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VIA eFILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

**RE: Assumption of Commission Jurisdiction Over Pole Attachments
from Docket No. L 2018-3002672 Federal Communications
Commission**

Dear Secretary Chiavetta:

Please find enclosed the Reply Comments of PECO Energy Company for filing in the above-referenced proceeding.

If you have any questions, please contact me directly at 215-841-4263.

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. Halderman", is written over the typed name and title.

John C. Halderman
Assistant General Counsel

JCH/cw
Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Assumption of Commission Jurisdiction :
Over Pole Attachments from the Federal : **Docket No. L-2018-3002672**
Communications Commission :

**REPLY COMMENTS OF PECO ENERGY COMPANY
TO THE NOTICE OF PROPOSED RULEMAKING**

I. INTRODUCTION

On July 13, 2018, the Pennsylvania Public Utility Commission (the "Commission") issued a Notice of Proposed Rulemaking ("July 13 NPRM" or "NPRM") in the above-referenced proceeding to begin a rulemaking to assert Commission jurisdiction over pole attachments pursuant to the federal Pole Attachment Act.¹ Comments were filed by 20 parties, including PECO Energy Company ("PECO"). PECO appreciates this opportunity to reply to certain issues that were raised in those Comments.

II. REPLY COMMENTS

A. The Commission's Expertise With Electric Utilities Will Facilitate Balanced Pole Attachment Regulation

In its Comments, PECO recognized that the Commission's primary responsibility over electric utility operations exceeds whatever momentary responsibility the Federal Communications Commission ("FCC") might have, so that the Commission is better equipped to regulate pole attachments in the Commonwealth.² Other commenters from both the electric and

¹ The Pole Attachment Act is codified at 47 U.S.C. § 224.

² See PECO Comments at 3, 12.

communications industries, agree, explaining that the Commission's electric utility expertise will better balance pole attachment regulations.³

Because the Commission's expertise provides a greater understanding of electric utility issues, PECO suggested modifications to proposed regulations §§ 77.5(c) and 77.3(b) to enable the Commission to deviate from FCC rulings when appropriate, and to consider the safety, maintenance and reliability of electric distribution service along with telecommunications and cable services.⁴ PECO's proposed changes are consistent with what these other commenters have to say about the Commission's electric utility expertise.⁵ PECO's proposal that the Commission be permitted to deviate from FCC rulings is also consistent with the New York Public Service Commission approach endorsed by NetSpeed LLC, which would allow the Commission to "adhere to the FCC's methods and practices unless we find a compelling reason to depart from them."⁶

³ See NetSpeed LLC Comments at 2 ("We believe the Commission's expertise regarding electric utilities and electric distribution service will provide a basis for wise regulation that the Federal Communications Commission unavoidably lacks."); Full Service Network, LP Comments at 3 ("[W]hile the FCC is well-versed in issues involving telecommunications carriers, the FCC does not share the Commission's experience and knowledge of electric utility operations."); MAW Communications Inc. Comments at 1 ("[T]he Commission could use their expertise regarding Pennsylvania electric and telecommunications utilities, distribution services, and National Electrical Safety Code (NESC) to provide a basis for regulation and expedited dispute resolution...."); FirstEnergy Companies Comments at 8 ("[T]he Commission maintains a better understanding of Electric distribution facilities over and above that of the FCC, whose expertise necessarily seems to concentrate on communication facilities and communication industry expansion, not electric distribution safety, reliability and regulated rates and cost recovery."); PPL Electric Comments at 2 ("[T]he PUC is best suited to balance the needs of its stakeholders and constituents with regard to broadband access and the infrastructure required to provide it."); Duquesne Light Company Comments at 2 ("The Company believes that the Commission's assumption of jurisdiction over pole attachments will allow a more balanced approach to all of the competing demands on pole infrastructure."). See also Central Bradford Progress Authority Comments at 2 ("Commenters agree with the observations by another commenter, NetSpeed LLC, that 'the Commission's expertise regarding electric utilities and electric distribution service will provide a basis for wise regulation that the Federal Communications Commission unavoidably lacks.'").

⁴ PECO Comments at 3-4, 12.

⁵ The Commission's expertise over electric utilities also supports rejecting the outlier view of Crown Castle that the Commission should not reverse preempt at all. See Crown Castle Comments at 3.

⁶ NetSpeed LLC Comments at 2-3, quoting Opinion No. 97-10, NYS PSC Case 95-C-0341, *In the Matter of Certain Pole Attachment Issues which Arose in Case 94-C-0095*, Issued June 17, 1997, at p. 5.

B. The Commission's Mediation Office Already Provides Alternative Dispute Resolution

Several commenters propose one form or another of alternative dispute resolution so that pole attachment disputes could be resolved quickly and inexpensively.⁷

PECO does not understand these calls for some new form of alternative dispute resolution because any party filing a complaint with the Commission already can use the Commission's Mediation Office for alternative dispute resolution now. As explained and endorsed by the Central Bradford Progress Authority, the Commission's mediation process is already available at 52 Pa. Code §§ 69.391-69.397.⁸

C. A Pole Attachment Database Would be an Enormous Waste of Money

A few commenters support requiring pole owners to develop and maintain a database for poles and attachments,⁹ while several others strongly oppose it.¹⁰

⁷ See Verizon Comments at 13 (suggesting the Commission offer "mediation" or "abbreviated dispute resolution"); NetSpeed LLC Comments at 3-4 (explaining New York PSC expedited dispute resolution process); Full Service Network, LP Comments at 3-6 (Commission should make clear its "Abbreviated Dispute Resolution Process" is available); MAW Communications Inc. Comments at 3-4 ("adamantly" supporting NY PSC expedited resolution process); CTIA Comments at 7 (proposing a voluntary "Rapid Response Team" process as in Maine); Pennsylvania Telephone Association Comments at 3 (noting an expedited dispute resolution process would be easier, faster and less expensive); and CenturyLink Comments at 5-6 (supporting the New York NYPSC expedited process).

⁸ Central Bradford Progress Authority Comments at 5-6 (proposing the Commission use its existing Title 52 mediation process).

⁹ MAW Communications Comments at 2-3 ("abundantly supports" a comprehensive registry of poles, believing it would cause no financial burden); Central Bradford Progress Authority Comments at 6 (supporting a centralized, comprehensive registry of poles and attachments); Office of Consumer Advocate Comments at 7 (supporting a database with details like height, location, installation year, last installation date, etc., along with photographic inventories of poles and manhole access to conduits).

¹⁰ Verizon Comments at 16-17 (noting the FCC already rejected such a database, finding the burdens far outweigh any benefits, that it would take years and hundreds of millions dollars to create, and would require annual maintenance); FirstEnergy Comments at 12-13 (noting such a database would jeopardize security, reveal competitively sensitive information, be prohibitively expensive, and be of little use); PPL Comments at 5-6 (noting adequate resources for new attachers are already available, such a database would be unduly burdensome and costly, and such a database would be of little benefit anyway); Duquesne Light Company Comments at 6 (explaining such a database would be costly, would present a security risk, is not really needed, and would have little benefit); CenturyLink Comments at 6 (explaining a pole database is problematic from a maintenance and expense standpoint, and also raises security concerns).

PECO is among those commenters that objected to this concept of a comprehensive registry of pole and attachments, and PECO agrees with commenters who claim such a database is far too expensive and of little benefit.

In PECO's experience collecting data regarding installed equipment in the field, the cost of conducting an audit to create such a database might be between \$20-\$40 pole. At an average of \$30 per pole, a five-year survey of PECO's 415,000 poles would cost \$12,450,000. This dollar amount does not even count the back-office resources PECO would have to tie-up full time for that five-year period. At the end of this five-year survey, most of the data collected would already be dated because attachers do not always provide PECO with correct and detailed information regarding their as-built attachments. Moreover, trying to maintain such a database after it is completed would also be extraordinarily time-consuming and expensive even if attachers were to provide as-builts, because that data from many attachers would need to be standardized and integrated into the database.

Even if the availability of space on poles could be collected and maintained, that information alone would be insufficient to determine whether a pole can accommodate additional attachments. In addition to calculating required National Electrical Safety Code ("NESC") clearances, the size and weight of any proposed attachments also must be determined and compared to the existing load. Thus, even if a pole database existed, whenever an attacher requested a new set attachments, field survey work would still be required in order: (i) to review the poles and the routes of the cable installation; (ii) to verify existing attachments; and (iii) to determine whether anything has changed that would affect the attachments, such as elevation changes, the installation of driveways, road work in the right-of-way, new ditches, etc., prior to installation. Easement restrictions would also need to be evaluated.

In short, the burden and expense of creating a database that would be obsolete as soon as it is finished, and that would provide little benefit in any event, would constitute an enormous waste of personnel resources and electric ratepayer money.

D. Standardized Tariffs or Agreements Are Not Necessary

PECO commented that standardized agreements or tariffs were not necessary, since PECO already has a standard agreement the parties negotiate with very few changes.¹¹ Several parties agree such standardization is not necessary,¹² several fault standardization as being inflexible and incapable of addressing individual circumstances,¹³ two support a standardized agreement,¹⁴ and two state such standardization is premature.¹⁵

Every attacher which negotiates PECO's standard agreement has the flexibility to select a regulated pole attachment rental rate instead of a negotiated rate. This non-negotiated regulated rate is calculated pursuant to the FCC rate formula, is based on FERC Form 1 data as required by the formula, and changes every year to comport with changes to the FERC Form 1 inputs. As a result, any attacher that would prefer not to negotiate a more stable multi-year rate always has access to the FCC's annual regulated rate that changes every year.¹⁶

¹¹ PECO Comments at 15.

¹² CTIA Comments at 8; Pennsylvania Telephone Association Comments at 4; CenturyLink Comments at 6; and Verizon Comments at 17.

¹³ PPL Comments at 6; FirstEnergy Comments at 13; Duquesne Light Company Comments at 6-7; Pennsylvania Telephone Association Comments at 4; and CenturyLink Comments at 6.

¹⁴ MAW Communications Comments at 2; Crown Castle Comments at 10.

¹⁵ Central Bradford Progress Authority Comments at 6; NetSpeed LLC Comments at 4.

¹⁶ NetSpeed LLC's early-filed Reply Comments object to PECO's proposal to honor voluntarily negotiated agreements, claiming pole attachment agreements are unilaterally imposed by pole owners and serve only to protect pole owners from the Commission's rules. NetSpeed LLC Reply Comments at 1. In response, PECO notes that the rate flexibility it affords all attachers should alleviate NetSpeed's concern.

E. The Commission Should Adopt the FCC's Definitions

The Office of Consumer Advocate suggests the Commission clarify which federal definitions and/or Public Utility Code definitions would be applicable to the Commission's pole attachment regulations, since there are differences between the two.¹⁷

PECO agrees that clarity on this issue is needed. Since the FCC's pole attachment regulations were adopted using the federal Communications Act definitions, PECO believes the Commission should adopt the federal definitions in its pole attachment regulations.

F. Pole Attachment Working Groups Should Be Inclusive

Several parties support establishment of pole attachment working groups,¹⁸ and PECO had no objection to working groups as long as the mandate for the working group is clear.¹⁹ PECO offers no further comment except to request that, if the Commission does initiate a working group on any pole attachment issue, PECO be given the opportunity to participate in that working group.

G. Unauthorized Attachments Are a Serious Concern

MAW Communications proposes that the fee for unauthorized attachments total no more than three times the annual rate, and proposes that unauthorized attachments cannot be removed.²⁰

The primary purpose of electric distribution poles is to safely carry electric distribution wires and ancillary electric equipment. Getting too close to those wires and facilities is an inherently dangerous act. As more and more attachments are made to those poles, they are becoming increasingly congested, and space on these poles must be allocated safely and

¹⁷ Office of Consumer Advocate Comments at 4-6.

¹⁸ PPL Comments at 4; MAW Communications Inc. Comments at 2; Central Bradford Progress Authority Comments at 4; Crown Castle Comments at 10.

¹⁹ PECO Comments at 16.

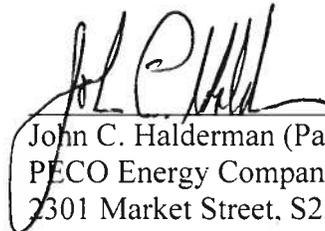
²⁰ MAW Communications Inc. Comments at 3.

efficiently for the benefit of everyone. To permit a communications company to install attachments at will, and without first seeking permission, would be dangerous to both the attacher and all those who would come to later work on the pole. It would also be unfair to other attachers who “follow the rules” and seek permission. MAW’s proposals essentially would require unauthorized attachments to be treated with impunity. Quite the contrary, and to ensure that electric pole distribution systems remain safe and manageable, PECO proposes instead that unauthorized attachment be treated seriously by all attaching entities, and that the Commission’s rules make clear that unauthorized attachments will not be tolerated.

III. CONCLUSION

PECO appreciates the opportunity to file these Reply Comments and asks that they be favorably considered.

Respectfully Submitted,



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