

September 1, 2020

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

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SEP 1 2020

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: Christopher and Valerie Watson v PECO Energy Company

Docket No. C-2020-3021127

Dear Ms. Chiavetta:

A copy of our response to PECO's Preliminary Objection is enclosed for filing. We have provided a copy to Khadijah Scott and Ward L. Smith of PECO Energy Company via email at the email addresses listed in their notice to plead, dated August 24, 2020. A Certificate of Service precedes this filing.

Very truly yours,



Valerie Watson



Christopher Watson

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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SEP 1 2020

CHRISTOPHER AND VALERIE :
WATSON :

Complainants :

v.

PECO ENERGY COMPANY :

Respondent

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCKET NO. C-2019-3008199

RESPONSE TO PRELIMINARY OBJECTION

On August 3, 2020, the Commission served Respondent PECO Energy Company ("PECO") with the Formal Complaint in this matter. As background, our complaint against PECO is as follows:

- PECO distribution cables traverse our property at 630 Morris Avenue, Bryn Mawr, PA to feed a transformer on an adjacent property
- PECO has no easement for its facilities on our property
- The PECO distribution cable has a maximum operating capability of 15,000 volts and its conductors are ~nine feet horizontally from current structures on our property
- Other neighbors have power delivered to their home via a transformer located on Morris Avenue, which is in front of our property, but our electricity is fed from the back of our property using a secondary line.
- The PECO facilities are interfering with the use of our property & have not been well maintained over the years
- We are requesting that PECO provide our electric service from an existing Morris Avenue transformer and remove the distribution wires that cut through the remainder of our yard so that we can move ahead with an addition on property that would conflict with these lines
- We asked Verizon and Comcast to remove their wires that were on the same poles as PECO's lines, on the basis that they had no easement, and they have since removed them; each has found a way to service the adjacent neighborhood

- The homes serviced by this line on our property are not landlocked and therefore could get electricity without interfering with the use of our property

On August 24, 2020, PECO submitted a preliminary objection claiming a matter is not within the Commission's jurisdiction.

In the objection PECO states "*The Commission does not jurisdiction over property disputes, including disputes related to proper use of easements. Fairview Water Company, v. Pa. Pub. Util. Comm'n, 502 A.2d 162 (Pa. 1985) ("...the PUC does not have jurisdiction to determine the scope and validity of an easement.") See also Samuel Messina v. Bell Atlantic-Pennsylvania, Inc., Docket No. C-00968225 (Order entered Sept. 23, 1998) ("The Commission has clearly stated in prior decisions that it is without subject matter jurisdiction to adjudicate questions involving trespass and whether or not utility facilities are located pursuant to valid easements or rights-of-way." (citation omitted)).*"

We believe the Public Utility Commission has jurisdiction to determine that an easement does not exist, and should continue to oversee the full complaint:

- 1) In *Messina v. Bell Atlantic*, cited by PECO in the Preliminary Objection, the PUC ruled on whether an easement existed, and concluded Bell Atlantic did not have one: "We conclude Bell has not shown the existence of a valid easement or right-of-way concerning Mr. Messina's property. We further adopt the ALJ recommendation and find that Bell has violated Section 1501 of the Public Utility Code based on this record". Section 1501, 66 Pa. C.S. & 1501, states, in part, "every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities..." Thus, based on *Messina v Bell Atlantic*, the PUC has jurisdiction to rule on the existence of an easement. The PUC in this case ruled in favor of the homeowner forcing Bell Atlantic to remove its telephone pole from his property.
- 2) The *Fairview vs PA PUC* precedent submitted by PECO is not relevant in this matter. *Fairview vs PUC* deals with the scope and validity of an easement; in our case the issue is that PECO does not have an easement, which is a matter within the authority of the PUC.
- 3) The PUC clearly maintains the authority to rule about whether PECO's facilities are necessary and proper. See *Fairview vs PA PUC* "Once there has been a determination by the PUC that the proposed

service is necessary and proper...”. The homes that get their power source from the wires in our backyard are not landlocked and therefore there are other ways to deliver electricity to these houses.

- 4) The PUC allows self-represented parties like us to explain their objections rather than dismissing them. See language from PUC Administrative Law Judge Mary D. Long: “The Commission has expressed a preference for permitting self-represented parties an opportunity to explain the basis of their objection to the actions of a utility rather than dismissing a pleading on procedural grounds.” *Duquesne Light Co v. PUC* Docket number A-2019-3008589 (Order entered July 30, 2019)
- 5) The PA Supreme Court has ruled that the PUC has authority over location of public utility facilities. See *County of Chester v. Philadelphia Electric Company*, 218 A.2d 331 (Pa. 1966) “the Legislature has vested in the [PUC] exclusive authority over the complex and technical service and engineering questions arising in the location, construction and maintenance of all public utilities facilities. . . .”
- 6) The authority of the PUC is intended to establish a complete and uniform system. See *PPL Electric Utilities Corp. v. City of Lancaster and PA PUC*, 462 M.D. 2013 (Pa. Commw. Ct. 2015) “The courts of this Commonwealth have long recognized the intent of our General Assembly that public utilities be regulated on a uniform basis by a statewide regulator and not be subject to the varied regulation” and “There can be no reasonable doubt that the legislative intention was to make the Public Service Act the supreme law of the State in the regulation and supervision of public service corporations, and this being so, it follows as a necessary sequence that all laws inconsistent with the powers thus conferred must be held to be repealed or supplied thereby. . . The Public Service Company Law was intended to establish a complete and uniform system throughout the State for the enforcement of such powers as were conferred upon the Public Service Commission by that statute. . . .”

We, Valerie and Christopher Watson, respectfully request that the Public Utility Commission preside over the totality of the complaint and dismiss PECO’s jurisdictional objection. We are asking the PUC to determine that an easement does not exist in this case.

Lastly, please note that in PECO's objection, the accompanying Certificate filed by PECO shows the filing date to be October 24, 2020; we believe this is a simple oversight and should be adjusted to reflect the actual filing date of August 24, 2020.

Respectfully submitted,

Valerie Watson

Valerie Watson

A stylized handwritten signature consisting of a large, sweeping 'V' shape that loops back to the left and then extends to the right.

Christopher Watson

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Christopher and Valerie Watson

Docket No. C-2020-3021127

v.

PECO Energy Company

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CERTIFICATE OF SERVICE

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

I Valerie A. Watson, hereby certify that I served a copy of the Response to PECO's Preliminary Objections on Ward L. Smith and Khadijah Scott, via email to:

ward.Smith@exeloncorp.com

khadijah.Scott@exeloncorp.com

Dated September 1, 2020

Valerie and Christopher Watson
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610 520-1632, 610 733-4004
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CHRISTOPHER & VALERIE WATSON
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