Treasurer's sale. (See Baker Testimony, p. 5, lines 1-6; Exhibit 5).

Notably, PPL and Mr. & Mrs. Baker are parties to active and ongoing litigation before the Court of Common Pleas of Lackawanna County in the action titled, August Baker and Diana Baker v. PPL Electric Utilities Corp. and T&D Power, Inc., docketed to No. 15-CV-4264 (the "County Litigation")(See Stipulation, ¶ 36).[2] The County Litigation challenges the validity of PPL's purported easement and right of way across the Property. (See Baker Testimony, p. 7, lines 15-18). The County Litigation is scheduled for trial commencing August 25, 2022. (See Baker Testimony, p. 8, lines 2-5).

II. SUMMARY OF ARGUMENT

Mr. & Mrs. Baker have protested the pending applications because PPL is not the holder of a valid or legal easement interest in the Property. Rather, PPL's purported easement rights are based upon a defective easement agreement provided after an invalid tax sale fundamentally lacking in due process. Even if the easement agreement and the tax sale were valid, the improper descriptions and lack of property references deprived Mr. & Mrs. Baker of both constructive and actual notice.

In addition, the Public Utility Commission (the "PUC") lacks jurisdiction to determine the validity and scope of an easement or the claims advanced by Mr. & Mrs. Baker in the County Litigation.

III. ARGUMENT

A. The purported easement agreement from Lackawanna County to PPL is invalid as a matter of law because it does not sufficiently identify and describe the easement area.

As indicated *supra*, PPL claims it has a valid easement across the Property based upon an agreement dated June 12, 1969. (See Baker Testimony, p. 2, lines 22-24; p. 3 lines 1-6; Exhibit

---

2 "Stipulation" refers to that certain Joint Stipulation of Facts of PPL Electric Utilities Corporation and August and Diana Baker submitted by the parties.

2). The purported easement agreement reflects an alleged grant by the Lackawanna Commissioners to PPL. (Id.) However, the purported easement agreement entirely failed to identify and describe the property and the sketch attached to the purported easement fails to identify the Property and any adjoining property owners within the purported easement area depicted on the sketch. Accordingly, the purported easement agreement was invalid as a matter of law.

The law with respect to specificity required to grant an easement or other interest in real estate is clear. See Dickson v. Pennsylvania Power and Light Company, 283 Pa. Super 53, 423 A.2d 711 (1980). According to the Superior Court:

> . . . Notice that land is burdened with an easement is imputed to a purchaser of that land by a properly recorded instrument in which the easement is granted. Baltimore and Ohio Railroad Company v. Wilson Snyder Manufacturing Company, 279 Pa. 219, 123 A. 858 (1924). Specific performance of an agreement of sale will not be granted unless the terms of the agreement are sufficiently set forth and the property to be conveyed is sufficiently identified and described. Pierro v. Pierro, 438 Pa. 119, 264 A.2d 692 (1970). Where a description is sufficient so that one may determine the exact limits of the property included by reference to a plan, deed or other similar records, the law is satisfied. Cheney v. Carver, 370 Pa. 543, 88 A.2d 746 (1952). Ladner on Conveyancing in Pennsylvania states in section 6:09 at page 152, 264 A.2d 692 that, "no deed will be operative unless the description is sufficient for . . identification. While it need not be technically accurate, the description must be clear and sufficiently precise to enable a surveyor to locate and identify the property."

Id., 283 Pa. Super at 56, 423 A.2d at 712-13 (emphasis added). Thus, "[i]t is essential, for a deed to be operative as a legal conveyance, that the land granted and intended to be conveyed be described with sufficient definiteness and certainty to locate and distinguish it from other lands of the same kind." 6 Summ.Pa.Jur.2d, Property, § 9:33 (2007).

In the present case, the June 12, 1969, agreement purporting to grant an easement interest to PPL clearly does not meet the standards cited by the Superior Court. The purported easement is not sufficiently precise for the following reasons:

- The purported easement fails to reference the servient estate by tax parcel number;
- The purported easement fails to reference a deed book and page number reference for the servient estate;
- There is no reference to the ownership of the property other than that "the County of Lackawanna, a municipality in the Commonwealth of Pennsylvania, by its duly elected Commissioners, J. Mellody, E.J. Zipay, and Charles R. Harte" intend to grant an easement interest. There is no reference to any prior owner or prior deed in the chain of title thereby making it nearly impossible for any title searcher to abstract the title;
- Although a sketch is attached to the purported easement, the sketch fails to identify with any particularity adjacent property owners. While the sketch references "Penn Anthracite Collieries" and "L. Canter", it does not identify any deed book or page number reference or tax parcel identification numbers for the adjacent parcels;
- The sketch fails to identify and/or reference other adjacent properties;
- The sketch attached to the purported easement fails to provide any course and distance reference for the subject Property and/or the location of any iron pins;
- The sketch identifies a Scott Township/Dickson City municipal boundary line without referencing a distance to such line; and
- The sketch fails to reference any existing physical features such as roads, streets, watercourses or even trees or stone walls or other PPL transmission lines in the area.

(See Baker Testimony, p. 6, lines 8-24; p. 7, lines 1-13; Exhibit 2).

These descriptive failures could easily have been addressed by PPL; most notably by including a simple reference to either the underlying tax parcel number or deed book and page number reference in the instrument.

In Dickson v. Pennsylvania Power and Light Company, the Pennsylvania Superior Court refused to enforce the terms of an easement agreement benefitting PPL due to lack of specificity in the easement grant. In addressing PPL's negligent failure to attach a sufficient description, the Superior Court held:

> [t]he negligence of PP&L in failing to attach a property description to its agreement which was recorded in 1973, and the further compounding of that negligence by assisting the Dicksons in the erection of a home on PP&L's right of way, cannot be excused in this matter. ...

Dickson v. Pennsylvania Power and Light Company, 283 Pa. Super 53, 57-58, 423 A.2d 711, 713 (1980).

PPL's negligence in preparing an insufficient easement description and sketch in the present case likewise should not be excused. Such negligence has rendered the purported easement grant to PPL invalid. See Dickson v. Pennsylvania Power and Light Company, 283 Pa. Super at 56, 423 A.2d at 712-13.

Due to the purported easement's lack of specificity and fact that it cannot be located even by an experienced surveyor and/or title searcher, PPL cannot demonstrate that it has a valid easement interest in and to the Property.

B. 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 due to lack of specificity.

As indicated *supra*, PPL claims it has a valid easement across the Property based upon an easement agreement dated June 12, 1969. (See Baker Testimony, p. 2, lines 22-24; p. 3 lines 1-6; Exhibit 2). The purported easement agreement reflects an alleged grant by the Lackawanna

Commissioners to PPL. (Id.) According to the Defendants, the Property was conveyed by the Lackawanna County Treasurer, as entered in Lackawanna County Treasurer's Book No. 5, to the Lackawanna County Commissioners following a tax sale conducted in 1965. (See Baker Testimony, p. 3, lines 19-22; Exhibit 3). However, the conveyance by the Lackawanna County Treasurer to the Lackawanna County Commissioners following a tax sale is invalid and unenforceable as a matter of law due to the County' noncompliance with statutory mandate.

The recording and acknowledgment of the purported deed by the Lackawanna County Treasurer was performed pursuant to Section 5971n of the 1931 County Return Act which provides as follows:

> When the purchaser has paid the amount of his bid, or such portion thereof as he is required to pay under this act, and has given the surplus bond as above required, or when such property has been purchased by the county commissioners, its shall be the duty of the county treasurer to make the said purchaser or purchasers, his heirs or assigns, a deed in fee simple for the lands sold as aforesaid; each such deed to be duly acknowledged in the court of common pleas, and such acknowledgment shall be duly entered and recorded by the prothonotary of said court in the treasurer's deed book,- - and for such service and the entry of the report of said treasurer, said prothonotary shall receive the sum one dollar and fifty cents, except when the property has been purchased by the county commissioners, - - which, after being entered and recorded by the prothonotary, shall be returned to the treasurer.

72 P.S. § 5971n (1931)(emphasis added).

According to well established Pennsylvania law, "no tax sale of land is valid unless both the assessment and the conveyance by the treasurer contain sufficient descriptions to identify and disclose the property taxed and sold. ..." Clark v. Weinberg, 38 Pa. Cmwlth. 300, 304, 393 A.2d 507, 510 (1978)(citations omitted). If the return does not enable the owner, officer and public to identify and determine from the return the *exact* property which is delinquent and liable to sale, the sale is void. Sarous v. Morgan, 171 Pa. Super. 165, 167, 90 A.2d 353, 354 (1952)(citation

omitted). It is not necessary that the descriptions be by metes and bounds, but the land must be so identified that the owner, the collector, and the public can determine what property is being assessed or sold. Hunter v. McKlveen, 361 Pa. 479, 482, 65 A.2d 366, 367 (1949)(citation omitted). In violation of the County Return Act, however, the deed purportedly conveying the subject property to the Lackawanna County Commissioners entirely failed to identify the property. (See Baker Testimony; Exhibit 3).

The record and acknowledgment set forth in County Treasurers Deed Book No. 5 merely describes the property sold at sale as follows: "Unknown Owner"; "Bell Mountain Edington Tr."; "$346.46". (Id.) Under the weight of Pennsylvania law, this description was not sufficient to pass title to the Lackawanna County Commissioners.

In Sarous v. Morgan, 171 Pa. Super. 165, 90 A.2d 353 (1952), the Pennsylvania Superior Court found wholly inadequate a conveyance to the Delaware County Commissioners described as follows, ". . . lot near Baltimore Avenue. N. Penn Street * * * assessed in the name of John Morgan." Id., 171 Pa. Super at 166, 90 A.2d at 353-54. According to the Superior Court, "[t]he assessment, return or sale in the instant case did not identify this particular lot. It may have been any one of several Morgan properties; and neither the defendant, the collector nor the public could have determined which property was meant. ... " Id., 171 Pa. Super at 167, 90 A.2d at 354.

Similarly, in Hunter v. McKlveen, 361 Pa. 479, 482, 65 A.2d 366, 367 (1949), deeds containing descriptions of "420 acres in Cook Township," "a tract containing timber in Donegal Township" and "one half of 224 A brush in Donegal Township" were insufficient to pass title. Id., 361 Pa. at 483-84, 65 A.2d at 368. According to the Supreme Court, the deeds received by the county commissioners containing such descriptions "were worthless and could not serve to divest . . . [the landowners'] title." Id., 361 Pa. at 484, 65 A.2d at 368 (bracketed information added).

Lackawanna County's description of "Unknown Owner"; "Bell Mt. Edington Tr."; "$346.46" actually contains *less* information than that found inadequate by the Superior Court in Sarous v. Morgan and by the Supreme Court in Hunter v. McKlveen. In fact, the description in Sarous v. Morgan at least identified the owner of the property. There is no such reference in the subject deed.

Similarly, in Clark v. Weinberg, 38 Pa. Cmwlth. 300, 304, 393 A.2d 507, 510 (1978) (citations omitted), the Pennsylvania Commonwealth Court found as adequate a description from the Lackawanna County Treasurer providing as follows:

> All the following described piece, parcel or lot of land situate in the County of Lackawanna and Commonwealth of Pennsylvania, being described on the assessment rolls of said county as the Esther Weinberg property in the municipality known and the Township of Scott, . . . and also being known and designated as Lot No. 59 in Block No. 23 fronting on Lake Chapman. ...

Id., 38 Pa. Cmwlth. at 304, 393 A.2d at 510.

Unlike the description at issue in the present case, the description found valid in Clark v. Weinberg, specifically references lot and block numbers identifying the precise property to be sold. In fact, the Lackawanna County Commissioners' deed as entered in Lackawanna County Treasurer's Deed Book No. 5, specifically references assessment block and lot numbers for ***other*** properties being conveyed by the County pursuant to the 1965 sale. (See Baker Testimony, Exhibit 3). The deed to the Lackawanna County Commissioners, however, entirely fails to reference any lot and block numbers for the subject Property. (Id.)

The Lackawanna County Treasurer could have protected itself by reference to the lot and block numbers in the record. Sarous v. Morgan, 171 Pa. Super. at 167, 90 A.2d at 354. However, no such descriptions were referenced by the Lackawanna County Treasurer with respect to the subject Property. In violation of law, the 1965 deed from the County Treasurer to the Lackawanna County Commissioners does not enable the owner, officer and public to identify

and determine from the return the *exact* property which has been sold. Sarous v. Morgan, 171 Pa. Super. 165, 167, 90 A.2d 353, 354 (1952)(citation omitted).

In addition, the notice of the 1965 County Treasurer's sale which appeared in the August 6, 1965, August 13, 1965, and August 20, 1965, *The Scranton Times* and the Lackawanna County Commissioners' deed itself fails reference any portion of the Property being within Scott Township. (See Baker Testimony, p. 4, lines 21-24; Exhibits 3, 4). The advertisements also reference the property as the "Bell Mt. Edington Tr." despite the correct reference being "Edginton". (See Baker Testimony, p. 4, lines 8-13; Exhibit 4). The fact that the Lackawanna County identifies separate and conflicting locations for the Property being in Ward I in one instance and in Ward 3 in another and fails to reference Scott Township and the correct owner is *prima facie* evidence that the description was entirely deficient. (Id.)

Moreover, the public notice requirements, which require that the County Treasurer's sale be advertised in at least two newspapers of general circulation, were not satisfied. Specifically, the second newspaper, *The Scranton Tribune*, omitted any properties located in Dickson City in the August 6, August 13 and August 20, 1965, advertisements of the Treasurer's sale. (See Baker Testimony, p. 5, lines 1-6; Exhibit 5).

Due to the complete lack of information describing the Property in the 1965 deed to the Lackawanna County Commissioners as reflected in County Treasurer's Deed Book No. 5, the purported conveyance to the Lackawanna County Commissioners is void. Sarous v. Morgan, 171 Pa. Super. at 167, 90 A.2d at 354; Clark v. Weinberg, 38 Pa. Cmwlth. at 304, 393 A.2d at 510. Because the 1965 Lackawanna County Commissioners' deed is void, the Lackawanna County Commissioners had no valid interest in and to the Property. Cantwell v. Henzler, 9 D.&C.2d 21 (Bucks Cty. 1956)("If there be no valid assessment, the tax sale is void, and no interest passes to the county as a result thereof. ..." Id. at 32). Without having a valid ownership interest, the

Lackawanna County Commissioners could not grant an easement to PPL. Owens v. Holzheid, 335 Pa. Super. 231, 484 A.2d 107 (1984)("...one must be the owner of land before he has the power to dispose of it by granting an easement." Id., 335 Pa. Super. at 236, 484 A.2d at 110). PPL therefore cannot demonstrate that is has any valid interest in and to the Property.

C. 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.

Pennsylvania law is very clear with respect to the notice required to properly divest an owner of his property pursuant to a tax sale. According to the Commonwealth Court, the notice provisions of tax sales statutes must be strictly complied with to guard against deprivation of property without due process of law. C. Everett, Inc. v. Ayres, 22 Pa. Cmwlth. 422, 425, 349 A.2d 514, 515 (1975). Thus, when an individual's property rights are at stake in a tax sale, due process requires that he or she be identified with clarity and without disguise so that those rights may be asserted and the owner may fully protect his or her interest in the property. Id., 22 Pa. Cmwlth. at 426, 349 A.2d at 516.

In the present case, Lackawanna County did not provide notice of the 1965 tax sale as provided by statute and required by due process. With respect to notice required as a prerequisite to a tax sale of ***unseated*** lands (and the subject Property is unseated).

Section 6001 of the Act of 1815 provides as follows:

> And it shall be the duty of the said county treasurer to give at least sixty days' notice of the time and place of such sales, the township or townships in which the said tracts of land are respectively situated, the number of acres contained in each tract, and the names and the warranties or owners thereof, and the sums due upon each tract for taxes . ...

72 P.S. § 6001 (1815)(emphasis added).

In addition, no actual deed exists from the County Treasurer to the Lackawanna County Commissioners as required under the Unseated Lands Selling of for Taxes act, Act of March 13,

1815, P.L. 177. Moreover, Section 9 of the Act requires that the acreage be included within the deed description.

Similarly, Section 5971g of the County Return Act requires the following notice to satisfy the due process concerns associated with tax sales:

> The county treasurer shall advertise the fact of holding such sale, once a week for three successive weeks prior to the holding of such sale in at least two newspapers of general circulation in the county in which such seated land is located, if there be two newspapers so published; if there be only one, then in such newspaper so published in the county.
>
> Such advertisement shall set forth:
>
> (a) The purpose of such sale.
>
> (b) The time of such sale.
>
> (c) The place of such sale.
>
> (d) The terms of such sale.
>
> (e) A list of the seated lands affected and their location, and the owner or reputed owner of each.
>
> (f) Amount of taxes and interest. ...

72 P.S. § 5971g (1931)(emphasis added).

In the present case, the notice of the 1965 tax sale did not comply with the due process requirements of Section 6001, Section 5971g or Section 9 of the Act of March 13, 1815, P.L. 177. Notice of the 1965 County Treasurer's sale appeared in the August 6, 1965, August 13, 1965, and August 20, 1965, *The Scranton Times*. All three advertisements merely identify the Property as "Unknown Owner"; "Bell Mt. Edington Tr."; "348.42". (See Baker Testimony, p. 4, lines 8-13; Exhibit 4). The three advertisements identify the Property as being in "Dickson"; "Ward Three". (Id.) None of the advertisements reference a portion of the Property being

located within Scott Township. (Id.) The advertisements also reference the property as the "Bell Mt. Edington Tr." despite the correct reference being "Edginton". (Id.)

Similarly, notice of the 1965 County Treasurer's sale appeared in the August 6, 1965, August 13, 1965, and August 20, 1965, *The Scranton Tribune*. (See Baker Testimony, p. 5, lines 1-6; Exhibit 5). All three advertisements merely identify the Property as "Unknown Owner"; "Bell Mt. Edington Tr."; "348.42". None of the advertisements reference a portion of the Property being located within Scott Township. (Id.) Such notice therefore was in violation of both 72 P.S. § 6001 and 72 P.S. § 5971g.

In violation of both Section 6001 or Section 5971g, the County's advertisements of the 1965 County Treasurer's sale fail to both identify the property and its location. The County's advertisements further fail to identify the acreage of the Property and one of the owner's proper surname. Moreover, it does not appear that the real owners of the Property were properly notified of the sale.

In Hess v. Westerwick, 366 Pa. 90, 76 A.2d 745 (1950), the Pennsylvania Supreme Court addressed whether a description of a 100 acre farm including a dwelling house, two tenant houses and a barn as "100 acres of land in Forward Township" was sufficient to satisfy due process considerations. According to the court, this description and location were manifestly too indefinite and were therefore insufficient to satisfy due process notice requirements. Id., 366 Pa. at 98, 76 A.2d at 748. As stated by the court:

> . . . the legislature has sought to prevent invalidation of sale for mere technical omissions, irregularities or errors. But this very fact places upon taxing authorities a responsibility to see that the owner of the property is not punished by the taxing authorities' neglect or worse, and deprived of an extremely valuable property because of the carelessness or oversight of a title searcher in failing to discover a comparatively trivial sum of taxes unpaid in one of the previous years. To permit it would be an outstanding reproach of our system of justice. ...

Id.

Similarly, in C. Everett, Inc. v. Ayres, 22 Pa. Cmwlth. 422, 349 A.2d 514 (1975), the Pennsylvania Commonwealth Court addressed whether a notice that identified the owner of entireties property subject to as tax sale by stating the husband's name and "et ux" rather than stating the names of both the husband and the wife was sufficient. In finding the notice insufficient for failing to affirmatively identify both the husband and the wife, the Commonwealth Court held as follows:

> . . . "Et ux", as used in this case after the husband's name, represents obviously an abbreviation for "et uxor" which means "and wife", and the term is commonly used in abstracts and indexes to indicate that a wife has joined with her husband in conveyances. See Black's Law Dictionary, 653 (rev. 4th ed. 1968). While, however, the use of such a term may capture the attention of the legal community and indicate that a wife is a party to a transaction involving the conveyance of property, we do not believe that its use meets the notice requirements of due process which are designed to protect the interests of not only the parties but, of the public at large. ...

Id., 22 Pa. Cmwlth. at 426, 349 A.2d at 516.

The court further held that:

> . . . [w]hen an individual's property rights are at stake, due process requires that he or she be identified with clarity and without disguise so that those rights may be asserted and the owners may fully protect his or her interest in the property concerned.

Id.

The notices at issue in the present case contain significant less information that those found lacking in both Hess v. Westerwick, and C. Everett, Inc. v. Ayres. In violation of the express statutory requirements, the notices at issue in the present case fail to identify or describe: (i) the actual owner of the Property; (ii) the location of the Property; and/or (iii) the acreage of the Property. The advertisements also reference the property as the "Bell Mt. Edington Tr."

despite the correct reference being "Edginton". As a result, the purported sale to the Lackawanna County Commissioners as memorialized by County Treasurers Deed Book No. 5 was void and no title to the Property passed. Hess v. Westerwick, 366 Pa. 90, 99-100, 76 A.2d 745, 749 (1950); C. Everett, Inc. v. Ayres, 22 Pa. Cmwlth. 422, 428, 349 A.2d 514, 517 (1975)("Inasmuch as the tax sale, which purported to transfer title of the property to the plaintiff . . . was invalid, the title which . . . [the plaintiff] thought it had thereby acquired was also invalid. . . ." Id.). Without having a valid interest, the Lackawanna County Commissioners could not grant an easement to PPL. Owens v. Holzheid, 335 Pa. Super. 231, 484 A.2d 107 (1984)(". . . one must be the owner of land before he has the power to dispose of it by granting an easement." Id., 335 Pa. Super. at 236, 484 A.2d at 110).

"... [I]t is a momentous event under the United States and the Pennsylvania Constitutions when a government subjects a citizen's property to forfeiture for non-payment of taxes." In re: Sale of Real Estate by Lackawanna County Tax Claim Bureau, 255 A.3d 619, 627 (2021)(citation omitted). Thus, "[i]t is a fundamental provision of both our state and federal constitutions that no person shall be deprived of property except by the law of the land or due process of law which requires notice and an opportunity to be heard." Id., 255 A.3d at 627-28.

The County's failure to properly notify the subject property owners deprived them of due process and rendered any attempted conveyance of the Property following the sale void *ab initio*. In re: Sale of Real Estate by Lackawanna County Tax Claim Bureau, 255 A.3d at 630. Given the defective nature of the attempted conveyance to the County, PPL cannot demonstrate that it has any valid interest in and to the Property. If the sale was void *ab initio*, an attempted easement grant subsequent to such sale by the County likewise was invalid as a matter of law. Accordingly, PPL has no legally valid easement across the Property.

D. The Commission Lacks Jurisdiction to determine the validity of PPL's purported Easement across the Property.

PPL Electric and Mr. & Mrs. Baker are parties to active and ongoing litigation before the Court of Common Pleas of Lackawanna County in the County Litigation. (See Stipulation, ¶ 37). The County Litigation will involve, *inter alia*, a determination of the validity and scope of PPL Electric's right-of-way obtained in 1969 traversing the Property, and possible damages associated therewith. (See Stipulation, ¶ 39). Trial is scheduled to commence on August 25, 2022. (See Stipulation, ¶ 38).

Notably, the Commission lacks jurisdiction to determine the validity and scope of an easement or the claims raised by Mr. & Mrs. Baker in the ongoing litigation. Barbara Gallagher v. PECO Energy Company, Docket No. C-2010-2201568, 2011 Pa. PUC LEXIS 46, at * 34 (Opinion and Order entered Sept. 22, 2011) ("We agree that we cannot adjudicate the scope or validity of an easement."); Shedlosky v. Pennsylvania Electric Co., Docket No. C-20066937 (Order entered May 28, 2008); see also Anne E. Perrige v. Metropolitan Edison Co., Docket No. C-00004110 (Order entered July 11, 2003) (Commission had no jurisdiction to interpret the meaning of a written right-of-way agreement); Samuel Messina v. Bell Atlantic-Pennsylvania, Inc., Docket No. C-00968225 (Order entered Sept. 23, 1998) ("The Commission has clearly stated in prior decisions that it is without subject matter jurisdiction to adjudicate questions involving trespass and whether or not utility facilities are located pursuant to valid easements or rights-of-way." (citation omitted)). Accordingly, the pending Applications should not impact upon the issues involved in the County Litigation.

IV. PROPOSED FINDINGS OF FACT

1. 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. (See Baker Testimony, p. 2, lines 6-10).

2. 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. (See Baker Testimony, p. 2, lines 11-17; Exhibit 1).

3. In or about April, 1970, PPL Electric Utilities Corporation ("PPL") installed its first set of electrical lines and towers on the Property. (See Baker Testimony, p. 2, lines 19-21).

4. PPL bases its right to the installation of the towers and electrical lines on a purported easement agreement dated June 12, 1969. (See Baker Testimony, p. 2, lines 22-24; p. 3 lines 1-6; Exhibit 2).

5. 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. (See Baker Testimony, Exhibit 2).

6. Notably, the purported easement agreement provides as follows:

> 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 rights of redemption, if any, that may now or hereafter remain in any former owner or other person interested in said premises. ...

(See Baker Testimony, p. 3, lines 7-13; Exhibit 2).

7. PPL bases the ownership of the Property by Lackawanna County, and the subsequent validity of the alleged easement agreement, on a 1965 Treasurer's sale conducted pursuant to the provisions of the Act of May 29, 1931, P.L. 280. (See Baker Testimony, p. 3, lines 14-18).

8. The purported sale of the Property is reflected in County Treasurers Deed Book No. 5. (See Baker Testimony, p. 3, lines 19-22; Exhibit 3).

9. However, County Treasurers Deed Book No. 5 merely describes the property sold at sale as follows: "Unknown Owner"; "Bell Mt. Edington Tr."; "$346.46". (See Baker Testimony, p. 4, lines 2-5; Exhibit 3).

10. Notice of the 1965 County Treasurer's sale appeared in the August 6, 1965, August 13, 1965, and August 20, 1965, *The Scranton Times* and all three advertisements merely identify the Property as "Unknown Owner"; "Bell Mt. Edington Tr."; "348.42". (See Baker Testimony, p. 4, lines 8-13; Exhibit 4).

11. None of the advertisements reference a portion of the Property being located within Scott Township. (See Baker Testimony, p. 4, lines 21-24; Exhibit 4).

12. Similarly, notice in a second newspaper, *The Scranton Tribune*, omitted any properties located in Dickson City in the August 6, August 13 and August 20, 1965, advertisements of the Treasurer's sale. (See Baker Testimony, p. 5, lines 1-6; Exhibit 5).

13. PPL and Mr. & Mrs. Baker are parties to active and ongoing litigation before the Court of Common Pleas of Lackawanna County in the action titled, August Baker and Diana Baker v. PPL Electric Utilities Corp. and T&D Power, Inc., docketed to No. 15-CV-4264 (the "County Litigation")(See Stipulation, ¶ 36).

14. The County Litigation challenges the validity of PPL's purported easement and right of way across the Property. (See Baker Testimony, p. 7, lines 15-18).

15. The County Litigation is scheduled for trial commencing August 25, 2022. (See Baker Testimony, p. 8, lines 2-5).

V. PROPOSED CONCLUSIONS OF LAW

1. The law with respect to specificity required to grant an easement or other interest in real estate is clear. See Dickson v. Pennsylvania Power and Light Company, 283 Pa. Super 53, 423 A.2d 711 (1980). According to the Superior Court:

> . . . Notice that land is burdened with an easement is imputed to a purchaser of that land by a properly recorded instrument in which the easement is granted. Baltimore and Ohio Railroad Company v. Wilson Snyder Manufacturing Company, 279 Pa. 219, 123 A. 858 (1924). Specific performance of an agreement of sale will not be granted unless the terms of the agreement are sufficiently set forth and the property to be conveyed is sufficiently identified and described. Pierro v. Pierro, 438 Pa. 119, 264 A.2d 692 (1970). Where a description is sufficient so that one may determine the exact limits of the property included by reference to a plan, deed or other similar records, the law is satisfied. Cheney v. Carver, 370 Pa. 543, 88 A.2d 746 (1952). Ladner on Conveyancing in Pennsylvania states in section 6:09 at page 152, 264 A.2d 692 that, "no deed will be operative unless the description is sufficient for . . identification. While it need not be technically accurate, the description must be clear and sufficiently precise to enable a surveyor to locate and identify the property."

Id., 283 Pa. Super at 56, 423 A.2d at 712-13 (emphasis added). Thus, "[i]t is essential, for a deed to be operative as a legal conveyance, that the land granted and intended to be conveyed be described with sufficient definiteness and certainty to locate and distinguish it from other lands of the same kind." 6 Summ.Pa.Jur.2d, Property, § 9:33 (2007).

2. The June 12, 1969, agreement purporting to grant an easement interest to PPL clearly does not meet the standards cited by the Superior Court. The purported easement is not sufficiently precise for the following reasons:

- The purported easement fails to reference the servient estate by tax parcel number;
- The purported easement fails to reference a deed book and page number reference for the servient estate;
- There is no reference to the ownership of the property other than that "the County of Lackawanna, a municipality in the Commonwealth of Pennsylvania, by its duly elected Commissioners, J. Mellody, E.J. Zipay, and Charles R. Harte" intend to grant an easement interest. There is no reference to any prior owner or prior deed in the chain of title thereby making it nearly impossible for any title searcher to abstract the title;
- Although a sketch is attached to the purported easement, the sketch fails to identify with any particularity adjacent property owners. While the sketch references "Penn Anthracite Collieries" and "L. Canter", it does not identify any deed book or page number reference or tax parcel identification numbers for the adjacent parcels;
- The sketch fails to identify and/or reference other adjacent properties;
- The sketch attached to the purported easement fails to provide any course and distance reference for the subject Property and/or the location of any iron pins;
- The sketch identifies a Scott Township/Dickson City municipal boundary line without referencing a distance to such line; and
- The sketch fails to reference any existing physical features such as roads, streets, watercourses or even trees or stone walls or other PPL transmission lines in the area.

(See Baker Testimony, p. 6, lines 8-24; p. 7, lines 1-13; Exhibit 2).

3. In Dickson v. Pennsylvania Power and Light Company, the Pennsylvania Superior Court refused to enforce the terms of an easement agreement benefitting PPL due to lack of specificity in the easement grant. In addressing PPL's negligent failure to attach a sufficient description, the Superior Court held:

> [t]he negligence of PP&L in failing to attach a property description to its agreement which was recorded in 1973, and the further compounding of that negligence by assisting the Dicksons in the erection of a home on PP&L's right of way, cannot be excused in this matter. ...

Dickson v. Pennsylvania Power and Light Company, 283 Pa. Super 53, 57-58, 423 A.2d 711, 713 (1980).

4. PPL's negligence in preparing an insufficient easement description and sketch in the present case likewise should not be excused. Such negligence has rendered the purported easement grant to PPL invalid. See Dickson v. Pennsylvania Power and Light Company, 283 Pa. Super at 56, 423 A.2d at 712-13.

5. Due to the purported easement's lack of specificity and fact that it cannot be located even by an experienced surveyor and/or title searcher, PPL cannot demonstrate that it has a valid easement interest in and to the Property.

6. PPL claims it has a valid easement across the Property based upon an easement agreement dated June 12, 1969.

7. The recording and acknowledgment of the purported deed by the Lackawanna County Treasurer was performed pursuant to Section 5971n of the 1931 County Return Act which provides as follows:

> When the purchaser has paid the amount of his bid, or such portion thereof as he is required to pay under this act, and has given the surplus bond as above required, or when such property has been purchased by the county commissioners, its shall be the duty of the county treasurer to make the said purchaser or purchasers, his heirs

> or assigns, a deed in fee simple for the lands sold as aforesaid; each such deed to be duly acknowledged in the court of common pleas, and such acknowledgment shall be duly entered and recorded by the prothonotary of said court in the treasurer's deed book,- - and for such service and the entry of the report of said treasurer, said prothonotary shall receive the sum one dollar and fifty cents, except when the property has been purchased by the county commissioners, - - which, after being entered and recorded by the prothonotary, shall be returned to the treasurer.

72 P.S. § 5971n (1931)(emphasis added).

8. According to well established Pennsylvania law, "no tax sale of land is valid unless both the assessment and the conveyance by the treasurer contain sufficient descriptions to identify and disclose the property taxed and sold. ..." Clark v. Weinberg, 38 Pa. Cmwlth. 300, 304, 393 A.2d 507, 510 (1978)(citations omitted).

9. If the return does not enable the owner, officer and public to identify and determine from the return the *exact* property which is delinquent and liable to sale, the sale is void. Sarous v. Morgan, 171 Pa. Super. 165, 167, 90 A.2d 353, 354 (1952)(citation omitted). It is not necessary that the descriptions be by metes and bounds, but the land must be so identified that the owner, the collector, and the public can determine what property is being assessed or sold. Hunter v. McKlveen, 361 Pa. 479, 482, 65 A.2d 366, 367 (1949)(citation omitted).

10. In violation of the County Return Act, however, the deed purportedly conveying the subject property to the Lackawanna County Commissioners entirely failed to identify the property. (See Baker Testimony; Exhibit 3).

11. The record and acknowledgment set forth in County Treasurers Deed Book No. 5 merely describes the property sold at sale as follows: "Unknown Owner"; "Bell Mt. Edington Tr."; "$346.46". (Id.) Under the weight of Pennsylvania law, this description was not sufficient to pass title to the Lackawanna County Commissioners.

12. In Sarous v. Morgan, 171 Pa. Super. 165, 90 A.2d 353 (1952), the Pennsylvania Superior Court found wholly inadequate a conveyance to the Delaware County Commissioners described as follows, ". . . lot near Baltimore Avenue. N. Penn Street * * * assessed in the name of John Morgan." Id., 171 Pa. Super at 166, 90 A.2d at 353-54. According to the Superior Court, "[t]he assessment, return or sale in the instant case did not identify this particular lot. It may have been any one of several Morgan properties; and neither the defendant, the collector nor the public could have determined which property was meant. ... " Id., 171 Pa. Super at 167, 90 A.2d at 354.

13. Similarly, in Hunter v. McKlveen, 361 Pa. 479, 482, 65 A.2d 366, 367 (1949), deeds containing descriptions of "420 acres in Cook Township," "a tract containing timber in Donegal Township" and "one half of 224 A brush in Donegal Township" were insufficient to pass title. Id., 361 Pa. at 483-84, 65 A.2d at 368. According to the Supreme Court, the deeds received by the county commissioners containing such descriptions "were worthless and could not serve to divest . . . [the landowners'] title." Id., 361 Pa. at 484, 65 A.2d at 368 (bracketed information added).

14. Lackawanna County's description of "Unknown Owner"; "Bell Mt. Edington Tr."; "$346.46" actually contains *less* information than that found inadequate by the Superior Court in Sarous v. Morgan and by the Supreme Court in Hunter v. McKlveen. In fact, the description in Sarous v. Morgan at least identified the owner of the property. There is no such reference in the subject deed.

15. in Clark v. Weinberg, 38 Pa. Cmwlth. 300, 304, 393 A.2d 507, 510 (1978) (citations omitted), the Pennsylvania Commonwealth Court found as adequate a description from the Lackawanna County Treasurer providing as follows:

> All the following described piece, parcel or lot of land situate in the County of Lackawanna and Commonwealth of Pennsylvania,

> being described on the assessment rolls of said county as the Esther Weinberg property in the municipality known and the Township of Scott, . . . and also being known and designated as Lot No. 59 in Block No. 23 fronting on Lake Chapman. ...

Id., 38 Pa. Cmwlth. at 304, 393 A.2d at 510.

16. Unlike the description at issue in the present case, the description found valid in Clark v. Weinberg, specifically references lot and block numbers identifying the precise property to be sold. In fact, the Lackawanna County Commissioners' deed as entered in Lackawanna County Treasurer's Deed Book No. 5, specifically references assessment block and lot numbers for ***other*** properties being conveyed by the County pursuant to the 1965 sale. (See Baker Testimony, Exhibit 3). The deed to the Lackawanna County Commissioners, however, entirely fails to reference any lot and block numbers for the subject Property. (Id.)

17. The Lackawanna County Treasurer could have protected itself by reference to the lot and block numbers in the record. Sarous v. Morgan, 171 Pa. Super. at 167, 90 A.2d at 354. In violation of law, the 1965 deed from the County Treasurer to the Lackawanna County Commissioners does not enable the owner, officer and public to identify and determine from the return the *exact* property which has been sold. Sarous v. Morgan, 171 Pa. Super. 165, 167, 90 A.2d 353, 354 (1952)(citation omitted).

18. In addition, the notice of the 1965 County Treasurer's sale which appeared in the August 6, 1965, August 13, 1965, and August 20, 1965, *The Scranton Times* and the Lackawanna County Commissioners' deed itself fails reference any portion of the Property being within Scott Township. (See Baker Testimony, p. 4, lines 21-24; Exhibits 3, 4).

19. The advertisements also reference the property as the "Bell Mt. Edington Tr." despite the correct reference being "Edginton". (See Baker Testimony, p. 4, lines 8-13; Exhibit 4).

20. The fact that the Lackawanna County identifies separate and conflicting locations for the Property being in Ward I in one instance and in Ward 3 in another and fails to reference Scott Township and the correct owner is *prima facie* evidence that the description was entirely deficient.

21. Moreover, the public notice requirements, which require that the County Treasurer's sale be advertised in at least two newspapers of general circulation, were not satisfied. Specifically, the second newspaper, *The Scranton Tribune*, omitted any properties located in Dickson City in the August 6, August 13 and August 20, 1965, advertisements of the Treasurer's sale. (See Baker Testimony, p. 5, lines 1-6; Exhibit 5).

22. Due to the complete lack of information describing the Property in the 1965 deed to the Lackawanna County Commissioners as reflected in County Treasurer's Deed Book No. 5, the purported conveyance to the Lackawanna County Commissioners is void. Sarous v. Morgan, 171 Pa. Super. at 167, 90 A.2d at 354; Clark v. Weinberg, 38 Pa. Cmwlth. at 304, 393 A.2d at 510.

23. Because the 1965 Lackawanna County Commissioners' deed is void, the Lackawanna County Commissioners had no valid interest in and to the Property. Cantwell v. Henzler, 9 D.&C.2d 21 (Bucks Cty. 1956)("If there be no valid assessment, the tax sale is void, and no interest passes to the county as a result thereof. ..." Id. at 32). Without having a valid ownership interest, the Lackawanna County Commissioners could not grant an easement to PPL. Owens v. Holzheid, 335 Pa. Super. 231, 484 A.2d 107 (1984)("...one must be the owner of land before he has the power to dispose of it by granting an easement." Id., 335 Pa. Super. at 236, 484 A.2d at 110).

24. PPL therefore cannot demonstrate that is has any valid interest in and to the Property.

25. Pennsylvania law is very clear with respect to the notice required to properly divest an owner of his property pursuant to a tax sale. According to the Commonwealth Court, the notice provisions of tax sales statutes must be strictly complied with to guard against deprivation of property without due process of law. C. Everett, Inc. v. Ayres, 22 Pa. Cmwlth. 422, 425, 349 A.2d 514, 515 (1975). Thus, when an individual's property rights are at stake in a tax sale, due process requires that he or she be identified with clarity and without disguise so that those rights may be asserted and the owner may fully protect his or her interest in the property. Id., 22 Pa. Cmwlth. at 426, 349 A.2d at 516.

26. In the present case, Lackawanna County did not provide notice of the 1965 tax sale as provided by statute and required by due process.

27. With respect to notice required as a prerequisite to a tax sale of ***unseated*** lands (and the subject Property is unseated).

Section 6001 of the Act of 1815 provides as follows:

> And it shall be the duty of the said county treasurer to give at least sixty days' notice of the time and place of such sales, the township or townships in which the said tracts of land are respectively situated, the number of acres contained in each tract, and the names and the warranties or owners thereof, and the sums due upon each tract for taxes . . . .

72 P.S. § 6001 (1815)(emphasis added).

28. Similarly, Section 5971g of the County Return Act requires the following notice to satisfy the due process concerns associated with tax sales:

> The county treasurer shall advertise the fact of holding such sale, once a week for three successive weeks prior to the holding of such sale in at least two newspapers of general circulation in the county in which such seated land is located, if there be two newspapers so published; if there be only one, then in such newspaper so published in the county.
>
> Such advertisement shall set forth:

(a) The purpose of such sale.

(b) The time of such sale.

(c) The place of such sale.

(d) The terms of such sale.

(e) A list of the seated lands affected and their location, and the owner or reputed owner of each.

(f) Amount of taxes and interest. ...

72 P.S. § 5971g (1931)(emphasis added).

29. In the present case, the notice of the 1965 tax sale did not comply with the due process requirements of Section 6001, Section 5971g or Section 9 of the Act of March 13, 1815, P.L. 177. Notice of the 1965 County Treasurer's sale appeared in the August 6, 1965, August 13, 1965, and August 20, 1965, *The Scranton Times*. All three advertisements merely identify the Property as "Unknown Owner"; "Bell Mt. Edington Tr."; "348.42". (See Baker Testimony, p. 4, lines 8-13; Exhibit 4). The three advertisements identify the Property as being in "Dickson"; "Ward Three". (Id.) None of the advertisements reference a portion of the Property being located within Scott Township. (Id.) The advertisements also reference the property as the "Bell Mt. Edington Tr." despite the correct reference being "Edginton". (Id.)

30. Similarly, notice of the 1965 County Treasurer's sale appeared in the August 6, 1965, August 13, 1965, and August 20, 1965, *Scranton Tribune*. (See Baker Testimony, p. 5, lines 1-6; Exhibit 5). All three advertisements merely identify the Property as "Unknown Owner"; "Bell Mt. Edington Tr."; "348.42". None of the advertisements reference a portion of the Property being located within Scott Township. (Id.) Such notice therefore was in violation of both 72 P.S. § 6001 and 72 P.S. § 5971g.

31. In Hess v. Westerwick, 366 Pa. 90, 76 A.2d 745 (1950), the Pennsylvania Supreme Court addressed whether a description of a 100 acre farm including a dwelling house, two tenant houses and a barn as "100 acres of land in Forward Township" was sufficient to satisfy due process considerations. According to the court, this description and location were manifestly too indefinite and were therefore insufficient to satisfy due process notice requirements. Id., 366 Pa. at 98, 76 A.2d at 748. As stated by the court:

> . . . the legislature has sought to prevent invalidation of sale for mere technical omissions, irregularities or errors. But this very fact places upon taxing authorities a responsibility to see that the owner of the property is not punished by the taxing authorities' neglect or worse, and deprived of an extremely valuable property because of the carelessness or oversight of a title searcher in failing to discover a comparatively trivial sum of taxes unpaid in one of the previous years. To permit it would be an outstanding reproach of our system of justice. …

Id.

32. Similarly, in C. Everett, Inc. v. Ayres, 22 Pa. Cmwlth. 422, 349 A.2d 514 (1975), the Pennsylvania Commonwealth Court addressed whether a notice that identified the owner of entireties property subject to as tax sale by stating the husband's name and "et ux" rather than stating the names of both the husband and the wife was sufficient. In finding the notice insufficient for failing to affirmatively identify both the husband and the wife, the Commonwealth Court held as follows:

> . . . "Et ux", as used in this case after the husband's name, represents obviously an abbreviation for "et uxor" which means "and wife", and the term is commonly used in abstracts and indexes to indicate that a wife has joined with her husband in conveyances. See Black's Law Dictionary, 653 (rev. 4th ed. 1968). While, however, the use of such a term may capture the attention of the legal community and indicate that a wife is a party to a transaction involving the conveyance of property, we do not believe that its use meets the notice requirements of due process which are designed to protect the interests of not only the parties but, of the public at large. …

Id., 22 Pa. Cmwlth. at 426, 349 A.2d at 516.

33. The court further held that:

> . . . [w]hen an individual's property rights are at stake, due process requires that he or she be identified with clarity and without disguise so that those rights may be asserted and the owners may fully protect his or her interest in the property concerned.

Id.

34. The notices at issue in the present case contain significant less information that those found lacking in both Hess v. Westerwick, and C. Everett, Inc. v. Ayres.

35. As a result, the purported sale to the Lackawanna County Commissioners as memorialized by County Treasurers Deed Book No. 5 was void and no title to the Property passed. Hess v. Westerwick, 366 Pa. 90, 99-100, 76 A.2d 745, 749 (1950); C. Everett, Inc. v. Ayres, 22 Pa. Cmwlth. 422, 428, 349 A.2d 514, 517 (1975)("Inasmuch as the tax sale, which purported to transfer title of the property to the plaintiff . . . was invalid, the title which . . . [the plaintiff] thought it had thereby acquired was also invalid. . . ." Id.). Without having a valid interest, the Lackawanna County Commissioners could not grant an easement to PPL. Owens v. Holzheid, 335 Pa. Super. 231, 484 A.2d 107 (1984)(". . . one must be the owner of land before he has the power to dispose of it by granting an easement." Id., 335 Pa. Super. at 236, 484 A.2d at 110).

36. Lackawanna County's failure to properly notify the subject property owners deprived them of due process and rendered any attempted conveyance of the Property following the sale void *ab initio*. In re: Sale of Real Estate by Lackawanna County Tax Claim Bureau, 255 A.3d at 630.

37. Given the defective nature of the attempted conveyance to the County, PPL cannot demonstrate that it has any valid interest in and to the Property. If the sale was void *ab*

initio, an attempted easement grant subsequent to such sale by the County likewise was invalid as a matter of law.

38. Accordingly, PPL has no legally valid easement across the Property.

39. The Commission lacks jurisdiction to determine the validity and scope of an easement or the claims raised by Mr. & Mrs. Baker in the ongoing litigation. Barbara Gallagher v. PECO Energy Company, Docket No. C-2010-2201568, 2011 Pa. PUC LEXIS 46, at * 34 (Opinion and Order entered Sept. 22, 2011) ("We agree that we cannot adjudicate the scope or validity of an easement."); Shedlosky v. Pennsylvania Electric Co., Docket No. C-20066937 (Order entered May 28, 2008); see also Anne E. Perrige v. Metropolitan Edison Co., Docket No. C-00004110 (Order entered July 11, 2003) (Commission had no jurisdiction to interpret the meaning of a written right-of-way agreement); Samuel Messina v. Bell Atlantic-Pennsylvania, Inc., Docket No. C-00968225 (Order entered Sept. 23, 1998) ("The Commission has clearly stated in prior decisions that it is without subject matter jurisdiction to adjudicate questions involving trespass and whether or not utility facilities are located pursuant to valid easements or rights-of-way." (citation omitted)).

40. We therefore do not address the issues involved in the County Litigation.

VI. CONCLUSION

The Protestants, August W. Baker and Diana M. Baker, respectfully request that the Commission enter relief consistent and in accordance with their Protests.

RESPECTFULLY SUBMITTED,

/s/ Richard L. Huffsmith

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