

**Legal Department**

Exelon Business Services Company  
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Business Services  
Company

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May 21, 2012

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

RE: Access Agreement between PECO Energy Company and  
Philadelphia Water Department, City of Philadelphia

RECEIVED  
2012 MAY 21 AM 11:06  
PA P.U.C.  
SECRETARY'S BUREAU

Dear Ms. Chiavetta:

Enclosed for filing and approval pursuant to §507 of the Public Utility Code is an original and one copy of an Access Agreement between PECO Energy Company and Philadelphia Water Department, City of Philadelphia for access to 6 aerial poles located at Mingo Avenue and Bartram Avenue in Philadelphia, Pennsylvania.

Kindly advise me of the Commission's approval thereof. Enclosed for your convenience is a self-addressed U.S. postage paid envelope.

Very truly yours,



Merrick L. Friel  
Senior Legal Analyst

Enclosures

cc: Dorien Couch

RECEIVED

ACCESS AGREEMENT

Rec'd  
RE&F  
MAY 17 2012

2012 MAY 24 AM 11:07

This **ACCESS AGREEMENT** ("Agreement") is made this 14<sup>th</sup> day of MAY P.U.C. 2012, by and between PECO Energy Company ("Company") and the City of Philadelphia ("City") through the Philadelphia Water Department ("PWD"). Company and the City are each referred to as a "Party" and collectively as the "Parties" herein.

**WHEREAS**, the City owns the Mingo Creek Basin service road located on Mingo Avenue at the intersection of Mingo Avenue and Bartram Avenue, Philadelphia, PA 19153 ("Premises"), and

**WHEREAS**, the City also owns six utility poles ("Poles") located on the Premises, and

**WHEREAS**, the Company installed messenger wire and lashed fiber optic communication cable ("Facilities") on the Poles mistakenly believing the Company owned the Poles, and

**WHEREAS**, the City wishes to grant to Company access to the Premises only under the terms of this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants, terms and conditions set forth herein, the Parties intending to be legally bound agree as follows:

1. **Facilities, Term.**

(a) The Facilities constructed hereunder shall be in accordance with a plan, known as PECO File Number **29-10740, Quad No. 57A4**, which is incorporated into this Agreement and attached as **Exhibit A**. Company shall not expand, alter, or replace the Facilities without City's approval.

(b) The initial term of this Agreement ("Term") shall be one year from the date of this Agreement. The Parties may renew this Agreement in writing for additional periods of one year at Company's request with City's approval.

(c) No legal title, leasehold or other interest in the Premises or appurtenances thereto shall be deemed or construed to have been created or vested in the Company by anything contained in this Agreement.

2. **Maintenance, Repair and Removal.**

(a) The Company may access the Premises solely to maintain, repair or remove the Facilities. Such use shall include pedestrian and vehicular access along with all necessary materials and equipment.

(b) The Company may access the Premises to trim, cut down, and/or remove all trees, roots, and tree branches, to the extent determined necessary by the Company, to provide sufficient clearance for the maintenance of the Facilities.

(c) All work related to the Facilities shall be at the sole expense of the Company and shall be completed in a good and workmanlike manner.

(d) The City shall not unreasonably interfere with the Company's maintenance, repair, removal or use of the Facilities.

(e) The City shall not be responsible for any damage to the Facilities resulting from Pole failure or collapse, however caused, or otherwise.

(f) If the Facilities are no longer necessary for Company's operation, Company shall remove the Facilities from the Premises to the satisfaction of the City.

3. **Security.**

(a) The Premises is fenced for security purposes. Company shall coordinate all access described in this Agreement with the City at least forty-eight (48) hours in advance of such access. For such regular access, Company shall contact PWD Flow Control by calling the PWD standby individual for Flow Control via the City's Municipal Radio Dispatcher at 215-686-4514, or by calling the contacts listed on the PECO Maintenance trouble list for the Mingo Creek Pump Station.

(b) In the event of an emergency, the Company may gain access by calling the PWD standby individual for Flow Control via the City's Municipal Radio Dispatcher at 215-686-4514, or by calling PWD Security via the PWD Load Control Operator at 215-685-9609.

4. **Company's Maintenance of the Premises.**

(a) The Company shall maintain and keep all portions of the Premises used by the Company in a clean and orderly condition, free of broken glass, debris, garbage, and rubbish brought onto the premises by the Company.

(b) Company shall not commit or cause any waste, damage, disfigurement or injury to the Premises, including the Poles. Company shall promptly repair, at Company's sole cost and expense, any injury or damage to the Premises, including the Poles, caused by Company, its officers, employees, agents, representatives, invitees, contractors, and subcontractors to substantially the same condition as existed prior to such injury or damage.

(c) If the City determines it must conduct emergency maintenance on any part of the Premises, including the Poles, related to Company's presence, the City may charge the reasonable costs of such repairs to the Company. In the event the City performs work pursuant to this Section, or expends any funds in performance of such work for labor, use of equipment, supplies, materials, and the like, the Company shall reimburse the City upon written demand, within thirty (30) days of receipt thereof for all actual costs reasonably incurred by the City hereunder.

(d) Company shall not knowingly allow fluid to leak from any vehicles or equipment while on the Premises. In the event of a sudden leak occurrence, Company shall perform proper containment and cleanup to the satisfaction of the City.

(e) Except in an emergency, no maintenance or repair shall be performed on the Premises to any vehicles or equipment.

5. **Insurance.**

(a) Company shall procure and maintain, and shall cause its contractors and subcontractors to procure and maintain, at their sole cost, throughout the Term, insurance of the types and minimum limits of coverage set forth on **Exhibit B** attached hereto and made a part hereof. All insurance shall be procured from reputable insurers who are acceptable to City and authorized to do business in the Commonwealth of Pennsylvania. All insurance required herein shall be written on an "occurrence" basis and not a "claims-made" basis.

(b) Such coverage shall also include insurance against such other hazards, risks or perils, and in such amounts as reasonably may be requested by the City and as at the time are customarily insured against with respect to improvements similar in character, size, general location, use and occupancy to the Premises.

(c) The City of Philadelphia, its officers, employees and agents, shall be named as additional insureds on all policies required hereunder except the Workers Compensation and Employers Liability policies. All such policies shall include an endorsement stating that the coverage afforded to the additional insureds will be primary to any other coverage available to them.

(d) Certificates of insurance evidencing the required coverage shall be submitted to the Department of Risk Management (1515 Arch Street, 14th Floor, Philadelphia, PA 19102, Attention: Deputy Finance Director for Risk Management), and the Philadelphia Water Department (1101 Market Street, 5<sup>th</sup> Floor, City of Philadelphia, PA 19107, Attention: Deputy Water Commissioner - Operations) on or before the execution date of this Agreement and in any event prior to entering the Premises. Company shall furnish certified copies of the original policies of all insurance required under this Agreement at any time within ten (10) days after written request by City.

(e) All insurance policies shall provide for at least thirty (30) days prior written notice to be given to City in the event coverage is materially changed, canceled or not renewed. At least ten (10) days prior to the expiration of each policy, Company shall deliver to City an original certificate evidencing a replacement policy to become effective immediately upon the termination of the previous policy.

(f) Company shall furnish the City with proof that the premiums for all insurance required hereunder have been paid in full. Such proof shall be provided in writing at the time of the delivery of the certificate of insurance.

(g) If Company fails to cause such insurance to be maintained, City shall not be limited in the proof of any damages which City may claim against Company or any other person or entity to the amount of the insurance premium or premiums not paid or incurred and which would have been payable upon such insurance, but the City shall also be entitled to recover as damages for such breach the uninsured amount of any loss and damages, expenses of suit and costs, including without limitation, reasonable cancellation fees, suffered or incurred during any period when Company shall have failed or neglected to provide insurance as required herein.

(h) The insurance requirements set forth herein are not intended and shall in no way modify, limit or reduce the indemnifications made in this Agreement by Company to City or limit Company's liability under this Agreement to the limits of the policies of insurance required to be maintained by Company hereunder.

(i) From time to time, and in any event not more frequently than once every year, the City may, upon thirty (30) days notice to Company, reasonably adjust the amounts, types and deductibles of the insurance coverage required hereunder.

(j) Company vehicles entering the Premises related to this Agreement shall be properly registered, inspected, and insured in accordance with **Exhibit B**.

(k) Notwithstanding the foregoing, the Company may self-insure for the required insurance coverage as part of a program of corporate self-insurance.

## 6. **Indemnification.**

Company shall indemnify, hold harmless, and defend the City, and its respective officials, agents, employees, contractors or subcontractors ("Indemnitees") from and against all damages, losses, liabilities and claims, arising from Company's use, occupancy, conduct, operation, management and improvements of the Premises or from any work or thing whatsoever done in, on or about the Premises by the Company or arising from any act, neglect or negligence of Company or its agents, contractors, subcontractors, servants, employees or invitees, including any act, or arising from any accident, injury or damage whatsoever caused to any person or any entity whatsoever during the Term in, on or about the Premises, and from and against all costs, expenses and liabilities incurred in connection with any claim or action or proceeding brought thereon (including without limitation the reasonable fees of attorneys, investigators and experts); and in case any action or proceeding be brought against any Indemnitee(s) by reason of any such claim, Company, upon notice from such Indemnitee(s), covenants at Company's cost and expense to resist and defend such action or proceeding or to cause it to be resisted and defended by an insurer.

## 7. **Release.**

In consideration of the rights granted to Company under this Agreement, Company does hereby remise, quitclaim, release and forever discharge, and by these presents does for Company's administrators, successors, and assigns, and Company's agents, employees, officers,

board, contractors, subcontractors, invitees and any person claiming under or through them hereby remise, quitclaim, release and forever discharge the City, and its successors, assigns, agents, employees, officers, departments and boards, acting officially or otherwise (the "Releasees") from any and all, and all manner of, actions and cause of action, suits, claims and demands whatsoever at law or in equity which Company, or any of them may have against any and all Releasees, relating in any way whatsoever to any and all access by Company, its agents, employees, contractors, subcontractors, officers, invitees and/or boards in, on or about the Premises. Company hereby voluntarily assumes all risk of loss, damage, or injury, including death, that may be sustained by Company, its agents, employees, contractors, subcontractors, officers, invitees or boards while in, on or about the Premises.

8. **Condition of Premises.**

Company acknowledges and agrees that Company's access granted herein is subject to the "AS IS" condition of the Premises, including without limitation all defects latent and patent; neither the City nor any other Indemnitee(s) make any representation as to the condition of the Premises.

9. **Agreement Applies to Contractors.**

Company shall cause each of its contractors and subcontractors to adhere to the terms of this Agreement.

10. **Miscellaneous.**

(a) **Headings.** The headings in this Agreement are for convenience only and are not a part of this Agreement. The headings do not in any way define, limit, describe or amplify the provisions of this Agreement or the scope or intent thereof.

(b) **Governing Law.** This Agreement shall be governed in accordance with the laws of the Commonwealth of Pennsylvania without regard to the conflicts of law doctrines thereof. The parties to this Agreement agree to submit to the jurisdiction of courts, whether federal or state, located in Philadelphia, Pennsylvania.

(c) **No Joint Venture.** Nothing in this Agreement shall be construed as creating a joint venture or partnership between the City and the Company.

(d) **No Third-Party Beneficiaries.** Nothing in this Agreement is intended to confer a third-party beneficiary right upon any person or entity.

(e) **Invalidity of Certain Provisions.** If any term or covenant of this Agreement, or the application thereof, shall to any extent be held invalid or unenforceable, the remaining terms and covenants of this Agreement, or the application of such terms or covenants, shall not be affected thereby and each term and covenant of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(f) **PUC Approval.** Company shall file a copy of this Agreement with the Pennsylvania Public Utility Commission (the "PUC") promptly upon the execution hereof. This Agreement

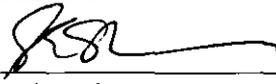
shall be effective the 33<sup>rd</sup> day after such filing unless prior to such date the PUC institutes proceeding as provided in Section 507 of the Pennsylvania Public Utility Code, Title 66. In the event such proceedings are instituted, this Agreement shall become effective only after approval by the PUC.

**[signature page follows]**

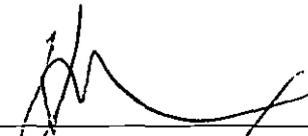
**IN WITNESS WHEREOF**, and intending to be legally bound hereby, the Parties have caused this Agreement to be duly executed as of the date first above written.

**APPROVED AS TO FORM**

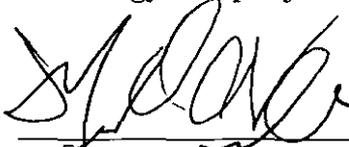
Shelley R. Smith  
City Solicitor

By:   
\_\_\_\_\_  
Sarah E. Stevenson  
Assistant City Solicitor

**THE CITY OF PHILADELPHIA by its  
Water Department**

By:   
\_\_\_\_\_  
Howard M. Neukrug  
Commissioner

**PECO Energy Company**

By:   
\_\_\_\_\_  
Michael A. Williams  
Director, Real Estate & Facilities

APPROVED
RE
FORM


**Exhibit A**

**PECO File Number 29-10740, Quad No. 57A4**

**RECEIVED**

**2012 MAY 24 PM 3:10**

**PA P.U.C.  
SECRETARY'S BUREAU**

POLE HWT  
 BUTT SPlice 72CT. ADSS F.O.C.  
 TO 12CT. F.O.C.  
 LEAVE 100' COIL FOR EACH

PULL 5675' OF 111 BARE 72CT F.O.C.  
 & 2-CELL MAXWELL THROUGH EXISTING  
 PENROCK CONDUIT W/ EXISTING FIBER

MAKE AERIAL ATTACHMENT TO BRIDGE  
 PENETRATE & SEAL EX. JUNCTION BOX

PLACE 35' OF 9.6MM AERIAL  
 STRAND & 72CT F.O.C.

Pole 15KV 6-1

POLE HWT  
 PLACE RISER W/ "U" GUARD  
 PULL 295' OF 131 1.25" 100T'S  
 & 111 72 CT. ADSS F.O.C.  
 THRU EX. PECK CONDUIT

POLE #630890  
 PLACE RISER W/ "U" GUARD

REFER TO Penrose - Island Rd Sub Link 6-DWG  
 FOR UNDERGROUND CONTINUATION



FIBER OPTIC SYSTEM			
72 CT. ADSS FIBER OPTIC CABLE (FOC) PENROSE - ISLAND RD.			
DATE	BY	CHKD	APP'D
07.25.11	...	...	...
PENROSE - ISLAND RD - Link 07.dwg			



RECEIVED

**Exhibit B**

2012 MAY 24 PM 3: 10

**Insurance**

PA P.U.C.  
SECRETARY'S BUREAU

1. Workers' Compensation and Employers' Liability.
  - a. Workers' Compensation: Statutory Limits
  - b. Employer's Liability: \$100,000 Each Accident – bodily injury by accident; \$100,000 Each Employee – Bodily Injury by Disease; and \$500,000 Policy Limit – Bodily Injury by Disease.
  - c. Other states insurance including Pennsylvania.
  
2. General Liability Insurance.
  - a. Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 advertising injury; \$2,000,000 general aggregate and \$1,000,000 aggregate for products and completed operations. The City may require higher limits of liability if, in the City's sole discretion, the potential risk warrants.
  - b. Coverage: Premises operation; blanket contractual liability; personal injury liability; products and completed operations; independent contractors, employees and volunteers as additional insureds; cross liability and broad form property damage (including completed operations), explosion, collapse and underground damage (XCU).
  
3. Automobile Liability Insurance.
  - a. Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
  - b. Coverage: Owned, non-owned, and hired vehicles.
  
4. Umbrella Liability Insurance at limits totaling \$5,000,000 per occurrence when combined with the Employers Liability, General Liability and Auto Liability insurance required above.
  
5. Professional Liability Insurance (for architectural and engineering services)
  - a. Limit of Liability: \$1,000,000 with a deductible not to exceed \$50,000.
  - b. Coverage: Errors and omissions including liability assumed under Contract.
  - c. Professional Liability Insurance may be written on a claims-made basis provided that coverage for occurrences arising out of the performance of the services required under the Contract shall be maintained in full force and effect under the policy or "tail" coverage for a period of at least two (2) years after expiration of the Contract.

**BSC Insurance**

Exelon Corporation  
2301 Market Street, S21-2  
P.O. Box 8699  
Philadelphia, PA 19101-8699

Telephone 215.841.5332  
Fax 215.841.5432  
www.exeloncorp.com

May 2, 2012

Philadelphia Water Department  
1101 Market Street, 5<sup>th</sup> Floor  
Philadelphia, PA 19107  
Attention: Deputy Water Commissioner - Operations

Re: Access Agreement for Mingo Creek Basin service road

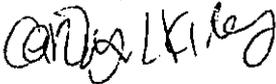
With regard to the above referenced agreement, please be advised that PECO Energy Company is covered under a self-insurance program maintained by its parent company, Exelon Corporation, and we will self insure its obligations as they may arise. PECO Energy Company is thus hereby named as an insured to this program. The self-insurance program is more fully described as follows:

1. **Commercial General Liability** – Exelon Corporation maintains a self-insured retention of \$10 million per occurrence. We also maintain excess liability insurance above this self-insured retention.
2. **Workers' Compensation and Employer's Liability** – Exelon is a qualified self-insurer in Pennsylvania for all statutory benefits and employer's liability.
3. **Automobile Liability** – Exelon is a qualified self-insurer in Pennsylvania for automobile liability.
4. **Property/All Risk Insurance** – Exelon Corporation maintains excess "all risk" property insurance on a replacement cost basis with a self-insured retention of \$10,000,000.

Exelon Corporation shall consider the above-described program of self-insurance to be continuous and shall provide at least thirty (30) days prior written notice of cancellation to the addressee of this letter. This letter will also confirm that the City of Philadelphia its officers, employees and agents are hereby added as additional insureds under our self-insured program with respect to this agreement.

We trust this information is satisfactory. Should you have any questions, please contact the undersigned at (215) 841-4739.

Very truly yours,



Carolyn L. King  
Senior Insurance Analyst  
Exelon Corporation

**BSC Insurance**

Exelon Corporation  
2301 Market Street, S21-2  
P.O. Box 8699  
Philadelphia, PA 19101-8699

Telephone 215.841.5332  
Fax 215.841.5432  
www.exeloncorp.com

May 2, 2012

City of Philadelphia  
Department of Risk Management  
1515 Arch Street, 14th Floor  
Philadelphia, PA 19102  
Attention: Deputy Finance Director for Risk Management

Re: Access Agreement for Mingo Creek Basin service road

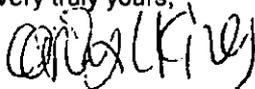
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We trust this information is satisfactory. Should you have any questions, please contact the undersigned at (215) 841-4739.

Very truly yours,



Carolyn L. King  
Senior Insurance Analyst  
Exelon Corporation

M. Friel

**Exelon**®

Business Services  
Company

Legal Department  
2301 Market Street/S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699



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0004277888 MAY 21 2011  
MAILED FROM ZIP CODE 19101

Rosemary Chavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265