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September 1, 2022

***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, 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  
Docket No. 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  
Docket No. A-2022-3031013**

Dear Secretary Chiavetta:

Attached for filing is the Reply Brief of PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) in the above captioned proceedings. Copies will be provided as indicated on the Certificate of Service.

In addition, pursuant to the Interim Order issued on July 26, 2022, PPL Electric is transmitting, via First Class Mail, one hard copy of its Reply Brief to:

Rosemary Chiavetta, Secretary  
September 1, 2022  
Page 2

The Honorable Mary D. Long  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
Piatt Place, Suite 220  
301 Fifth Avenue  
Pittsburgh, PA 15222

Please direct any questions regarding this submission to the undersigned.

Copies have been provided per the Certificate of Service.

Respectfully,

A handwritten signature in black ink, appearing to read "Garrett P. Lent". The signature is fluid and cursive, with the first name "Garrett" being more prominent and the last name "Lent" following in a similar style.

Garrett P. Lent

GPL/dmc  
Attachments

cc: The Honorable Mary D. Long (*via email and First - Class Mail*)  
Certificate of Service

**CERTIFICATE OF SERVICE**

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).

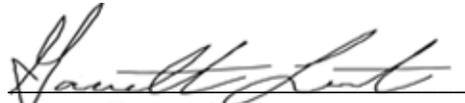
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Date: September 1, 2022

  
Garrett P. Lent

**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 : Docket No. A-2022-3030969  
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 :

Application of PPL Electric Utilities :  
Corporation Under 15 Pa.C.S. § 1511(c) For :  
A Finding And Determination That The : Docket No. A-2022-3031013  
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 :

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**REPLY BRIEF OF  
PPL ELECTRIC UTILITIES CORPORATION**

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## I. INTRODUCTION

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) hereby submits this Reply Brief in response to the Principal Brief submitted by August and Diana Baker (the “Bakers”). In its Main Brief, PPL Electric submitted that the Pennsylvania Public Utility Commission (“Commission”) should approve the Company’s request to rebuild the existing double-circuit 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 (the “Summit-Lackawanna Project” or “Project”).<sup>1</sup>

For the reasons set forth below and in PPL Electric’s Main Brief, PPL Electric requests that Administrative Law Judge Mary D. Long (the “ALJ”) and the Commission (a) find that the Summit-Lackawanna Project, as set forth in the Joint Application and Petition Waiver and associated testimony and exhibits, satisfies the requirements of the applicable statutes and regulations, (b) approve the Joint Application and Petition Waiver, and (c) approve the Baker Condemnation Application.<sup>2</sup>

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<sup>1</sup> “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,” at Docket No. A-2022-3030969 (the “Joint Application and Petition for Waiver”).

<sup>2</sup> “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,” at Docket No. A-2022-3031013.

## **II. SUMMARY OF ARGUMENT**

The Bakers' Principal Brief is focused exclusively upon a non-jurisdictional dispute pending before the Court of Common Pleas of Lackawanna County, which prompted PPL Electric to file the Baker Condemnation Application. The Bakers argue, *inter alia*, that PPL Electric's existing easement and right-of-way ("ROW") to construct, and maintain electric transmission facilities across a portion of the property they claim in Dickson City Borough and Scott Township, Lackawanna County, Pennsylvania, is invalid and unenforceable, despite PPL Electric's physical presence on this property since 1970. In addition, the Bakers also assert that, even if PPL Electric possesses a valid easement to site, construct, and maintain electric transmission facilities across a portion of this property, the easement does not sufficiently identify and describe the easement area (i.e., its scope).

Importantly, the Bakers' Principal Brief does not address any issue that is relevant to the findings and determinations that the ALJ or the Commission must make in order to approve the Summit-Lackawanna Project. Rather, consistent with the Joint Stipulation of Facts of PPL Electric Utilities Corporation and August and Diana Baker filed on July 15, 2022 (the "Joint Stipulation"), the Bakers do not dispute PPL Electric's evidence regarding each of the findings required to approve the Summit-Lackawanna Project under 52 Pa. Code § 57.76(a) and approve the Baker Condemnation Application under 15 Pa.C.S. § 1511(c). Indeed, the Bakers' Principal Brief does not address these issues at all.

Rather, the Bakers exclusively focus upon arguments regarding the scope and validity of the disputed easement. This is an irrelevant and non-jurisdictional issue that is outside the scope of this proceeding. The Bakers' Principal Brief ultimately concedes—as it must—that issues related to the scope and validity of the easement are non-jurisdictional.

Consistent with its representations through this proceeding, and with the Joint Stipulation, PPL Electric acknowledges the underlying dispute with the Bakers is properly within the jurisdiction of the Court of Common Pleas of Lackawanna County. PPL Electric filed the Baker Condemnation Application to ensure that, to the extent a Court of Common Pleas determines PPL Electric's existing easement and ROW is invalid or insufficient and negotiations with the landowner should fail, PPL Electric has ROW necessary to maintain its existing transmission line facilities. While PPL Electric does not seek any finding or determination from the Commission regarding the scope or validity of its existing easement and ROW, PPL Electric fully explained its bases for asserting it possesses a valid and sufficient easement and ROW.

### III. ARGUMENT

#### A. **THE BAKERS' PRINCIPAL BRIEF DOES NOT DISPUTE OR CONTEST ANY FINDINGS OR DETERMINATIONS REQUIRED FOR THE ALJ AND THE COMMISSION TO APPROVE THE SUMMIT-LACKAWANNA PROJECT AND BAKER CONDEMNATION APPLICATION**

In order to grant an application for the construction and siting of an HV transmission line, the Commission must find and determine the following as to the proposed line:

- (1) That there is a need for it.
- (2) That it will not create an unreasonable risk of danger to the health and safety of the public.
- (3) That it is in compliance with applicable statutes and regulations, providing for the protection of the natural resources of this Commonwealth.
- (4) That it will have minimum adverse environmental impact, considering the electric power needs of the public, the state of the available technology and the available alternatives.<sup>3</sup>

To approve an application for condemnation under Section 1511(c) of the Pennsylvania Business Corporation Law of 1988, P.L. 1444, No. 177, Section 103, as amended, 15 Pa. C.S. §§ 1101 et seq. (“BCL”), the Commission must determine whether the service—the transmission or distribution of electricity to or for the public that will be provided to the public if the subject property is condemned—is necessary or proper for the service, accommodation.<sup>4</sup>

As explained in PPL Electric’s Main Brief, PPL Electric’s presentation with respect to these findings and determinations is uncontested. The Joint Stipulation makes it abundantly clear that the Bakers are **not** contesting the ALJ’s or the Commission’s action on the Joint Application and Petition for Waiver or the Baker Condemnation Application. Indeed, “[t]he Parties stipulate[d]

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<sup>3</sup> 52 Pa. Code § 57.76(a); *see also* PPL Electric MB, Section III.C. PPL Electric’s Main Brief further explained that how it had satisfied the criteria set forth in 52 Pa. Code § 57.76(a), subject to the waivers it sought of certain requirements for siting applications under 52 Pa. Code § 57.72(c).

<sup>4</sup> 66 Pa.C.S. § 1511(c); *see also* PPL Electric MB, Section III.D.

and agree[d] that the ALJ and the Commission should approve the Joint Application and Petition for Waiver, and the Baker Condemnation Application” consistent with the Joint Stipulation.<sup>5</sup>

The Bakers’ Principal Brief does not address—let alone reference—any of the findings and determinations necessary to approve the Joint Application and Petition for Waiver set forth in Section 57.76(a) of the Commission’s regulations.<sup>6</sup> Nor does the Bakers’ Principal Brief address—let alone reference—the finding and determination required to approve the Baker Condemnation Application under Section 1511(c) of the BCL.<sup>7</sup>

If an applicant sets forth a *prima facie* case, then the burden shifts to the opponent.<sup>8</sup> Once a *prima facie* case on a point has been established, if contrary evidence is not presented, there is no requirement that the applicant produce additional evidence in order to sustain its burden of proof.<sup>9</sup> The Bakers did not present contrary evidence that is material to 52 Pa. Code § 57.76(a) and 15 Pa.C.S. § 1511(c). Therefore, PPL Electric’s evidence is un rebutted.

- 1. The Joint Application And Petition For Waiver Satisfies 52 Pa. Code § 57.76 And Should Be Approved.**
  - a. The Bakers Do Not Dispute That The Summit-Lackawanna Project Is Needed Pursuant To 52 Pa. Code § 57.76(a)(1).**

The Bakers have presented no evidence regarding the need for the Project and their Principal Brief makes no arguments in opposition to PPL Electric’s demonstration of need. On the other hand, PPL Electric demonstrated that the Summit-Lackawanna Project immediately resolves significant asset health conditions, efficiently rebuilds the transmission lines to ensure the

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<sup>5</sup> Joint Stipulation ¶ 45.

<sup>6</sup> 52 Pa. Code § 57.76(a).

<sup>7</sup> 66 Pa.C.S. § 1511(c).

<sup>8</sup> *McDonald v. Pennsylvania Railroad Co.*, 36 A.2d 492 (Pa. 1940).

<sup>9</sup> *District of Columbia’s Appeal*, 21 A.2d 883 (Pa. 1941). See, e.g., *Application of Pennsylvania Power & Light Co.*, Docket Nos. A-110500F0196, et al., 1994 Pa. PUC LEXIS 65 (Oct. 21, 1994) (holding that the company met its burden to prove that there was an immediate need for the reinforcement of the power supply where the need for the project was uncontested and no party presented any evidence challenging the need for the project).

continued provision of safe and reliable service, and resolves additional reliability concerns.<sup>10</sup> In addition, PPL Electric demonstrated that the Project, as proposed, avoids the additional costs and uncertainties associated with replacement and remediation alternatives, and is also more cost-efficient than these alternatives.<sup>11</sup>

The Bakers “do not dispute that there is a need for the Summit-Lackawanna Project.”<sup>12</sup> Indeed, the Bakers have stipulated to key aspects of PPL Electric’s demonstration of need. As explained in PPL Electric’s Main Brief:

[N]o party has challenged PPL Electric’s evidence showing the need for the Summit-Lackawanna Project. The only other active party in this proceeding, the Bakers, entered into a Joint Stipulation with PPL Electric whereby the Parties have stipulated and agreed, *inter alia*, that:

- “The rebuilding of the 230 kV transmission lines as a part of the Project is needed to address significant asset health conditions and reliability concerns related to the deteriorated condition of the COR-TEN® lattice towers on the existing Summit-Lackawanna #1 and #2 230 kV Transmission Lines. (Joint Application and Petition for Waiver, Attachment 1 at 4-12; PPL Electric St. 1 at 5-12.)”
- “The proposed rebuild addresses the safety issues resulting from the presence of pack-out rust (e.g., structures failing due to deteriorated joints at the arms or legs). (Joint Application and Petition for Waiver, Attachment 1 at 11; PPL Electric St. 1 at 10.)”
- “Possible shearing of bolts, members disconnecting from lattice towers, or complete tower failure pose a major safety risk to both the public and PPL Electric employees. (Joint Application and Petition for Waiver, Attachment 1 at 11; PPL Electric St. 1 at 10.)”
- “there is a need for the Summit-Lackawanna Project, as described in the Joint Application and Waiver and the

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<sup>10</sup> PPL Electric MB, Section V.C.2.a.

<sup>11</sup> PPL Electric MB, Section V.C.2.b.

<sup>12</sup> Joint Stipulation ¶ 23.

associated attachments and testimony” pursuant to 52 Pa. Code § 57.76(a)(1).

Moreover, the Joint Stipulation also makes clear that “[the Bakers] do not dispute that there is a need for the Summit-Lackawanna Project.”<sup>13</sup>

**b. The Bakers Do Not Assert That The Summit-Lackawanna Project Will Create An Unreasonable Risk of Danger To The Health And Safety Of The Public Pursuant To 52 Pa. Code § 57.76(a)(2).**

The Bakers have presented no evidence regarding health and safety and their Principal Brief makes no arguments in opposition to PPL Electric’s demonstration of health and safety. On the other hand, PPL Electric demonstrated that the Summit-Lackawanna Project will not create an unreasonable risk of danger to the health and safety of the public.<sup>14</sup> The proposed rebuilt transmission lines will be designed, constructed, operated, and maintained in a manner that meets or surpasses all applicable NESC minimum standards and all applicable legal requirements.<sup>15</sup> The Project also accounts for electric and magnetic fields mitigation.<sup>16</sup>

The Bakers “do not assert that the Summit-Lackawanna Project will create an unreasonable risk of danger to the health and safety of the public.”<sup>17</sup> Indeed, as explained in PPL Electric’s Main Brief, the Joint Stipulation entered into by the Parties makes clear that no facts regarding health and safety are in dispute.

**c. The Bakers Do Not Assert That The Summit-Lackawanna Project Is In Violation Of Applicable Statutes And Regulations Providing For The Protection Of Natural Resources Pursuant To 52 Pa. Code § 57.76(a)(3).**

The Bakers have presented no evidence regarding the Project’s compliance with 52 Pa.

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<sup>13</sup> PPL Electric MB, at pp. 37-38 (internal citations omitted).

<sup>14</sup> PPL Electric MB, Section V.D.

<sup>15</sup> PPL Electric MB, Section V.D.1.

<sup>16</sup> PPL Electric MB, Section V.D.2.

<sup>17</sup> Joint Stipulation ¶ 27.

Code § 57.76(a)(3), and their Principal Brief makes no arguments in opposition to PPL Electric’s satisfaction of this criteria. PPL Electric demonstrated that the Project satisfies Section 57.76(a)(3), consistent with the waiver of 52 Pa. Code § 57.72(c)(7) sought in the Joint Application and Petition for Waiver.<sup>18</sup> Moreover, through the Joint Stipulation the Bakers made clear that they “do not assert that the Summit-Lackawanna Project is in violation of applicable statutes and regulations providing for the protection of the natural resources of this Commonwealth.”<sup>19</sup>

**d. The Bakers Do Not Assert That The Summit-Lackawanna Project Will Have Adverse Environmental Impacts Pursuant To 52 Pa. Code § 57.76(a)(4).**

The Bakers have presented no evidence regarding any adverse environmental impacts associated with the Project, and their Principal Brief makes no arguments related adverse environmental impacts. PPL Electric demonstrated that the Project satisfies Section 57.76(a)(4), consistent with the waiver of 52 Pa. Code § 57.72(c)(10) sought in the Joint Application and Petition for Waiver.<sup>20</sup> The Project does not require a siting and route selection analysis because it involves rebuilding an existing transmission line located entirely within existing ROW. The existing ROW would have fewer environmental impacts and constitute the preferred ROW in comparison to other reasonable alternatives, because any other alternative ROW would require the construction of transmission lines where none are currently located.

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<sup>18</sup> PPL Electric MB, Section V.E.; *see also Application of PPL Electric Utilities Corporation, for Approval to Rebuild Approximately Six Miles of the Breinigsville-Alburtis 500 kV Transmission Line in Lower Macungie and Upper Macungie Townships, Lehigh County, Pennsylvania; Petition for Waiver of Certain Provisions of the Commission’s Regulations for Commission Review of Siting and Construction of Electric Transmission Lines set forth at 52 Pa. Code § 57.71 et seq.*, Docket No. A-2019-3007945, at pp. 3-9 (Order entered Aug. 14, 2019) (“Breinigsville-Alburtis Order”).

<sup>19</sup> Joint Stipulation ¶ 31.

<sup>20</sup> PPL Electric MB, Section V.F.; *see also Breinigsville-Alburtis Order*.

**2. The Baker Condemnation Application Satisfies 15 Pa.C.S. § 1511(c) And Should Be Approved.**

The Bakers presented no evidence, and their Principal Brief does not assert, that the service that will continue to be provided by Summit-Lackawanna Project is not necessary or proper for the service, accommodation, convenience, or safety of the public. Rather, PPL Electric demonstrated that the Project is needed,<sup>21</sup> and PPL Electric's demonstration of need is undisputed.<sup>22</sup> Indeed, the Parties have also:

stipulate[d] and agree[d] that the electric service to continue to be furnished by PPL Electric through the exercise of the power of eminent domain associated with the Summit-Lackawanna Project, to the extent such exercise is required, is necessary or proper for the service, accommodation, convenience, or safety of the public.<sup>23</sup>

PPL Electric also explained why the Baker Condemnation Application was filed, despite PPL Electric maintaining that it has all necessary ROW to rebuild the Summit-Lackawanna #1 and #2 230 kV Transmission Lines. PPL Electric acknowledged the Bakers' pending dispute before the Court of Common Pleas of Lackawanna County.<sup>24</sup> PPL Electric also entered the Joint Stipulation in order to make clear that there was no dispute among the Parties regarding which tribunal has jurisdiction over the Parties' property dispute.<sup>25</sup> And the Joint Stipulation makes clear that neither PPL Electric nor the Bakers are "seeking a finding or determination by the Commission regarding the scope and validity of the easement or the disposition of the associated claims currently pending before the Court of Common Pleas of Lackawanna County."<sup>26</sup>

With respect to the Baker Condemnation Application, the evidence presented regarding the only relevant determination before the Commission is undisputed. Therefore, and for the reasons

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<sup>21</sup> PPL Electric MB, Section V.C.; *see also* Section III.A.1. *supra*.

<sup>22</sup> PPL Electric MB, Sections V.C.2.c. and V.G.

<sup>23</sup> Joint Stipulation ¶ 44 (emphasis added).

<sup>24</sup> PPL Electric MB, at p. 49.

<sup>25</sup> Joint Stipulation ¶¶ 40-41.

<sup>26</sup> Joint Stipulation ¶ 42.

more fully explained in PPL Electric's Main Brief, the Baker Condemnation Application should be approved.

**B. THE BAKERS' PRINCIPAL BRIEF RAISES IRRELEVANT AND NON-JURISDICTIONAL ISSUES THAT ARE OUTSIDE THE SCOPE OF THIS PROCEEDING**

The vast majority of the Bakers' Principal Brief focuses solely on the factual and legal bases for the Bakers' assertion that PPL Electric does not possess a valid or sufficient easement and ROW.<sup>27</sup> These arguments, and the underlying facts, are irrelevant to any of the determinations required to approve the Joint Application and Petition for Waiver or the Baker Condemnation Application. Moreover, these arguments relate exclusively to issues outside the scope of the Commission's jurisdiction.

As a general principle, subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy.<sup>28</sup> The Commonwealth Court reaffirmed this principle when it held that, "[a]s a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it..."<sup>29</sup> Therefore, the Commission's jurisdiction must arise from the express language of the pertinent enabling legislation or by necessary implication.<sup>30</sup>

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<sup>27</sup> See Bakers PB, Sections II (Summary of Argument), III.A. through III.C, IV (Proposed Findings of Fact), V (Proposed Conclusions of Law).

<sup>28</sup> *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992).

<sup>29</sup> *Pickford v. Pa. PUC*, 4 A.3d 707, 713 (Pa. Cmwlth. 2010).

<sup>30</sup> *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977).

The Commission lacks jurisdiction to determine the validity and scope of an easement.<sup>31</sup>

The Bakers unambiguously acknowledge this principle in their Principal Brief.<sup>32</sup> Moreover, the Parties have already stipulated and agreed as to this jurisdictional question.<sup>33</sup> The Joint Stipulation further makes clear that:

36. PPL Electric and the Protestants are parties to active and ongoing litigation before the Court of Common Pleas of Lackawanna County, August Baker and Diana Baker v. PPL Electric Utilities Corp, and T&D Power, Inc., No.: 15-CV4264...

39. The matter before the Court of Common Pleas of Lackawanna County will involve, inter alia, a determination of the validity and scope of PPL Electric's right-of-way obtained in 1969 traversing the land claimed by the Protestants at parcel number 102030010005, Lackawanna County, Pennsylvania, and possible damages associated therewith...

41. The Court of Common Pleas of Lackawanna County has jurisdiction over the Parties' right-of-way dispute and associated claims at parcel number 102030010005, Lackawanna County, Pennsylvania...

42. Neither PPL Electric nor the Protestants are seeking a finding or determination by the Commission regarding the scope and validity of the easement or the disposition of the associated claims currently pending before the Court of Common Pleas of Lackawanna County...<sup>34</sup>

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<sup>31</sup> PPL Electric MB, at p. 50 (citing *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)).

<sup>32</sup> Bakers PB, at p. 16; see also Bakers PB, at p. 3 (“[T]he Public Utility Commission...lacks jurisdiction to determine the validity and scope of an easement...”). Page 16 of the Bakers' MB contains the same string cite as set forth in footnote 30 *supra*.

<sup>33</sup> Joint Stipulation ¶ 40. Paragraph 40 of the Joint Stipulation contains the same string cite as set forth in footnote 30 *supra*.

<sup>34</sup> Joint Stipulation ¶¶ 36, 39, 41-42.

The Bakers further acknowledge that “the pending Applications should not impact upon the issues involved in the County Litigation.”<sup>35</sup>

In this regard, the scope of this proceeding before the Commission is clear. The findings and determinations required to approve the Joint Application and Petition for Waiver are set forth in 52 Pa. Code § 57.76(a)(1)-(4);<sup>36</sup> the findings and determinations required to approve the Baker Condemnation Application are set forth in 15 Pa.C.S. § 1511(c).<sup>37</sup> The Bakers’ arguments and evidence regarding the property dispute pending before the Court of Common Pleas of Lackawanna County relate to none of these findings or determinations.

Given the scope of the Commission’s jurisdiction, the Parties’ clear acknowledgement of the scope of its jurisdiction, and the Joint Stipulation, the arguments and evidence set forth in Sections II, III.A.-III.C., IV, and V of the Bakers’ Principal Brief are outside the scope of this proceeding and irrelevant. For these reasons, PPL Electric submits that the ALJ and the Commission should disregard these arguments in rendering a Recommended Decision and final order in this proceeding.

**C. THE BAKERS’ ARGUMENTS PROVIDE NO GROUNDS FOR DENYING THE JOINT APPLICATION AND PETITION FOR WAIVER OR THE BAKER CONDEMNATION APPLICATION.**

PPL Electric maintains that it possesses a valid and sufficient easement and ROW traversing a portion of the property claimed by the Bakers. As explained above,<sup>38</sup> in PPL Electric’s Main Brief,<sup>39</sup> and in the Joint Stipulation,<sup>40</sup> the Commission lacks jurisdiction to determine the

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<sup>35</sup> Bakers PB, at p. 16.

<sup>36</sup> PPL Electric MB, Section III.C; *see* Section III.A.1. *infra*.

<sup>37</sup> PPL Electric MB, Section III.D; *see* Section III.A.2. *infra*.

<sup>38</sup> Section III.B. *supra*.

<sup>39</sup> PPL Electric MB, Sections III.D. and V.H.

<sup>40</sup> Joint Stipulation ¶¶ 40-41.

validity and scope of an easement or the claims raised by the Bakers in the ongoing litigation before the Court of Common Pleas of Lackawanna County.<sup>41</sup>

PPL Electric is not seeking any finding or determination by the Commission regarding the validity or scope of the easement traversing a portion of the property claimed by the Bakers.<sup>42</sup> Nevertheless, PPL Electric has fully explained the bases for its assertion that it possesses a valid and sufficient easement and ROW across a portion of the Bakers' property.<sup>43</sup> As such, the arguments raised in the Bakers' Principal Brief provide no grounds for denying the Joint Application and Petition for Waiver or the Baker Condemnation Application. Therefore, the Bakers' arguments should be denied.

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<sup>41</sup> See footnote 30 *supra*.

<sup>42</sup> Joint Stipulation ¶ 42.

<sup>43</sup> See PPL Electric St. 2 (Baker), at pp. 4-7; PPL Electric St. 2-R (Baker), at pp. 2, 4-5. Given the Parties' Joint Stipulation, PPL Electric does not restate the evidence presented in the direct and rebuttal testimony of Austin Weseloh that was provided in support of the Baker Condemnation Application.

**IV. CONCLUSION**

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that Administrative Law Judge Mary D. Long and the Pennsylvania Public Utility Commission:

- (1) approve the above-captioned “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”;
- (2) grant the waivers of 52 Pa. Code §§ 57.72(c) (7), (8), (10) and (11), 57.74(c), and 69.3101-69.3107 sought and explained in “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”;
- (3) approve the one (1) application under 15 Pa.C.S. §1511(c) seeking findings and determination that the service to be furnished by the Company through its proposed exercise of the power of eminent domain, to the extent such exercise is required to acquire a right-of-way and easement over a certain portion of the lands of August and Diana Baker in Dickson City Borough and Scott Township, Lackawanna County, Pennsylvania for the proposed rebuild of the Summit-Lackawanna #1 and #2 230 kV Transmission Lines associated with the Summit-Lackawanna Project, is necessary or proper for the service, accommodation, convenience, or safety of the public; and
- (4) grant such other approvals and/or waivers as are necessary or appropriate under all of the circumstances.

Respectfully submitted,



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