

3214



An Exelon Company

John C. Halderman
Assistant General Counsel
2301 Market Street / S23-1
Philadelphia, PA 19103

Direct Dial: 215.841.4263



October 29, 2018

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 the Federal Communications Commission
Docket No. L-2018-3002672**

Dear Secretary Chiavetta:

Please find enclosed the **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 "JCH".

John C. Halderman
Assistant General Counsel

JCH/cw
Enclosure

3214



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**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

PECO Energy Company ("PECO") appreciates the opportunity to provide comments regarding the Commission's proposal. PECO supports the Commission's efforts to promote timely access to the Commonwealth's adjudicatory resources and its adoption of well-known Federal Communications Commission ("FCC") regulations, and proposes a few simple changes to make Commission regulation of pole attachments even more effective.

II. COMMENTS

A. Adoption of Federal Communications Commission Regulations

As explained in the July 13 NPRM, the Commission is free to adopt the FCC's pole attachment regulations, similar to the approach taken recently by the Washington Utilities and Transportation Commission.² As the NPRM explains, this approach will preserve the status quo of pole attachment regulation, and permit timely access to administrative hearings before the

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

² NPRM at 12.

Commission and the specialized administrative jurisdiction of the Commonwealth Court.³ The Commission therefore proposes to adopt existing FCC pole attachment regulations and seeks comment on its proposal.⁴

PECO agrees that this proposal to adopt existing FCC pole attachment regulations will provide the benefits identified above. In addition, consistent with the Commission's approach and as explained below, PECO proposes three modest changes designed to improve the effectiveness of the proper Commission regulation by: (1) granting the Commission flexibility to interpret FCC regulations for the benefit of the Commonwealth; (2) recognizing that the Commission, unlike the FCC, has the primary responsibility to ensure the safety and reliability of pole distribution systems; and (3) reducing potential Commission workload by protecting voluntarily negotiated pole attachment agreements.

1) The Commission should have the flexibility to interpret FCC regulations for the benefit of the Commonwealth

The Annex to the July 13 NPRM proposes the new regulations which will comprise new Chapter 77 (Pole Attachments) to Title 52 of the Pennsylvania Code. Proposed regulation § 77.5(c) borrows regulatory language from the Washington Utilities and Transportation Commission ("WUTC") pole attachment regulations, and states:

(c) When exercising authority under this chapter the Commission will consider Federal Communications Commission orders promulgating and interpreting federal pole attachment rules and federal court decisions reviewing those rules and interpretations as persuasive authority in construing the provisions of 47 U.S.C. § 224 and 47 C.F.R. 1.1401 – 1.1425.⁵

PECO agrees it is appropriate to look to FCC and court interpretations for guidance, but believes the Commission should retain full discretion to form its own interpretations for the

³ *Id.*

⁴ *Id.* at 13.

⁵ See NPRM at Annex, proposed regulation § 77.5(c), and at p. 11, citing Washington Administrative Code § 480-54-010.

benefit of the Commonwealth. In PECO's view, such local control over pole attachment regulation is one of the significant benefits of Commission jurisdiction. To that end, PECO proposes to revise Section 77.5(c) to add a new phrase at the end, as follows (in bold):

(c) When exercising authority under this chapter the Commission will consider Federal Communications Commission orders promulgating and interpreting federal pole attachment rules and federal court decisions reviewing those rules and interpretations as persuasive authority in construing the provisions of 47 U.S.C. § 224 and 47 C.F.R. 1.1401 – 1.1425, but may deviate from those rulings to make its own determinations of whether rates, terms, and conditions of pole attachments are just and reasonable.

- 2) *The regulations should recognize the Commission's leadership in ensuring safe and reliable pole distribution systems*

Proposed regulation § 77.3(b) reads as follows:

(b) The Commission has the authority to consider, and will consider, the interests of the subscribers of the services offered via pole attachments, as well as the interests of the consumers of the utility services.⁶

The Pole Attachment Act requires this language to be included in any State certification to the FCC that it regulates pole attachments,⁷ and this language is helpful to highlight each State commission's responsibility both to communications company subscribers and utility ratepayers. But unlike the FCC, the Commission has primary responsibility to ensure the safety and reliability of the pole distribution systems operated and maintained by electric utilities and incumbent local exchange carriers. This overall responsibility for the safety and reliability of these structures exceeds whatever fleeting responsibility the FCC might have, and should be recognized in the proposed regulations. Accordingly, PECO proposes to revise Section 77.3(b) to add new language as follows (in bold), to make this provision similar to the language in a Texas state pole attachment statute:

⁶ See NPRM at Annex. proposed regulation § 77.3(b).

⁷ 47 U.S.C. § 224(c)(2)(B).

(b) The Commission has the authority to consider, and will consider, the interests of the subscribers of the services offered via pole attachments, as well as the interests of the consumers of the utility services. In addition, in determining whether rates, terms, and conditions are just and reasonable, the Commission will consider compliance with applicable safety standards and the maintenance and reliability of electric distribution, telecommunications and cable services.

Texas Utilities Code § 252.005(g).⁸

3) The Commission should protect voluntarily negotiated agreements

Most pole attachment and joint use agreements have remained in effect for some time without dispute. It is not necessary or appropriate to revise these agreements simply because the Commission has asserted jurisdiction over pole attachments. Moreover, parties should be free to negotiate pole attachment and joint use agreements that differ from the pole attachment regulations adopted by the Commission. Leaving existing and newly-negotiated agreements unprotected could invite unnecessary and improper disputes that would need Commission and Commonwealth Court adjudication. To protect existing and newly-negotiated agreements and to preserve Commission resources, PECO proposes the following new section be added to proposed Chapter 77. This new section contains language from the pole attachment regulations currently in effect in Arkansas:

§ 77.6. Voluntarily Negotiated Agreements.

Nothing in these Rules prevents or limits the ability of a pole owner and an attaching entity to enter into a voluntarily negotiated written agreement regarding the rates, terms, and conditions for pole attachment access. Voluntarily negotiated agreements are preferred and encouraged by the Commission. Nothing in these rules shall be interpreted to supersede or

⁸ Texas Utilities Code § 252.005(g) ("In determining whether rates, terms, and conditions are just and reasonable, at least the following factors must be considered: (1) the interests of and benefits to the consumers and potential consumers of the pole owner's services; (2) the interests of and benefits to the subscribers and potential subscribers of the services offered through pole attachments; (3) compliance with applicable safety standards; and (4) the maintenance and reliability of electric distribution, telecommunications and cable services.")

modify any lawful rate, term, or condition of a voluntarily negotiated written agreement.

Arkansas Public Service Commission, Pole Attachment Rules, Rule 1.05.⁹

III. RESPONSES TO COMMISSIONER QUESTIONS

A. CHAIRMAN BROWN

I ask the parties to this proceeding to address developments on pole attachments that have occurred since issuance of the FCC's 2011 Pole Attachment Order, particularly how the Commission's adoption of FCC rules should address rules that may not necessarily reflect a consensus view of Pennsylvania's providers. I also ask the parties to address what, if any, impact the pending Broadband Deployment Advisory Committee (BDAC) deliberations and recommendations will have on pole attachment in Pennsylvania.

1) *FCC Actions Since 2011 Pole Attachment Order*

November 24, 2015 Order on Reconsideration

Among other rulings, the FCC's 2011 Pole Attachment Order lowered the FCC "Telecom" pole attachment rental rate that investor-owned electric utilities and ILECs can charge communications attachers to the very low level of the FCC "Cable" rate. The Order did this by requiring two new artificial multipliers to be used in the calculation, one for "non-urbanized" areas and another for "urbanized areas." As a result, when the rates were calculated using the FCC's presumptions of three attaching entities for "non-urbanized" areas and five attaching entities for "urbanized areas," the multiplier associated with that presumptive number of attaching entities had the effect of approximating the Cable rate.

These two multipliers did not work to lower the Telecom rate to the Cable rate when the presumptions were rebutted, however. In response, the FCC issued a ruling on November 24, 2015, that lowered the Telecom rate to the level of the Cable rate in almost all cases, no matter

⁹ The Arkansas PSC's Pole Attachment Rules are available on the PSC's website at: http://www.apseservices.info/Rules/pole_attachment_rules.pdf (last visited Oct. 18, 2018).

how many attaching entities are used in the calculation. The FCC's Order accomplished this by using artificial "multipliers" that change in sync with whatever average number of attaching entities is used.¹⁰

November 16, 2017 Pole Attachment Complaint Shot Clock Ruling

On November 16, 2017, the FCC adopted a 180-day "shot clock" for the disposition of pole attachment complaints, but only those alleging a denial of access. The FCC also codified the policy of excluding capital expenses already recovered via make-ready fees from annual pole attachment rental rates.¹¹

July 18, 2018 Amendment of Complaint Rules

On July 18, 2018, the FCC issued an order amending its procedural rules affecting formal complaints, including pole attachment complaints, by streamlining and consolidating those complaint rules.¹² The July 18, 2018 Order did the following:

- Adopted a uniform deadline of 30 days for filing an answer to a formal complaint, except as otherwise ordered by FCC staff. Replies to answers must be filed within 10 days of service of the answer.
- Required the complaint, answer, and reply to include a description of individuals with firsthand knowledge of facts and documents relevant to the allegations in the pleadings.
- Extended the option of requesting interrogatories to pole attachment complaint proceedings, so that in pole attachment complaint proceedings, (1) a complainant may file and serve up to ten (10) written interrogatories with its complaint; (2) a defendant may file and serve up to ten (10) written interrogatories with its answer; and (3) a complainant may file and serve up to five (5) additional written interrogatories with its reply.
- Made clear that motions to dismiss are permitted.
- Provided Commission staff with the ability to order a status conference in pole attachment complaint proceedings.

¹⁰ *Implementation of Section 224 of the Act*, Order on Reconsideration, 30 FCC Rcd 13731 (2015).

¹¹ *In the Matter of Accelerating Wireline Broadband Deployment By Removing Barriers To Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11128 (2017).

¹² *Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, Report and Order, 2018 CR 71, EB Docket No. 17-245, FCC 18-96 (Jul. 18, 2018).

- Consolidated the Accelerated Docket provisions into one new streamlined rule that includes pole attachment complaints.
- Imposed a “shot clock” of 270 days for disposition of pole attachment complaints regarding the rates, terms, and conditions of pole attachments. (The November 16, 2017 ruling had previously established a 180-day “shot clock” for pole attachment complaints alleging a denial of access.

August 3, 2018 Pole Attachment Order

On August 3, 2018, the FCC issued an order which made numerous changes to its pole attachment rules.¹³ The changes include the following:

- “New” Telecom Rate for New and Renewed Contracts with ILECs
 - For any new and “renewed” joint use agreements, ILECs are presumed to get the FCC’s “new” (i.e., post-2011 Order) Telecom Rate, and a utility can rebut that presumption only upon a “clear and convincing” showing that the ILEC receives benefits that “materially advantage” the ILEC over cable company and CLEC attachers.
 - If the presumption is rebutted, then the maximum rate that can be negotiated is presumed to be the “old” (pre-2011 Order) FCC Telecom Rate.
- Self-Help for Make-Ready Construction Work in the Electric Space
 - If utilities fail to meet the make-ready construction deadlines, attachers can hire utility-approved contractors to perform make-ready construction work, not only in the communications space (which was the current rule), but also in the electric space, except that this electric space self-help remedy does not apply to pole replacements.
 - If an attacher hires a utility-approved contractor to perform make-ready construction work, it would need to provide only five days’ notice to the utility pole owner of the date the attacher schedules for the make-ready construction work.
 - Utilities have 90 days to inspect self-help work, but pass this inspection cost along to the self-help new attacher.
- Self-Help for Survey Work
 - If utilities fail to meet the 45-day make-ready survey deadline, attachers can hire a utility-approved contractor to perform the survey work, including survey work in the electric space.

¹³ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*. Third Report and Order and Declaratory Ruling, WC Docket No. 17-84 and WT Docket No. 17-79. FCC 18-111 (rel. Aug. 3, 2018).

- The attacher needs to provide only three business days' notice to the utility of the date scheduled for such survey so the utility can accompany the new attacher.
- **Self-Help in Communications Space for Failure to Meet 30-day Deadline for Communications Space Make-ready Construction Work**
- **New Rules Regarding "Complete" Pole Attachment Applications**
 - Utilities have 10 days to review an application or the application is deemed complete.
 - Follow-up deadlines apply to corrected applications.
- **Joint Ride-Outs**
 - Utilities are required to make "commercially reasonable" efforts to provide three business days' notice to the new attacher and to all existing attachers of scheduled field surveys so that any or all of them can join the utility on the survey.
- **Make-Ready Notification Requirement**
 - Existing rules require that at the time the new attacher pays the make-ready estimate, utilities must immediately notify all existing attachers of the timing and scope of the proposed make-ready, and instruct the existing attachers to perform their own make-ready or have it performed for them. The August 3, 2018 Order requires utilities to provide a copy of those notices to the new attacher so that the new attacher can thereafter "coordinate" with existing attachers to "encourage" them to do their make-ready work.
- **One-Touch Make-Ready for "Simple" Make-Ready**
 - A "one-touch make-ready" system was made available only for "simple" make-ready in the communications space. One-touch make-ready would not be allowed in the electric space, or for "complex" make-ready in the communication space (it is "complex" if there would be a service outage, splicing, or other damage to existing facilities, or if the proposed attachments are wireless attachments).
 - It is anticipated that attachers will hire a contractor to do the survey work in advance of the application to determine if its proposed attachments will require only "simple" make-ready work. The survey contractor would need to be utility-approved only if the utility has a list of contractors for "simple" make-ready survey and construction work. If not, the attacher may select a contractor that meets five criteria plus any other utility-specified safety and reliability requirements.
 - Utilities have only 15 days, not 45 days, to decide whether to approve any one-touch make-ready application for "simple" make-ready. They have only 30 days (not 60 days) for large orders of 300-3000 poles.

- A new attacher electing one-touch make-ready for “simple” communications attachments need provide only 3 days’ notice for the utility to join in the survey and 15 days’ notice for the utility to observe one-touch make-ready construction.
 - Contractors doing one-touch make-ready must notify utilities of any damage or code violations.
- **Attachers Have Some Ability to Select Contractors**
 - Utilities need to maintain a list of utility-approved contractors for make-ready survey and construction work in the electric space, and for “complex” make-ready survey and construction work in the communications space. The FCC also recommends (but does not require) utilities to maintain a list of utility-approved contractors for “simple” make-ready survey and construction work in the communications space.
 - If a utility does not maintain a list of utility-approved contractors, the attacher can hire its own contractor. The utility must accept the proposed contractor if the contractor meets five criteria specified plus any additional utility-specified “commercially reasonable requirements” relating to safety and reliability.
 - Even if a utility maintains a list of utility-approved contractors, the attacher can propose its own contractor that the utility must accept if the contractor meets the five specified criteria plus any additional utility-specified safety and reliability requirements.
 - Utilities can veto attacher-proposed contractors for survey work within three business days, and veto attacher-proposed contractors for make-ready construction work within 15 days, but only if the proposed contractors fail to meet one of the five specified criteria or other utility-specified safety and reliability requirements. If an attacher-proposed contractor is vetoed, the utility must identify another available contractor.
 - Attachers could select non-union contractors to do the work.
 - **Detailed Pole-By-Pole Make-Ready Construction Estimates and Final Invoices**
 - If an attacher asks for it, utilities need to provide detailed pole-by-pole estimates and final invoices of the make-ready construction costs associated with each pole.
 - Utilities must collect make-ready estimates from the other existing attachers and provide new attachers with those detailed pole-by-pole estimates for existing attacher communications space work.
 - **Overlashing**
 - Utilities can require 15-days’ advance notice but there are restrictions on what information utilities can require in this notice.
 - Utilities can perform post-overlash inspection and engineering, but must pay for it themselves.
 - Utilities cannot prohibit overlashing when there are existing violations
 - **New Attachers Not Responsible for Preexisting Violations**

- New attachers are not responsible for fixing preexisting noncompliant attachments or poles. Utilities cannot hold up access until preexisting violations are fixed. New attachers would not have to pay to correct poles that have non-emergency violations and are “red tagged” for later fixing.

2) *How to address the lack of consensus among providers*

PECO believes that this issue has now been addressed by the FCC’s August 3, 2018 Order.

3) *Impact of the Broadband Deployment Advisory Committee (BDAC)*

PECO believes that the FCC’s August 3, 2018 Order has now fully considered BDAC recommendations so that the BDAC will have no further impact should the Commission adopt FCC pole attachment rules.

B. VICE CHAIRMAN PLACE

1) *The legal and technical interactions and ramifications of any future Pennsylvania statutes that may address pole attachments with any potentially adopted Commission rules on pole attachments that are based on the FCC regulatory framework.*

PECO is aware of only one piece of pending legislation affecting pole attachments, but it applies only to wireless attachments and applies only to municipalities. House Bill No. 2564, currently pending in the General Assembly, would apply only to decisions made by municipalities over wireless carrier access to municipal rights-of-way and municipal poles. Since FCC pole attachment regulations apply only to poles, ducts, conduits and rights-of-way owned or controlled by electric utilities and incumbent local exchange carriers, and since House Bill No. 2564 only applies to municipalities, it would have no effect on any FCC pole attachment regulations adopted by the Commission.

The House Co-Sponsorship Memorandum written by Representative Frank A. Farry

explains that the legislation is similar to legislation passed in 19 other states. The memorandum summarizes the legislation as follows:

I will be introducing legislation to provide for the uniform, efficient, and predictable regulation of small wireless antennas to improve the provisioning and deployment of the next generation of high-speed wireless broadband throughout the Commonwealth. This does not change existing law relative to cell towers.

. . .

In order to meet those ever-growing demands, the wireless industry is deploying "Small Cell" facilities in our Commonwealth. However, because decisions are made on a municipal level, wireless providers are faced with varying fees and different procedures that may slow and, in some cases, deter their ability to deploy this new and modern infrastructure. With an array of municipal ordinances governing wireless infrastructure, compliance could be burdensome, time consuming, and costly. This results in less robust services for your constituents.

My legislation preserves local government authority over zoning and land use, including the ability to approve or deny wireless infrastructure permit applications consistent with common sense limitations, in order to create a more efficient process that would enable communities to enjoy the benefits of this critical next generation technology. It is a reasonable approach that encourages wireless providers to deploy the most modern infrastructure for our constituents while maintaining local government authority in their rights-of-way.¹⁴

- 2) *The technical and legal ramifications of adopting the FCC regulatory framework for pole attachments in Pennsylvania while the FCC may proceed with future changes to its own regulations on pole attachments at the federal level. Would the Pennsylvania pole attachment regulations be automatically linked with the corresponding FCC regulatory framework changes at the federal level? Or, will the Commission be obliged to institute a new rulemaking or other proceedings with appropriate due process notice and comment under applicable Pennsylvania law in order to consider such future changes in the FCC's own regulatory framework for pole attachments?*

PECO believes the best course would be for the Commission to adopt the FCC's regulations as they exist currently and as they may be amended from time to time. This adoption

¹⁴ House Co-Sponsorship Memorandum accompanying House Bill No. 2564, available at: <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20170&cosponId=26002>

of current and new FCC regulations should include the regulatory language PECO proposes above to improve the effectiveness of Commission regulation by: (1) granting the Commission flexibility to interpret FCC regulations for the benefit of the Commonwealth; (2) recognizing that the Commission, unlike the FCC, has the primary responsibility to ensure the safety and reliability of pole distribution systems; and (3) reducing potential Commission workload by protecting voluntarily negotiated pole attachment agreements. In addition, PECO believes the Commission should reserve for itself the discretion to implement a rulemaking in the event the Commission does not like any particular changes the FCC might make.

3) Whether the Commission's existing exercise of jurisdiction, including ratemaking mandates, over public utility entities that are and will be subject to pole attachment regulations, will present any unique issues that may require Pennsylvania-specific changes to the FCC's applicable regulatory framework.

PECO appreciates the need to be mindful of electric ratepayers and electric safety issues. Two of the regulation changes that PECO proposed above address these concerns. First, PECO has asked the Commission to revise Section 77.3(b) to add the following language: "In addition, in determining whether rates, terms, and conditions are just and reasonable, the Commission will consider compliance with applicable safety standards and the maintenance and reliability of electric distribution, telecommunications and cable services."

Second, PECO has asked the Commission to revise Section 77.5(c) (which would adopt the FCC's rules) to add a new phrase at the end which states: ", but may deviate from those rulings to make its own determinations of whether rates, terms, and conditions of pole attachments are just and reasonable."

Both of these proposed changes would allow the Commission to make Pennsylvania-specific changes to for the benefit of the Commonwealth and to account for the Commission's regulation of public utilities.

C. COMMISSIONER KENNARD

- 1) If possible, estimate the forecasted number of disputes that might be brought to the Commission for resolution under the proposed adoption of existing FCC regulations on pole attachments;***

PECO has not had any disputes with attachers in recent memory but cannot predict the future. PECO would hope that Commission jurisdiction would not have the effect of encouraging attaching entities to become more aggressive, and for that reason PECO requests above that the Commission adopt a new regulation to protect existing and newly-negotiated agreements.

- 2) Comment on whether the FCC regulations provide a means for pole owners to address unauthorized attachment or whether some additional mechanism(s) is necessary;***

Unauthorized attachments and the safety violations they cause have been a problem for electric utility pole owners for a long time. They are also a problem for new attachers seeking access to the poles.

FCC rules currently allow for the recovery of audit costs and provide penalties for unauthorized attachments, but the penalty amount is too low to provide a meaningful deterrent. Currently, FCC rules permit unauthorized attachment fees in the following amount:

An unauthorized attachment fee of five times the current annual rental fee per pole if the pole occupant does not have a permit and the violation is self-reported or discovered through a joint inspection, with an additional sanction of \$100 per

pole if the violation is found by the pole owner in an inspection in which the pole occupant has declined to participate.¹⁵

PECO believes a more meaningful penalty for unauthorized wire attachments would be a flat fee of \$200 per unauthorized wireline attachment, not tied to any invitation to an inspection. PECO believes that unauthorized wireless attachments, which will become much more commonplace with the rollout of hundreds of thousands of wireless 5G antennas on utility poles, require a whole new perspective, since the FCC's 2011 Pole Attachment Order did not address the unique hazards associated with unauthorized wireless attachments. Because wireless attachments often are installed on top of electric utility poles in the electric space, and because any unauthorized wireless attachment in the electric space is potentially life threatening and a hazard to the electric system, the penalties associated with unauthorized wireless attachments must be more severe. To prevent unauthorized wireless attachments, PECO believes a meaningful deterrent would require a penalty of \$2,500 per unauthorized wireless attachment.

3) Request the parties provide any suggestions to streamline or otherwise improve the Commission's existing adjudicatory and dispute resolution processes;

PECO does not believe any changes are necessary, as PECO is unaware of any complaints that the current process is too slow.

4) Comment on the value of adopting an expedited dispute resolution process similar to that used in New York, pursuant to the NY Public Service Commission's Order Adopting Policy Statement on Pole Attachment, issued on August 6, 2004;

As explained in response to question 3, PECO does not believe any changes are necessary.

¹⁵ *Implementation of Section 224 of the Act, A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, at ¶115 (2011).

5) *Provide comment and suggestions on the creation of a comprehensive registry of poles and attachments maintained by the pole owner accessible by for current and future pole attachers;*

PECO strongly objects to this concept of a comprehensive registry of pole and attachments. Establishing and maintaining such a registry would require extremely expensive pole surveys and an enormous effort, which would all become obsolete as soon as the several-year process to survey the entire system is completed, making it useless to attaching entities.¹⁶ Even if the availability of space on poles could be collected and maintained, that information alone is insufficient to determine whether a pole can accommodate additional attachments.¹⁷ Moreover, information about electric utility pole and conduit distribution is highly confidential because of national security, public safety, electric reliability, and even competitive concerns. Consistent with current FCC policy, many utilities already provide maps on a confidential basis to attaching entities who request and pay for this information. There is no need to change this system.

6) *Provide comment on whether standardized agreements or tariffs for pole attachments should be developed; and*

PECO already has a standardized agreement that attaching entities currently negotiate by adding very few changes. PECO accordingly believes the current system is not broken and does not require any change.

¹⁶ The cost of conducting such an audit 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 huge dollar amount does not even count the back-office resources PECO would need to tie-up full time for that five-year period. At the end of this five-year survey, most of the data collected already would be dated. Moreover, trying to maintain such a database after it is completed would also be extraordinarily time consuming and expensive.

¹⁷ In addition to calculating required NESC clearances, the size and weight of any proposed attachments also must be determined and compared to the existing load. Field survey work would still be required to review the poles and the routes of the cable installation, to verify existing attachments and 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., before installation. Easement restrictions would also need to be evaluated.

7) *Comment on the value of establishing an ongoing working group across public and private entities discuss pole attachment issues and ideas.*

PECO has participated in numerous working groups associated with other issues before the Commission. PECO has no objection to such working groups, as long as the mandate for the working group is clear.

D. COMMISSIONER SWEET

I am compelled to express my concerns, however, with the additional caseload and demands on the Commission's resources that this undertaking has the potential to impose. This impact on our resources has not yet been quantified, so at this point we have no idea of the potential cost to the Commission of this undertaking nor have we identified any new revenue sources, such as assessments under Section 510 of the Public Utility Code, that will provide this Commission the revenues necessary to address these new responsibilities.

PECO understands these concerns about regulatory burdens. To preserve Commission resources, PECO proposes above that a new section be added to proposed Chapter 77 to protect existing and newly-negotiated pole attachment agreements. PECO believes that this regulation PECO proposes to protect existing and newly-negotiated agreements would eliminate unnecessary and improper disputes that would need Commission and Commonwealth Court adjudication.

IV. CONCLUSION

PECO appreciates the opportunity to comment on the Commission's Notice of Proposed Rulemaking and asks that these comments be favorably considered.

Respectfully Submitted,



John C. Halderman (Pa. No. 34453)
PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
Phone: 215.841.4263
Fax: 215.841-4474
john.halderman@exeloncorp.com
For PECO Energy Company

October 29, 2018