

GRIESING LAW LLC

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January 27, 2020

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

**RE: Paul W. Memminger v. PECO Energy Company
PUC Docket No. C-2020-3015313**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the following:

1. *PECO Energy's Answer to Formal Complaint*
2. *PECO Energy's Preliminary Objection*

I have enclosed respective Certificates of Service showing that copies of the above documents were served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,


Edward Fisher, Esq

ETF/aml

Cc: Paul W. memminger

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PAUL W. MEMMINGER	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2020-3015313
	:	
PECO ENERGY COMPANY	:	
Respondent	:	


NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objections of PECO Energy Company within 10 days from service of this notice, a decision may be rendered against you. All pleadings, such as a Reply to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Edward T. Fisher, and where applicable, the Administrative Law Judge presiding over the issue.

File with:
Rosemarie Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

With a copy to:
Edward T. Fisher, Esq.
Counsel for PECO Energy Company
Griesing Law, LLC
1880 John F. Kennedy Boulevard, Suite 1800
Philadelphia, PA 19103

Dated at Philadelphia, PA, January 27, 2020



Edward T Fisher, Esquire
Counsel for PECO Energy Company
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PAUL W. MEMMINGER	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2020-3015313
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**PRELIMINARY OBJECTION OF RESPONDENT,
PECO ENERGY COMPANY**

Respondent, PECO Energy Company (“PECO Energy”), pursuant to 52 Pa. Code § 5.101(a)(4) respectfully petitions this Honorable Commission to dismiss the instant Complaint as legally insufficient.

1. On January 6, 2020, PECO Energy was served with a formal complaint filed by Paul W. Memminger (hereafter “Complainant”). A copy of the Complaint is attached hereto as Exhibit “1.”

2. In his Complaint, the Complainant alleges that PECO installed a wire across his property to an adjacent property. He claims this wire crosses his property at approximately twenty three (23) feet from a survey monument which was installed by a vendor that surveyed the aforementioned adjacent property. The Complainant alleges that he called PECO Energy about the wire and was told that the wire did not cross his property and that the wire would not be re-installed.

3. In his request for relief, the Complainant requests that PECO “move the wire so it does not cross my property.” See Exhibit “1.”

4. In essence, the Complainant is disputing whether PECO installed a wire that crosses his property.

5. PECO Energy simultaneously filed an Answer and the instant Preliminary Objection.

6. Pursuant to 52 Pa. Code § 5.101, preliminary objections may be filed against a complaint and dismissed for legal insufficiency. 52 Pa. Code § 5.101(a)(4).

7. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure. Equitable Small Transportation Intervenors. v. Equitable Gas Co., 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

8. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible. Roc v. Flaherty, 527 A.2d 211 (Pa. Cmwlth 1985).

9. A complaint must be able to recover under the law to survive a preliminary objection. Milliner v. Enck, 709 A.2d 417, 418 (Pa. Super. Ct. 1998) (“preliminary objection should be sustained only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover”).

10. All of the non-moving party’s averments must be taken as true for the sake of deciding the preliminary objection. County of Allegheny v. Commw. of Pa., 490 A.2d 402 (Pa. 1985).

11. The court does not, however, need to accept, “unwarranted inferences from facts, argumentative allegations, or expressions of opinions.” Feingold v. McNulty, 2009 Phila. Ct. Com. PI LEXIS 167, *3.

12. Section 703 of the Public Utility Code, 66 Pa. C.S.A. § 703(b) provides that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary to the public interest.

13. A hearing is required only when there is a disputed question of fact, and is not required to resolve questions of law. Dee-Dee Cab, Inc. v. Pa. Pub. Util. Comm'n, 817 A.2nd 593 (Pa. Commw. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

14. Here, the Commission lacks subject matter jurisdiction over this property dispute; therefore, the Complainant should be dismissed.

15. The Complainant raises allegations in his formal complaint pertaining to real property rights. The Commission has no subject matter jurisdiction to decide disputes over real property rights.

16. To state a claim over which the Commission has jurisdiction, the Complainant is required to allege a violation of the Code, Commission regulations, or Commission orders. 66 Pa.C.S. § 701; 52 Pa. Code § 5.21(a); West Penn Power Co. v. Pa. Pub. Util. Comm'n, 478 A.2d 947 (Pa. Cmwlth. 1984).

17. The Commonwealth Court stated, “Although the Public Utility Law (the Code) grants to the ... the Commission general supervisory and regulatory powers over public utilities, 66 Pa.C.S. §501, the Code does not confer an exclusive jurisdiction to decide all matters involving regulated public utilities.” Springdale Twp. v. Allegheny County Bd. Of Property Assessment, 467 A.2d 74, 77 (Pa. Cmwlth. 1983) quoting Virgilli v. Southwestern Pa. Water Auth., 427 A.2d 1251, 1253 (Pa. Cmwlth. 1981).

18. The Commission must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. Pa. Pub. Util. Comm'n, 43 A.2d 348 (Pa. Super. 1945).

19. Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. *Cf., Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), app. Denied, 637 A.2d 293 (1993).

20. Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

21. In this case, the allegation that PECO installed a wire over Complainant's property are not claims over which the Commission has jurisdiction. The Complainant's claim involves a violation of private property rights.

22. The Commission has determined that it is not the proper forum for resolving property rights controversies. Rather, such controversies are a matter for a court of general jurisdiction. *Anne E. Perrige v. Metropolitan Edison Co.*, Docket No. C-00004110 (Order entered July 3, 2003); *Fiorillo v. PECO Energy Co.*, Docket No. C-00971088 (Order entered September 15, 1999).

23. Thus, Complainant's complaint should be dismissed for lack of subject matter jurisdiction. The Commission cannot adjudicate substantive real property rights.

24. For the reasons set forth above, the Complainant's Complaint should be dismissed.

REQUEST FOR RELIEF

WHEREFORE, for the reasons set forth above, PECO Energy Company respectfully requests that your Honorable Commission summarily dismiss the Complainant's formal complaint for lack of subject matter jurisdiction.

DATED: January 27, 2020

Respectfully Submitted,



Edward T Fisher, Esquire
Counsel for PECO Energy Company
Griesing Law, LLC
1880 JFK Blvd., Suite 1800
Philadelphia, PA 19103
215-618-3720
efisher@griesinglaw.com

EXHIBIT 1

Botak, Amy:(PECO)

From: RA-PCESERVE@pa.gov
Sent: Monday, January 6, 2020 2:01 PM
To: Botak, Amy:(PECO)
Cc: Davis, Leslie:(PECO)
Subject: [EXTERNAL] PA PUC eServe Notice

Importance: High

Categories: Red Category

Dear Amy Botak,

A(n) **Formal Complaint** has been served in this proceeding. This document is docketed as **C-2020-3015313**. You may view this document at [Formal Complaint](#)

You are receiving this email because you are a(n) **Respondent** for this case and have agreed to be served electronically. By selecting electronic service (eService), you have agreed that this notification constitutes valid service. Electronic service of any and all documents will be in place of paper service.

Thank You,
Public Utility Commission
Commonwealth of Pennsylvania

** Please do not respond to this automatically generated email.
PUC has recently updated E-Service delivery E-Mail address to RA-PCESERVE@pa.gov. Please update your Address book and/or E-Mail rules accordingly.*

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

Filing this form begins a legal proceeding and you will be a party to the case. If you do not wish to be a party to the case, consider filing an informal complaint.

To complete this form, please type or print legibly in ink.

1. Customer (Complainant) Information

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name PAUL W. MEMMINGER
Street/P.O. Box 121 KILTIE DRIVE Apt #
City NEW HOPE State PA Zip 18938
County BUCKS

Telephone Number(s) Where We Can Contact You During the Day:

(215) 862-5893 (home) (215) 378-9090 (mobile)

E-mail Address (optional): PAULWMEMMINGER@GMAIL.COM

Utility Account Number (from your bill) 45760-00201

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name
Street/P.O. Box
City State Zip

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PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU

2. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

PECO An EXELON COMPANY

3. **Type of Utility Service**

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- | | |
|--|---|
| <input checked="" type="checkbox"/> ELECTRIC | <input type="checkbox"/> WASTEWATER/SEWER |
| <input type="checkbox"/> GAS | <input type="checkbox"/> TELEPHONE/TELECOMMUNICATIONS (local, long distance) |
| <input type="checkbox"/> WATER | <input type="checkbox"/> MOTOR CARRIER (e.g. taxi, moving company, limousine) |
| <input type="checkbox"/> STEAM HEAT | |

4. **Reason for Complaint**

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. Your complaint may be dismissed without a hearing if you do not provide specific information.

- The utility is threatening to shut off my service or has already shut off my service.
- I would like a payment agreement.
- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.
- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.
- Other (explain).
SEE ATTACHMENT 1

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

5. Requested Relief

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

MOVE THE WIRE SO IT DOES NOT
CROSS MY PROPERTY

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

6. Protection From Abuse (PFA)

Has a court granted a "Protection From Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection From Abuse" order for your personal safety or welfare?

YES

NO

If your answer to the above question is "yes," attach a copy of the current Protection From Abuse order to this Formal Complaint form.

7. Prior Utility Contact

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES No decision was issued mm

NO

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES

NO

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. Legal Representation

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (if known) _____

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

9. Verification and Signature

You must sign your complaint. Individuals filing a Formal Complaint **must** print or type their name on the line provided in the verification paragraph below and **must** sign and date this form in **ink**. If you do not sign the Formal Complaint, the PUC **will not accept it**.

Verification:

I PAUL W. MEMMINGER, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Paul W. Memminger 12/23/2019
(Signature of Complainant) (Date)

Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification **must** be signed by an authorized officer or authorized employee. If the Formal Complaint is **not signed** by one of these individuals, the PUC **will not accept it**.

10. Two Ways to File Your Formal Complaint

Electronically. You must create an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

Note: If you are appealing your Bureau of Consumer Services (BCS) decision, you must file your formal complaint by mail.

Mail. Mail the completed form with your original signature and any attachments, by certified mail, first class mail, or overnight delivery to this address:

Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

Note: Formal Complaints sent by fax or e-mail will **not** be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your Formal Complaint for your records.

121 KILTIE DRIVE/NEW HOPE, PENNSYLVANIA
18938

RECEIVED

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

December 21, 2019

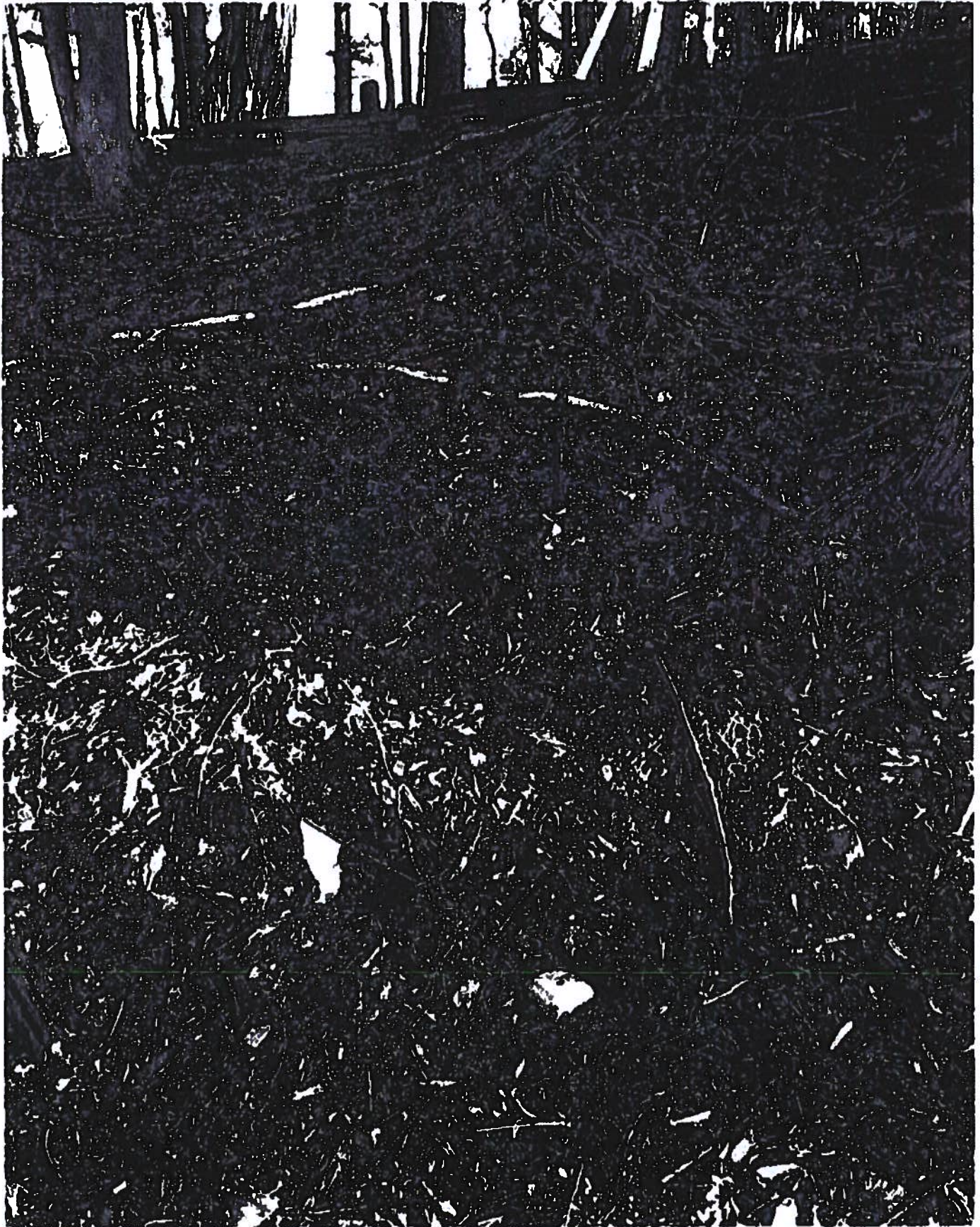
PECO installed a wire across my property to an adjacent property. I called PECO and was told that the wire did NOT cross my property and it would NOT be re-installed.

I then filed an informal complaint with the PUC (case # 3746267), which relied on an erroneous measurement made by a PECO employee (Kenneth M. Poulton) who did not know what a survey monument was and based his opinion on his own line of sight. This monument was installed by SiteWorks, the surveyor of the adjacent property.

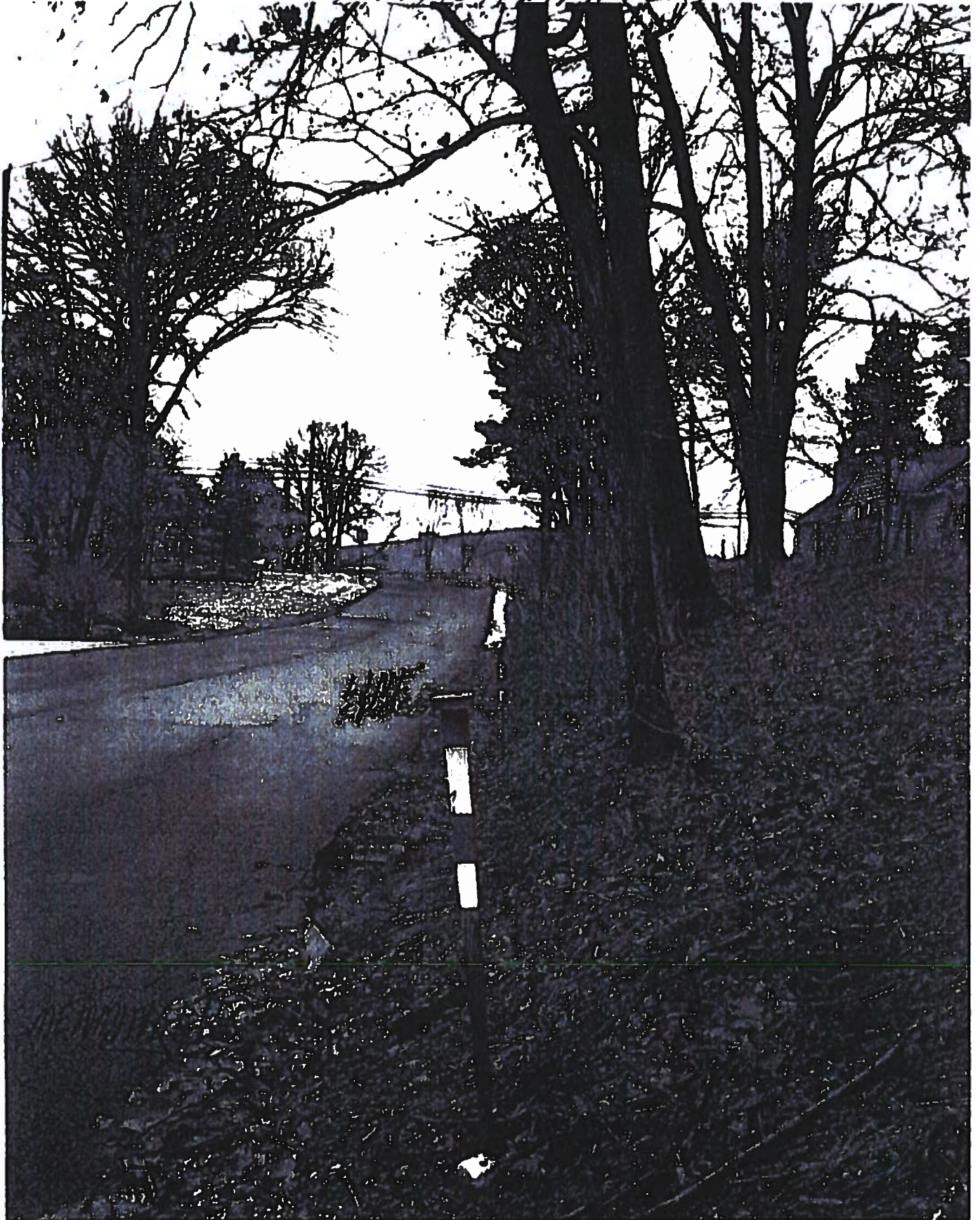
I continue to maintain that the wire crosses my property at approximately 23 feet from the monument.

ATTACHMENT I

ATTACHMENT II



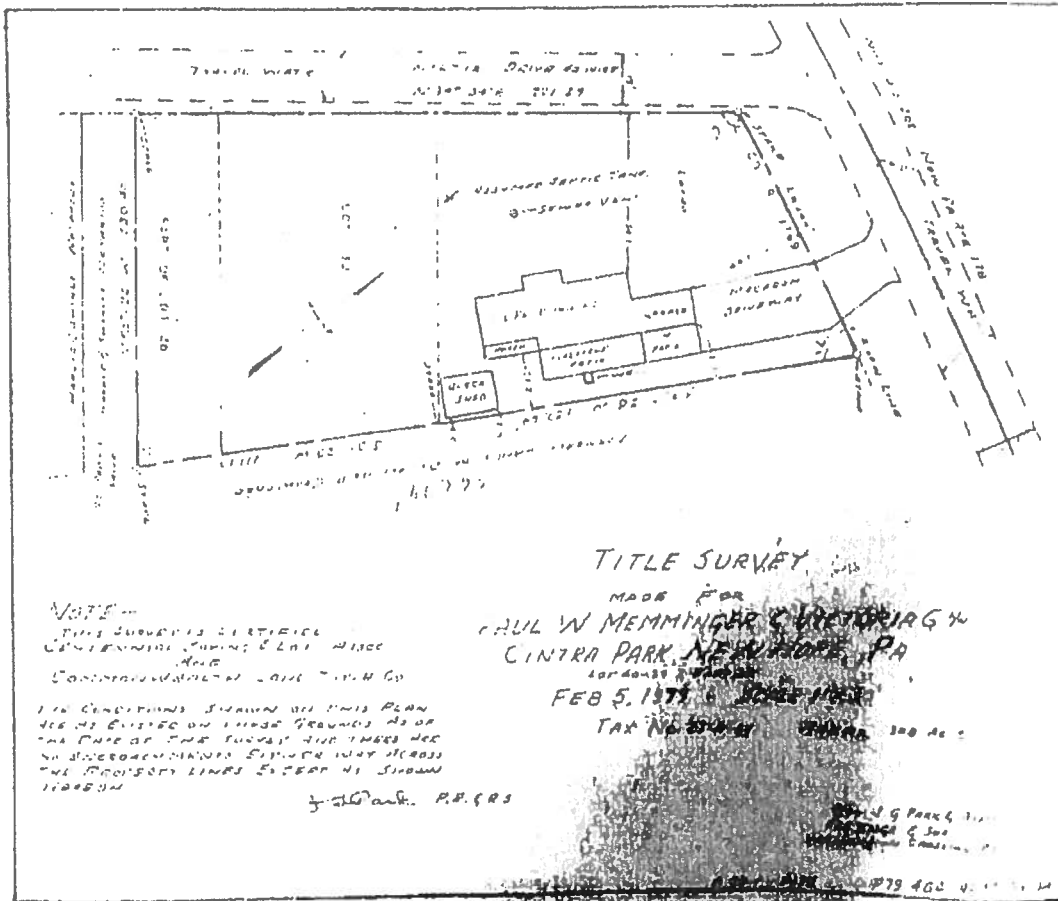
ATTACHMENT III



MURPHY

ATTACHMENT 2

RECEIVED



NOTE--
 THIS SURVEY IS CERTIFIED
 TO BE CORRECT AS SHOWN ON THIS PLAN
 AND TO BE THE TRUE AND CORRECT
 REPRESENTATION OF THE LAND AND
 THE CONDITIONS SHOWN ON THIS PLAN
 AS THEY EXISTED ON THESE GROUNDS AS OF
 THE DATE OF THIS SURVEY AND THERE ARE
 NO UNRECORRED EASEMENTS OR RIGHTS
 OF ANY KIND WHICH CROSS
 THE PROPERTY LINES EXCEPT AS SHOWN
 THEREON

TITLE SURVEY
 MADE FOR
 PAUL W MEMMINGER & VICTORIA G W
 CINTRA PARK, NEW HAVEN, PA
 FEB 5, 1977
 TAX No. 25444

J. G. Park, P.P.S.

CINTRA PARK, NEW HAVEN, PA

079 462 4...

PAUL W. VICTORIA MEMBER CAR
17 KILB DRIVE
NEW HOPKIN PA 17058

CERTIFIED MAIL



7016 0360 0002 2855 9233



1000



17120

U.S. POSTAGE PAID
NEW HOPKIN PA
17058
DEC 31, 19
AMOUNT
\$4.80
R2305M143055 8

SECRETARY
PENNSYLVANIA PUBLIC UTILITY COMMISSION
400 NORTH STREET
HARRISBURG, PA
17120

**BEFORE THE
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PAUL W. MEMMINGER	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2020-3015313
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

I, Edward T Fisher, hereby certify that I have this day served a copy of PECO Energy Company's Preliminary Objections in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Paul W. Memminger
121 Kiltie Drive
New Hope, PA 18938

DATED: January 27, 2020

Respectfully Submitted,



Edward T Fisher, Esquire
Counsel for PECO Energy Company
Griesing Law, LLC
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Philadelphia, PA 19103
215-618-3720
efisher@griesinglaw.com