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E-File

October 29, 2018

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



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

Dear Ms. Chiavetta:

Enclosed for filing on behalf of PPL Electric Utilities Corporation ("PPL Electric") is an original of PPL Electric's Comments in the above-captioned proceeding. These Comments are being filed pursuant to the Notice of Proposed Rulemaking issued on July 13, 2018 in the above captioned proceeding.

Pursuant to 52 Pa. Code § 1.11, the enclosed document is to be deemed filed on October 29, 2018, which is the date it was filed electronically using the Commission's E-filing system.

If you have any questions regarding these comments, please call me or Bethany L. Johnson, Manager – Regulatory Operations for PPL Electric at (610) 774-7011.

Very truly yours,

Michael J. Shafer

Enclosures

cc via email: Shaun A. Sparks
Colin W. Scott

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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
PPL ELECTRIC UTILITIES CORPORATION



I. BACKGROUND

On June 14, 2018 the Pennsylvania Public Utility Commission (“Commission” or “PUC”) passed the Motion of Commissioner Norman J. Kennard to begin a rulemaking to assert Commission jurisdiction over pole attachments pursuant to the Telecommunications Act of 1996 (“TA96”). TA96 provides that the Federal Communications Commission (“FCC”) regulates pole attachments by default but contains procedures by which states may reverse-preempt FCC jurisdiction over pole attachments. The proposed rulemaking asserts Commission jurisdiction over pole attachments and adopts the FCC’s regulations over pole attachments in totality. Subsequently, on September 29, 2018, the Notice of Proposed Rulemaking (“NOPR”) was published in the Pennsylvania Bulletin and directed interested parties to file Comments within 30 days of the notice being published in the Pennsylvania Bulletin, and Reply Comments 15 days thereafter.

In accordance with the NOPR, PPL Electric Utilities Corporation (“PPL Electric” or “the Company”) submits the following Comments.

II. COMMENTS

PPL Electric is a public utility and an electric distribution company (“EDC”) as defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 102, 2803. PPL Electric furnishes electric distribution, transmission, and default supply services to approximately 1.4 million customers throughout its certificated service territory, which includes all or portions of 29 counties and encompasses approximately 10,000 square miles in eastern and central Pennsylvania.

A. General Comments

PPL Electric is generally supportive of the Commission's action to exercise reverse-preemption of the jurisdiction of the Federal Communications Commission over pole attachments under 47 U.S.C. § 224(c). The Company believes that the 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. PPL Electric understands the PUC's approach in adopting the FCC rules in place at the time the PUC assumes jurisdiction so as to not cause confusion to the processes already established. However, PPL Electric does not believe that the PUC regulations should remain in lock step with the FCC regulations in the future. Doing so will limit the PUC's ability to develop solutions that address Pennsylvania specific issues.

The Company believes that state jurisdiction may allow for many benefits, such as a more streamlined make-ready construction process that adequately addresses safety and reliability concerns. PUC jurisdiction may also promote a more robust and timely process for dispute resolution. PPL Electric also believes that the Commission is in the best position to address pole attachment rates that are fair to both the pole owner and the attacher while avoiding electric utility customers subsidizing telecommunications attachments.

However, exercising reverse-preemption of the jurisdiction of the FCC over pole attachments is not a panacea. PPL Electric believes that many challenges to providing rural broadband will remain even after a change of jurisdiction has been completed. Pole attachment regulations, whether under the purview of the FCC or the PUC, do not apply to customers being served by municipalities and co-ops. Likewise, reverse-preemption does nothing to change the economic challenges of constructing expensive broadband infrastructure to sparsely populated areas of the Commonwealth. The rules governing attachments to EDC's poles are but one aspect of the larger policy discussion surrounding rural broadband expansion.

The NOPR provides significant detail on the last decade of history and changes to the broadband environment and rules governing pole attachments. The Commission also acknowledges the changes pending before the FCC that will take effect in February 2019. The PUC regulations, as proposed, suggest that any amendments to the existing FCC regulations would be automatically adopted by the state. Should this not be the Commission's intent, then the Company recommends that the proposed regulations be amended to adopt the FCC regulations at a date specific. If the PUC wishes to adopt future FCC amendments or otherwise change the pole attachment regulations, the Commission should initiate a new rulemaking or other proceeding with appropriate due process notice under Pennsylvania law. As written, there is potential for confusion should changes to the FCC regulations conflict with changes established through the state process.

B. Transition from FCC to PUC Regulatory Framework

The Statement of Vice Chairman Place requests comments on the legal and technical interactions arising out of the transition from FCC to PUC jurisdiction. PPL Electric agrees that the Commission's proposal to adopt the current FCC regulations in totality is an efficient method for the PUC to assume jurisdiction over pole attachments. Given the recent revisions to the FCC regulations, the Company requests clarification on which version of the FCC regulations is being adopted.

There does appear to be several areas where the current FCC regulations, which if adopted by the PUC, would be inconsistent with current PUC regulations. As an example, the FCC regulations provide for a pole attachment complaint procedure. *See* 47 C.F.R. § 1.1401, *et seq.* This procedure differs from the PUC's informal and formal complaint procedure. PPL Electric requests clarification as to which regulation would control if there is a conflict.

The Company does not support the automatic amendment of PUC regulations whenever the corresponding FCC regulations are amended. This policy would violate fundamental due process protections in the regulatory rulemaking process. In addition, Pennsylvania stakeholders would not

have a direct forum to voice concerns over rule changes at the FCC that would ultimately change Pennsylvania regulations. This procedure would also not be in the best interest of Pennsylvania residents. One of the benefits of PUC reverse-preemption of pole attachment regulations is that the PUC is in a better position than the FCC to address Pennsylvania specific issues. If the PUC regulations simply mirror federal regulations an opportunity is lost to develop solutions that address situations that may be unique for Pennsylvania stakeholders and residents.

C. Lack of Consensus

The Statement of Chairman Brown requests comments on how to address rules in which there is a lack of consensus from Pennsylvania providers. PPL Electric believes that the Commission's processes regarding rulemakings or other proceedings provide a means which is consistent with due process rights to gather data from all stakeholders and establish a strong evidentiary record to support changes sought by parties or the Commission. Additionally, once under Pennsylvania jurisdiction, and as raised by Commissioner Kennard, the Commission often establishes working groups to bring stakeholders together to share ideas and opinions in a less formal setting in an attempt to gain consensus on issues. The Company believes there is great value in establishing a pole attachment working group and looks forward to participating should one be established.

D. Unauthorized Attachment

The FCC regulations do not provide a direct means for pole owners to address unauthorized attachments, rather pole owners are required to enforce the terms of their pole attachment agreements which prohibit unauthorized attachments. PPL Electric does not believe that any additional enforcement mechanism is necessary. In the Company's experience, unauthorized attachments have only occurred with a limited number of attachers. In most situations, PPL Electric has been able to cooperatively resolve the unauthorized attachments with the offending attacher. In the unusual instance where there has been a systemic effort to place a large amount of unauthorized attachments

to PPL Electric's poles, the pole attachment agreement has provided for an adequate enforcement remedy.

E. Streamline/Improvements to Dispute Resolution Process

PPL Electric believes that the existing FCC adjudicatory and dispute resolution processes are a starting point on which the PUC can build. The dispute resolution process would benefit from a state level perspective which holistically evaluates and balances the safety and reliability of the electric distribution system, adequate cost recovery for attachments, and the need for timely access to utility infrastructure.

The Company also believes the PUC should consider eliminating certain "self-help" remedies under the FCC regulations in anticipation of a more efficient dispute resolution process. Self-help remedies allow attachers to hire their own contractors to access utility poles and perform make-ready construction activities if the pole owners have failed to meet FCC timelines. The policy behind FCC self-help remedies is that attachers were unable to receive timely decisions from the FCC. If the PUC is able to render timely pole attachment decisions it eliminates the need for self-help remedies. PPL Electric is supportive of eliminating self-help remedies, especially for self-help in the electric space where there are substantial safety and reliability concerns created from third parties working on PPL Electric's poles.

F. Pole Registry

At the federal level, the concept of a pole registry database has been thoroughly discussed and ultimately not adopted. Proponents of a pole registry database have argued that such a system would allow for more efficient pre-planning of attachment projects and help identify infeasible applications early in the process. *See* "Comments of the American Cable Association on the Notices of Proposed Rule Making", pgs. 14-15, June 15, 2017, FCC Dockets WC 17-84, WT 17-79. These arguments ignore the fact that there are currently adequate resources available to aid attachers in this pre-planning due diligence. PPL Electric believes that the development and maintenance of the

database, including proper cybersecurity protections, would be unduly burdensome and costly yet provide little benefit. Utilities already have unique asset management tools to track and locate their assets, and conversion and maintenance of this information to a centralized database on a regular basis would require significant effort. As a matter of normal operations, utilities may be removing, installing, or otherwise maintaining poles on a daily basis. Routine utility operations alone would require frequent updates to such a pole database system and utilize extensive resources.

Additionally, attachers would still be required to contact utilities to confirm location and pole information. Many utilities currently have an online application portal where prospective attachers can apply for attachments to utility poles which are shown on a map interface. This is in addition to the many publicly available resources which can aid attachers in early project planning. PPL Electric believes that there is little benefit for such a costly endeavor.

G. Standardized Agreements or Tariffs

PPL Electric does not believe that standardized agreements and tariffs are appropriate. Not all attachers are similarly situated with each having distinct business models and equipment. In turn, pole attachment agreements must be flexible enough to accommodate the differing needs of attachers. While standardization offers many benefits, standardized pole attachment agreements will limit the ability of pole owners and attachers to negotiate agreements which are appropriate for a particular attacher. This lack of flexibility would not serve the pole owner or attachers' best interests.

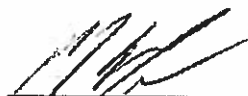
III. CONCLUSION

In closing, PPL Electric is supportive of the Commission's Proposed Rulemaking to assert PUC jurisdiction over pole attachments pursuant to the Telecommunications Act of 1996. The Company appreciates the Commission seeking additional comments on more detailed areas of discussion regarding unauthorized attachments, improvements to dispute resolution, pole registry, and standardized agreements. These areas will likely be better resolved through a working group

and/or future rulemaking proceeding. The company looks forward to future dialogue on these issues through those channels.

PPL Electric Utilities Corporation respectfully requests that the Commission take these Comments into consideration in preparing its Final Order.

Respectfully submitted,



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