

May 5, 2020

Via Electronic Filing

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

Re: Docket No. C-2019-3015187
MAW Communications, Inc. v. PPL Electric Utilities Corporation
Brief in Support of Unopposed Motion for an Extension of Time

Dear Secretary Chiavetta:

Attached for filing is the requested Brief of MAW Communications Inc. in support of the Unopposed Motion for an Extension of Time, efiled on April 24, 2020, in the above-captioned proceeding.

A copy of the attached Brief has been forwarded to the parties in the manner indicated on the attached Certificate of Service.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP

Margaret A. Morris

Margaret A. Morris

MAM/co
Enclosure

cc: The Honorable Charles E. Rainey, Jr., PA Public Utility Commission [w/encls]
The Honorable Joel Cheskis, PA Public Utility Commission [w/encls]
Service List [w/encl.]

**Re: Docket No. C-2019-3015187
MAW Communications, Inc. v. PPL Electric Utilities Corporation
Brief in Support of Unopposed Motion for an Extension of Time**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Via Electronic Mail

Michael J. Shafer, Esquire
Mallory J. Sweeney, Esquire
mjshafer@pplweb.com
mjsweeney@pplweb.com

*Attorneys for Respondent, PPL Electric
Utilities Corporation, formerly known as
Pennsylvania Power & Light Co.*

Joseph S. D'Amico, Jr., Esquire
jsdamico@flblaw.com

*Attorney for Respondent, PPL Electric
Utilities Corporation, formerly known as
Pennsylvania Power & Light Co.*

Dated: May 5, 2020

Margaret A. Morris

Margaret A. Morris, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

MAW COMMUNICATIONS, INC.,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2019-3015187
	:	
PPL ELECTRIC UTILITIES	:	
CORPORATION, FORMERLY KNOWN	:	
AS PENNSYLVANIA POWER & LIGHT	:	
CO.,	:	
	:	
Respondent.	:	
	:	

**BRIEF IN SUPPORT OF UNOPPOSED MOTION FOR AN ORDER GRANTING
AN EXTENSION OF TIME**

AND NOW, comes MAW Communications, Inc. (“MAW”), by and through its counsel, Reger, Rizzo & Darnall, LLP, and files this Brief in Support of its request for an extension of time pursuant to the Pennsylvania Public Utility Commission’s (“the Commission”) Emergency Order entered on March 20, 2020, (“*Order*”) to address Chief Administrative Law Judge Charles Rainey’s recent inquiry regarding the applicable statutory timeframe for the Commission to issue a final determination in the instant pole attachment dispute.

PPL Electric Utilities Corporation (“PPL”), through its counsel, has stated in an email dated April 24, 2020, that it will not oppose MAW’s request for an extension. As of the date of this filing, PPL continues to represent that it does not oppose any request for an extension of time.

In support of the foregoing, MAW states as follows:

RELEVANT PROCEDURAL BACKGROUND

1. On December 18, 2019, MAW filed its 2-Count Formal Complaint (“Complaint”).
2. Count I of the Complaint sets forth the legal basis for MAW’s contention that PPL has consistently denied MAW access to its Fiber Optic Network on its poles in the City of Lancaster, including dismantling portions of the network and refusing to allow MAW access to repair routine service outages to its own facilities. See Pa.C.S. § 1501.
3. Count II of the Complaint sets forth the legal basis for MAW’s contention that PPL continues to subject MAW to unjust and unreasonable rates, terms, and conditions of attachment on PPL poles in the City of Lancaster. See Pa.C.S. § 1304 and Pa.C.S. § 508.
4. On January 23, 2020, PPL filed Preliminary Objections and asserted, *inter alia*, that the Commission did not possess jurisdiction to hear the issues raised in the Complaint.
5. On the same date, January 23, 2020, PPL filed its Answer, denying MAW’s allegations.
6. On February 12, 2020, MAW filed its Reply to PPL’s New Matter.
7. On March 6, 2020, the Commission issued an Order denying PPL’s Preliminary Objections, concluding that the Commission has asserted jurisdiction over pole attachments in the Commonwealth of Pennsylvania. See Order Denying Preliminary Objections at pp. 5-6.
8. On March 18, 2020, the Commission certified to the Federal Communications Commission (“the FCC”) that pursuant to 47 U.S.C. § 224(c) and to the extent authorized by the Public Utility Code, 66 Pa.C.S. § 101 *et seq.*, the Commission has assumed primary jurisdiction over pole attachment disputes in the Commonwealth of Pennsylvania.

THE COMMISSION’S EMERGENCY ORDER

9. In the days that followed the Commission’s assertion of jurisdiction over pole attachment disputes, the Commission entered its *Order* acknowledging Governor Tom Wolf’s Proclamation of a Disaster Emergency in the Commonwealth of Pennsylvania due to the Covid-19 pandemic. Pursuant to the *Order*, deadlines in matters currently pending before the Commission ***may be extended for ninety (90) days***. *See, Order* at pp. 2, 4 (emphasis added).

10. On April 24, 2020, MAW filed its Unopposed Motion for an Order Granting an Extension of Time seeking a thirty (30) day extension of time to extend all applicable deadlines in the instant pole attachment dispute, pursuant to the *Order*.

JURISDICTION

11. This is a case of first impression before the Commission.

12. As set forth in the Complaint, on or about December 5, 2017, PPL filed a 2-Count Complaint in the Lehigh County Court of Common Pleas (Civil Action No. 2017-C-3755) (“Civil Case”) against MAW alleging breach of contract and seeking a permanent injunction requiring MAW to remove allegedly “unauthorized” attachments and enjoining MAW from any making any further attachments to PPL poles in the City of Lancaster.

13. The Civil Case ultimately involves the resolution of regulatory issues which are under the Commission’s exclusive jurisdiction.¹

¹ The Commission issued its Final Rulemaking Order on the assumption of primary jurisdiction over pole attachments on August 29, 2019. *See* Final Rulemaking Order, PUC Docket No. L-2018-3002672 (Order entered August 29, 2019). The Final Rulemaking Order states that the regulations will become effective upon publication in the Pennsylvania Bulletin. *Id.* at Paragraph 5; *see also* 50 Pa. B. 469. Pursuant to 52 Pa. Code § 77.3(a), the Commission established regulatory authority over the rates, terms and conditions of access to and use of utility poles sixty (60) days after the effective date of Chapter 77, on March 18, 2020.

14. Through the Commission, Pennsylvania has chosen to regulate pole attachments and therefore, the Commission has primary jurisdiction over the issues in the instant pole attachment dispute. See Order Denying Preliminary Objections at pp. 5-6.

15. Primary jurisdiction is a common-law doctrine that is utilized to coordinate judicial and administrative decision making. See e.g. Vertis Group v. Pa. PUC, 840 A.2d 390, 396 (Pa. Commw. 2003). The doctrine applies where a claim is cognizable in the civil courts and comes into play when a claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body. Id. Once the administrative tribunal has determined the issues are within its jurisdiction, the civil litigation may continue, guided in scope and direction by the nature and outcome of the agency determination. See Elkin v. Bell Tel. Co., 420 A.2d 371, 376-377 (Pa. 1980).

RELEVANT TIMEFRAME

16. As set forth above, MAW filed the Complaint on December 19, 2019.

17. Pursuant to FCC regulations governing pole attachment complaint procedures, final action on a complaint where a telecommunications service claims it has been denied access by a utility should be expected no later than 180 days from the date the Complaint is filed. See 47 CFR 1.141(a).

18. For all other pole attachment complaints, including complaints regarding the reasonableness of the rates, terms and conditions concerning pole attachments, final action should be expected no later than 270 days from the date the Complaint is filed. See 47 CFR 1.1414(b) and 47 CFR 1.740(a).

19. By the same token, Section 77.5(d) of the Commission's Rules and Regulations, 52 Pa. Code § 77.5(d), states as follows:

The Commission will take final action consisting of an order that will issue *within 180 days of the filing of a formal complaint initiating a pole attachment dispute as required by 47 U.S.C. § 224(c)(3)(B)(i) except for good cause shown.* If the Commission determines that a final action will not issue within 180 days, the Commission will issue a final action consisting of an order *no later than 270 days from the filing of the formal complaint* as permitted by 47 U.S.C. § 224(c)(3)(B)(ii).

See 52 Pa. Code § 77.5(d) (emphasis added).

20. MAW respectfully submits that given the complex technical, legal and policy issues raised in the Complaint, a longer pleading cycle is warranted and there is good cause to apply the 270-day timeframe to all issues raised in the Complaint pursuant to 52 Pa. Code § 77.5(d). Moreover, additional time is necessary to properly evaluate settlement.² No party will be prejudiced by the granting this extension of time.

21. Accordingly, MAW's request for an extension of time is essentially twofold: First, MAW respectfully submits that its request for an extension of time is being made for good cause pursuant to 52 Pa. Code § 77.5(d) and therefore, the 270-day timeframe is applicable resolve all the issues raised in the Complaint.³ Second, in light of the current restrictions on business and governmental operations in the Commonwealth of Pennsylvania due to the Covid-19 pandemic, MAW's ability to adequately prepare for litigation of the instant pole attachment dispute has been constrained. Because MAW's due process rights have been hampered by factors beyond its control, an extension of time is also warranted under the *Order*.

² It is the policy of the Commission to encourage settlements. 52 Pa. Code § 5.231(a). The parties continue to evaluate all issues raised in the Complaint and work together to resolve the instant pole attachment dispute. MAW also notes that the Commission could make mediation available to provide further assistance and incentive for the parties to negotiate a settlement.

³ The parties have conferred, and they are in agreement that the 270-day timeframe set forth in 52 Pa. Code § 77.5(d) applies to the issues raised in the Complaint.

22. Pursuant to 52 Pa. Code § 77.5(d), the clock begins on the date the Complaint was filed, December 19, 2019. Allowing 270 days for resolution, the clock ends on September 14, 2020.

23. If an extension of 30 days is also permitted pursuant to the Order (or 300 days) the clock begins on December 19, 2019 and ends on October 14, 2020.⁴

WHEREFORE, MAW Communications, Inc. respectfully requests that Chief Administrative Law Judge Charles Rainey grant its Motion and issue an order confirming that the 270-day timeframe set forth in 52 Pa. Code § 77.5(d) is applicable to all issues raised in the Complaint and granting an extension of time pursuant to the *Order*.

Respectfully submitted,

Dated: May 5, 2020

Margaret A. Morris
Margaret A. Morris, Esquire
Attorney I.D. # 75048
Meredith C. Schilling, Esquire
Attorney I.D. # 308164
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104
(215) 495-6524 (voice)
(215) 495-6600 (fax)
mmorris@regerlaw.com

Attorneys for MAW Communications, Inc.

⁴ If the *maximum extension* of 90 days is permitted pursuant to the *Order* (or 360 days) the clock begins on December 19, 2019 and ends on December 13, 2020.