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October 30, 2020

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

**RE: Christopher and Valerie Watson v PECO Energy Company
Docket No. C-2020-3021127**

Dear Ms. Chiavetta:

A copy of **PECO's Motion to Stay Proceeding** is enclosed for filing. A Notice to Plead and a Certificate of Service precede PECO's filing.

Very truly yours,

/s/ Ward Smith

Ward Smith
Counsel for PECO Energy Company

Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Christopher and Valerie Watson	:	
	:	Docket No. C-2020-3021127
v.	:	
	:	
PECO Energy Company	:	

CERTIFICATE OF SERVICE

I, Ward L. Smith, hereby certify that I served a copy of PECO's Motion to Stay Proceeding on Valerie Watson, via email, to:

Valerie.levesque24@hotmail.com

Dated October 30, 2020

/s/ Ward L. Smith
Ward L. Smith
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CHRISTOPHER AND VALERIE	:	
WATSON	:	
Complainants	:	
	:	
v.	:	DOCKET NO. C-2020-3021127
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

PECO’S MOTION TO STAY PROCEEDING

Pursuant to 52 Pa. Code § 5.103, PECO Energy Company (“PECO” or the “Company”) hereby files this Motion to Stay the formal complaint proceeding at Docket No. C-2020-3021127 pending the disposition of a civil action filed today by PECO in the Court of Common Pleas of Montgomery County. The civil action seeks a determination by the Court of Common Pleas that PECO has an irrevocable license to operate and maintain its electric distribution facilities on the Watson property or, in the alternative, that PECO has a prescriptive easement to operate and maintain its electric distribution facilities on the Watson property. The civil action also requests that the irrevocable license or prescriptive easement be recorded in the land records of Montgomery County.

Prior to filing this Motion for Stay, PECO informed the Complainants of its intention to file the Motion. The Complainants stated that they plan to oppose the Motion.

In support of its Motion, PECO represents the following:

I. BACKGROUND

1. On August 3, 2020, PECO was served with the Formal Complaint of Christopher and Valerie Watson (the “Complainants”).

2. The Formal Complaint (Attachment to ¶ 4) requests, among other things, that PECO be required to remove its electric distribution facilities from the Watson’s property at 630 Morris Avenue, Bryn Mawr, Pennsylvania 19010 (the “Property”) because, the Formal Complaint claims, PECO “has no easement in title or deed what so ever” for the location of its electric distribution facilities on the Property.

3. The Formal Complaint (¶ 5) requests the following relief: “We are asking PECO to please remove its high voltage line from our property since PECO has no easement to be here at 630 Morris Ave, Bryn Mawr.”

4. On August 24, 2020, PECO filed its Answer and New Matter.

5. In its Answer to the above-noted allegation from ¶ 4 of the Formal Complaint, PECO stated (emphasis added) that:

[The Formal Complaint] makes the subsidiary allegation that: “PECO has no easement in title or deed what so ever for” its facilities. This is a conclusion of law to which no answer is required. However, to the extent that this claim requires an answer, it is denied. By way of further answer, PECO’s facilities have been in place at this location since the 1920s or 1930s and, *even if PECO did not originally obtain an easement at that time, it has since developed a property right over time through the legal theories of adverse possession, easement by prescription, or other action of law.*

6. On August 24, 2020, PECO filed a Preliminary Objection in which it argued that the Commission does not have jurisdiction to resolve easement disputes and requested that the

Commission “dismiss the portions of the Complaint that request the Commission to determine whether it has property rights for its facilities on 630 Morris Avenue.”

7. On September 1, 2020, the Complainants filed an Answer to PECO’s Preliminary Objection. The Complainants argued that the Commission has jurisdiction to determine whether an easement or right-of-way exists. The Complainants also argued that, in cases where it is determined that an easement or right-of-way does not exist, the Commission has jurisdiction over the placement of PECO’s facilities. The Complainants also restated their position that PECO does not have an easement over the Property.

8. On September 18, 2020, a Hearing/Cancellation Notice was issued, setting this matter for hearing on November 12, 2020.

9. On September 24, 2020, Your Honor issued an Order denying PECO’s Preliminary Objection. That Order notes that the Commission must accept allegations made by the Complainant as true for purposes of evaluating a Preliminary Objection. Since the Complainants had alleged that no easement existed, Your Honor accepted that allegation as true for evaluative purposes and denied PECO’s Preliminary Objection.

10. On October 30, 2020, PECO filed a Complaint with the Court of Common Pleas, Montgomery County (the “Civil Complaint”). The Civil Complaint seeks a determination by the Court of Common Pleas that PECO has an irrevocable license to operate and maintain its electric distribution facilities on the Property or, in the alternative, that PECO has a prescriptive easement to operate and maintain its electric distribution facilities on the Property. The Civil Complaint also requests that the irrevocable license or prescriptive easement be recorded in the

land records of Montgomery County. A copy of the Civil Complaint will be filed with the Commission contemporaneously with this Motion.¹

II. STAYING THIS PROCEEDING WILL PROMOTE ADMINISTRATIVE EFFICIENCY

11. The parties have a material dispute as to whether PECO has property rights, via either an irrevocable license or a prescriptive easement, to operate and maintain its electric distribution facilities on the Property.

12. Your Honor's Order denying PECO's Preliminary Objections did not resolve that material dispute. Rather, the Order properly accepted the Complainants position as true for purposes of determining whether to grant or deny the Preliminary Objection; that evaluative assumption applies only to the Preliminary Objection determination and did not resolve the underlying material dispute as to whether PECO has an irrevocable license or prescriptive easement to operate and maintain its electric distribution facilities on the Property.

13. With today's filing of the Civil Complaint with the Court of Common Pleas for Montgomery County, PECO has requested resolution of that material dispute by a court of competent jurisdiction to resolve easement disputes and to issue a binding determination of whether PECO has an irrevocable license or prescriptive easement to operate and maintain its electric distribution facilities on the Property.

14. The resolution of the material dispute, in turn, is likely to meaningfully affect the Commission's determination of whether PECO has acted reasonably in the current situation, and

¹ Prior to the filing of the Formal Complaint and to the present time, the parties have been engaged in settlement negotiations. PECO has offered to continue those negotiations during any stay.

what remedies might be available to the Complainants. Simply, if the Court of Common Pleas determines that PECO has a property right to operate and maintain its electric distribution facilities on the Property, that determination almost certainly will materially affect the Commission's determination of whether to grant Complainants their requested relief of requiring PECO to "remove its high voltage line from our property since PECO has no easement."

15. Although the Formal Complaint raises some issues that are not likely to be directly addressed by the Civil Complaint proceeding – for example, their claim that PECO has not properly maintained its facilities on the Property – the property right/easement issue is so central to the overall gravamen of the Formal Complaint that it would not be efficient to hold a hearing on the ancillary, non-property rights issues prior to determination of the property rights issue by the Court of Common Pleas. In other words, since the primary issue in contention between the parties is now before the Court of Common Pleas, it would be administratively inefficient to hold a hearing on the few residual issues until the Court of Common Pleas makes a determination of whether PECO has a property right to operate and maintain its facilities on the Property.

III. CONCLUSION

Based upon the foregoing, PECO respectfully requests that the Commission grant the Company's Motion to Stay Proceeding until the Court of Common Pleas of Montgomery County reaches a determination regarding PECO's Civil Complaint, and in particular until the Court of Common Pleas determines whether PECO has a property right, either an irrevocable license or a prescriptive easement, to operate and maintain its electric distribution facilities on the Property.

Respectfully submitted,

/s/ Ward Smith

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