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September 17, 2020

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

**RE: Douglas Randall v. PECO Energy Company**  
**Docket Number: C-2020-3019786**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is the *Brief of PECO Energy Company* with regard to the matter referenced above.

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,



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Angela Lorenz, Esq

Cc: Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>DOUGLAS RANDALL,</b>	:	
<b>Complainant</b>	:	
	:	
v.	:	<b>DOCKET NO. C-2020-3019786</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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**BRIEF OF PECO ENERGY COMPANY**

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**I. Introduction/ Procedural History**

On May 13, 2020, PECO Energy Company ("PECO Energy") was served with a formal Complaint filed by Douglas Randall (hereafter "Complainant") in the above captioned docket. In his formal complaint, the Complainant objected to PECO's ~~planned~~ installation of a utility pole and equipment. The Complainant alleges that PECO Energy placed a heavy guy wire in the front of his home, 10 feet from his front door, posing ingress and egress issues. The Complainant further alleged that the wire has devalued his property and requests that it be removed.

On June 2, 2020, PECO filed a timely and responsive Answer to Complainant's formal complaint.

On July 28, 2020 ALJ Heep issued a Pre Hearing Order scheduling the parties to appear for a hearing on August 27, 2020.

On August 27, 2020, the parties appeared for the hearing via telephone. Complainant testified on his own behalf. PECO Energy presented two witnesses, Mr. Thomas Santacroce and Mr. Richard Keshgegian and provided documentary evidence. Upon completion of the testimony, ALJ Heep requested additional information from PECO Energy, including information on the lease agreements between communication companies and PECO Energy and information on the

efforts taken by PECO or its vendor to fortify the pole in question. PECO provided this information to ALJ Heep via email on September 14, 2020.

ALJ Heep provided a briefing schedule to the parties, instructing PECO to file its brief on or before September 17, 2020. This matter is now ripe for review and PECO Energy submits the instant brief in opposition to Complainant's formal complaint.

## **II. Summary of PECO's Argument**

In 2019, Complainant contacted PECO Energy stating that a pole was leaning in front of his home, causing wires to sag. As a result of that claim, two foremen were dispatched to the Complainant's home to investigate. Upon investigation, it was determined that there is one PECO primary phase wire on the pole with multiple communications cables attached thereto. After investigating the cost of moving the cables underground, the possibility of replacing the pole, and the failure of kedging and foaming efforts, it was determined that the best option to fortify the pole would be installation of a guy wire.

The guy wire and pole are shown in photographs presented to the Court as PECO Exhibits "1" and "2". These photos show two wires coming from the top of the pole at an angle that goes into the concrete sidewalk, in the front of Complainant's North Street property. *See*, PECO Exhibit "1" Photograph of guy wire location. Although the guy wire is in front of the Complainant's home, in the public right of way, it is not in the direction of the Complainant's home. *Id.* Thus, it does not present an impediment to Complainant's front door. PECO adamantly asserts that if the guy wire is removed, the pole will fall over.

### **III. Legal Authority and Argument**

The Public Utility Code, 66 Pa.C.S.A. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).

To establish a sufficient case and satisfy the burden of proof, Complainant must show that the Respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosierey v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa. Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would be required

to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

It is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" to its customers. 66 Pa.C.S. § 1501.

**A. The Guy Wire is Installed on a Public Right of Way, Does Not Impede Complainant's Ingress or Egress and Does Not De-Value his Home**

A public right of way is defined as any street, avenue, boulevard, highway, sidewalk, alley, or similar place which is owned or controlled by a governmental entity. In this matter, the PECO pole and attached guy wire are both located on a public sidewalk, within the public right of way controlled by the City of Philadelphia. *See*, PECO Exhibit "3", Street Card. As Mr. Santacroce testified, the right of way of North Street is 40 feet wide. Additionally, the pavement is 20 feet wide (curb to curb). Anything within 10 feet of the face of the curb on either side of the street is in the public ROW and not on private property. Mr. Santacroce confirmed that the pole and the guy are located in the public right of way and not encroaching onto Complainant's private property.

Complainant testified that the guy wire is not impeding his ability to enter or exit his front door. He further conceded that he did not have a home appraisal performed to accurately identify if the guy wire indeed, devalued his property. Complainant also confirmed that he is not actively selling his home.

Although Complainant is dissatisfied with the location of the guy wire, it stands squarely and legally within the public right of way along North Street. Therefore, regardless of whether or

not the guy wire actually does devalue Complainant's home, there has been no evidence presented that PECO Energy has violated any tariff or PUC regulation. Complainant's formal complaint must be dismissed as he has not met his requisite burden of proof and can receive no relief as he has requested.

**B. Installation of the Guy Wire was a Necessary Safety Measure**

As confirmed by PECO witnesses at the August 27, 2020, hearing, PECO has a single phase pole, which is located on the sidewalk of 1610 North Street, Philadelphia. The installation of the guy wire was a calculated, methodical and necessary safety measure.

The pole location was evaluated from an engineering perspective and it was determined that there are multiple utilities on the pole at issue. At the request of the next door developer and by Complainant, PECO officials investigated whether those multiple cables could be moved underground. Indeed, those cables could be placed underground, but the cost of doing so was anecdotally, monumental. Moreover, the cost of such repositioning would be borne by the individual seeking to have that project completed. Mr. Keshgegian testified that the developer of the new construction did look into this option, but determined that the cost was much too high. Additionally, Complainant testified that he too investigated the possibility of moving the equipment underground versus having the pole shored up by a guy wire. Again, the cost was substantial and would fall upon the requestor's shoulders. The only option left was to look into solutions to secure the pole.

Complainant and Mr. Keshgegian both identified Comcast as one of the communications companies with attachments to the pole. PECO witnesses confirmed that communications companies who have cable attached to PECO poles are lessees of PECO poles. While PECO does receive some type of rent from these communications companies, the agreements between

PECO and its lessees indicate that PECO is not required to maintain the communication/ third party cables. In fact, Mr. Keshgegian testified that even if PECO determined there was a safety issue with the cables themselves, PECO is prohibited from removing or relocating the cables. The onus is on the communication company to rectify the situation. *See* Lease Agreements, Comcast, Verizon and Sunesys. PECO is, however, responsible for the maintenance and care of its own equipment- including the pole in question. Of utmost importance, PECO is charged with maintaining its equipment to ensure safety and reliability of service. That is mandated not only of PECO, but of all utilities in Pennsylvania per 66 Pa.C.S. § 1501.

Mr. Keshgegian testified that in his opinion, the unsettling of the earth from the new construction adjacent to Complainant's property, coupled with the weight of the communications cables likely caused the pole to tilt or slant. Per his testimony and his sworn Affidavit, Mr. Keshgegian indicates several steps were taken prior to the installation of the guy wire.

During the second quarter of 2019, an inspection of the pole was performed by PECO Energy Contractor, Miller Brothers, Construction Inc (Miller Bros.) Miller Bros inspected the pole and determined that it could not be replaced due to the amount of wires transitioning down the pole. *See* Affidavit of Richard Keshgegian. Moreover, Mr. Keshgegian's testimony further establishes that replacing the pole was not a viable option because the pole that was in place was the largest width available. Upon questioning from ALJ Heep, Mr. Keshgegian confirmed that unlike other communications or transportation companies in the city, PECO does not use metal poles; only wooden poles.

After Miller Bros. determined that the pole could not be replaced, Miller Bros. kedged the pole by hammering in wooden blocks at the base of the pole in an attempt to straighten it. *Id.*, *See* also PECO Exhibit "1". After kedging attempts did not straighten the pole, Miller Bros.

sprayed pole foam at the base. The purpose of the foam is to harden until it turns to the consistency of concrete. Despite these two attempts to fortify the pole, it continued to lean in an unsafe manner. The final consideration and ultimate solution was to install a guy wire to secure the pole. Mr. Keshgegian testified that the guy wire was installed and anchored at an angle and length which conformed to industry standards and regulations. The guy wire was the final option left in order to safely shore up the leaning pole.

As confirmed by Mr. Keshgegian in his testimony, PECO does not have *carte blanche* to remove or reposition the communications wires. Likewise, it does not have the authority to halt nearby, third party construction which is disturbing the ground around its pole. PECO does however have a statutory mandate to maintain its equipment in a safe manner. PECO fulfilled this requirement by installing the guy wire.

#### **IV. Conclusion**

Complainant has failed to offer any substantial, competent evidence in support of his formal complaint. Complainant has not sustained his burden of proof as required by *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlt. 2001). Complainant has failed to state any claims in which relief can be granted by the Public Utility Commission.

For the reasons stated above, PECO respectfully requests that Complainant's formal complaint be DISMISSED WITH PREJUDICE.

Respectfully Submitted,



Angela Lorenz, Esq.  
PA ID: 93418  
Attorney for PECO Energy Co.

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<b>DOUGLAS RANDALL</b>	:	
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<b>PECO ENERGY COMPANY</b>	:	
Respondent	:	

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**VERIFICATION**

I, Angela Lorenz, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.



Date: September 17, 2020

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Angela Lorenz

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<b>Respondent</b>	:	

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**CERTIFICATE OF SERVICE**

I, Angela Lorenz, hereby certify that I have this day served a copy of PECO Energy Company's Answer in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Douglas Randall  
1610 North Street  
Philadelphia, PA 19130  
[Douglasrandall2@gmail.com](mailto:Douglasrandall2@gmail.com)

Administrative Law Judge Darlene Heep  
Pennsylvania Public Utility Commission  
Suite 4063  
801 Market Street,  
Philadelphia, PA 19107  
[dheep@pa.gov](mailto:dheep@pa.gov)

Dated at Philadelphia, Pennsylvania, September 17, 2020



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