

BLANKROME

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August 16, 2023

VIA EFILE

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

Re: Settlement Agreement Between PECO Energy Company and Borough of Swarthmore

Dear Ms. Chiavetta:

At a meeting held on August 14, 2023, the Council of the Borough of Swarthmore (the “Borough”) voted to approve a Settlement Agreement between the Borough and PECO Energy Company (“PECO”). Inasmuch as the Settlement Agreement is an agreement between a public utility, PECO, and a municipal corporation, the Borough of Swarthmore, Section 507 of the Public Utility Code, 66 Pa. C.S. § 507, requires that the Settlement Agreement be filed with the Public Utility Commission (the “Commission”) in order to be legally valid and binding.

The Settlement Agreement resolves issues raised in a Formal Complaint filed by the Borough at Docket No. C-2023-3037736 related to PECO’s Reliability & Resiliency Plan, which includes planned vegetation and construction work within the Borough to retire the existing Morton Substation and upgrade the distribution system from 4kV to 13kV. The Borough and PECO held a series of settlement discussions both independently and facilitated by Commission Mediator Teri-Lee Rhoades. On June 6, 2023, the Honorable Chief Administrative Law Judge Charles E. Rainey, Jr. issued an Interim Order Setting Resolution Conference directing the parties to resolve the matter.

The Borough and PECO negotiated and agreed to the terms of the Settlement Agreement, which resolves the Borough’s concerns related to tree removal, tree replacement, excavation, stormwater and utility pole removal, and the Borough has agreed to permit PECO to file a Certificate of Satisfaction in Docket No. C-2023-3037736 as more fully described in the Settlement Agreement attached hereto as Exhibit “A”. The Settlement Agreement has now been executed by the Borough and PECO. As required by Section 507 of the Public Utility Code, PECO hereby files the Settlement Agreement with the Commission.

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If additional information is needed about this matter, please contact me via email or at my direct-dial number above. Thank you.

Very truly yours,

/s/ Christopher A. Lewis _____

Christopher A. Lewis, Esq.

Enclosure

cc: Teri-Lee Rhoades, Esq., Pennsylvania Public Utility Commission Mediator (via email)
Robert Scott, Esq., Solicitor of the Borough of Swarthmore (via email)

Exhibit A

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into this 14th day of August, 2023 by and between the Borough of Swarthmore (the “Borough”) and PECO Energy Company (“PECO”) (collectively, the “Parties”).

RECITALS

WHEREAS, on January 20, 2023, the Borough filed a Formal Complaint against PECO before the Pennsylvania Public Utility Commission (the “Commission” or “PUC”), docketed at No. C-2023-3037736, alleging, *inter alia*, that PECO is legally obligated to comply with certain municipal ordinances in connection with utility work planned in the Borough (the “Formal Complaint”); and

WHEREAS, on February 14, 2023, PECO filed an Answer and New Matter to the Formal Complaint, asserting, *inter alia*, that local municipalities lack the authority to regulate the design, location, or construction of public utility facilities, citing *PPL Elec. Utilities Corp.*, 214 A.3d at 659-60 (Pa. 2019) and *PECO Energy Co. v. Twp. of Upper Dublin*, 922 A.2d 996, 1004-05 (Pa. Comm. 2007); and

WHEREAS, on March 6, 2023, the Borough filed a Reply to the New Matter disputing PECO’s contentions; and

WHEREAS, the Parties submitted their dispute to mediation pursuant to the Commission’s mediation procedures; and

WHEREAS, the Parties have reached a full and final settlement of the dispute and now wish to memorialize their agreement;

NOW THEREFORE, in consideration of the foregoing and the mutual agreements set forth herein, and for other good and valuable consideration, the adequacy of which is acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. **DEFINITIONS.** For the purposes of this Agreement, each of the following terms shall have the following respective meanings:

- a. “Project” means the vegetation and construction work PECO intends to perform in the Borough as part of PECO’s Reliability & Resiliency Plan. The Project will strengthen the electrical infrastructure used to serve PECO’s customers in order to better withstand more frequent and damaging storms, deliver enhanced reliability for PECO’s customers by reducing the frequency of outages and the duration of those that cannot be prevented, and support the adoption of clean energy resources, like solar power and electric vehicles.
- b. “Excavation Ordinance” means Chapter 1026 of the Codified Ordinances of the Borough of Swarthmore.
- c. “Tree Ordinance” means Chapter 266 of the Codified Ordinances of the Borough of Swarthmore, including Section 266.07 (pertaining to the caring for street trees) and Section 266.08 (pertaining to the replacement of street trees).
- d. “Stormwater Management Ordinance” means Chapter 1459 of the Codified Ordinances of the Borough of Swarthmore.
- e. “Street Trees” means trees that are located within the right-of-way lines of the Borough that PECO intends to remove as part of the Project. PECO has informed the Borough that it currently intends to remove approximately 80 Street Trees. The Borough acknowledges and understands that the final number of Street Trees to be removed by PECO may change due to field conditions encountered during the implementation of the Project, which tree removals will be determined by PECO’s vegetation management group in its sole discretion.
- f. “Private Trees” means trees that are not located within the right-of-way lines of the Borough. PECO has informed the Borough that, in addition to the Street Trees, PECO currently intends to remove approximately 44 Private Trees in the Borough. The final number of Private Trees to be removed by PECO may change and will be determined by PECO’s vegetation management group in its sole discretion.
- g. “Replacement Street Trees” means bare-root trees, with a caliper of 1.5” – 2”, that will be selected and provided by the Pennsylvania Horticultural Society (“PHS”) pursuant to the PHS’s partnership with PECO.
- h. “Replacement Private Trees” will be containerized trees provided by PHS.
- i. “Replacement Tree Timeframe” means either the spring or fall planting season following PECO’s completion of vegetation work, tree removal, and other construction activities related to the Project that PECO’s Project team determines, at its sole discretion, would damage or otherwise jeopardize any Replacement Street Trees or Replacement Private Trees, or otherwise interfere with PECO’s work for the Project. PECO estimates that, assuming a Project start timeframe of September 2023, vegetation work, tree removal, and other construction activities for the Project

that may damage or otherwise jeopardize the Replacement Street Trees, Replacement Private Trees, or otherwise interfere with PECO's work for the Project will be completed by the end of the fourth quarter of 2024. Accordingly, the following optimal planting season is estimated to be spring 2025. The Parties acknowledge and agree that the estimated timeframe within this definition is only an estimate and may be subject to further change depending on any number of factors, including but not limited to, permitting complications, field conditions, supply chain constraints, labor shortages, or other issues.

2. **LIST OF STREET TREES.** Within two (2) business days after the Borough executes and delivers to PECO this Agreement, PECO will submit to the Borough a list of all Street Trees. The list will identify each Street Tree by: (1) property address; (2) species; and (3) caliper.

3. **REPLACEMENT STREET TREES.** PECO will provide the Borough with a Replacement Street Tree for each Street Tree removed as a result of the Project during the Replacement Tree Timeframe. PECO shall provide the Borough with a menu of at least five (5) native species of trees deemed suitable for planting under utility lines by PHS, and the Borough shall elect the exact number of each species to be provided from such menu.

4. **PLANTING OF REPLACEMENT STREET TREES AND STORMWATER MANAGEMENT.** PECO agrees to pay the Borough \$40,000 as compensation for the Borough's cost of planting the Replacement Street Trees and as a contribution to the Borough's anticipated stormwater management project at Henderson field, which the Borough has informed PECO is a project that the Borough has applied to the Commonwealth of Pennsylvania for a grant to support the funding of this project. PECO shall make the above payment no later than sixty (60) days following the Commission's approval of this Agreement or PECO's receipt of an IRS Form W-9 from the Borough, whichever is later. PECO will also provide the Borough a full copy of its Chapter 105 Permit Application to the Pennsylvania Department of Environmental Protection and Delaware County Conservation District.

5. **REPLACEMENT PRIVATE TREES.** The Borough acknowledges that PECO has agreed that PECO will make Replacement Private Trees available to the Borough's residents for each Private Tree removed as a result of the Project. The Replacement Private Trees will be made available first to those Borough residents who have had Private Trees removed from their properties from a menu of at least five (5) native species of trees, then to other Borough residents on a first-come first-serve basis as Replacement Private Trees are available. The Replacement Private Trees will be made available during the Replacement Tree Timeframe.
6. **GRINDING OF STUMPS.** PECO agrees to grind the stumps of both Street Trees and Private Trees removed as a result of PECO's implementation of the Project, provided the stumps are located in areas that are maintained and accessible as reasonably determined by PECO or its contractors.
7. **EXCAVATION PERMITS.** PECO will apply for excavation permits pursuant to the Excavation Ordinance for the removal and installation of electrical poles. The Borough agrees to process and issue such permits in the customary and ordinary course. For the avoidance of doubt, the Borough agrees that it will not deny or delay the issuance of permits with the intent to interfere with the Project.
8. **REMOVAL OF UNUSED ELECTRICAL POLES.** During the Project, PECO agrees to remove all unused PECO electrical poles without any third-party attachments that are being replaced with taller poles, and will apply all commercially reasonable efforts to require that all third-parties remove their attachments from such PECO poles. Removal of all poles that PECO is replacing as part of the Project will be completed within sixty (60) days after all attachments have been removed and the pole is no longer needed to provide electrical service.
9. **FULL AND FINAL ACCORD AND SETTLEMENT.** PECO and the Borough agree that this Agreement constitutes a full and final accord and settlement of all allegations made by

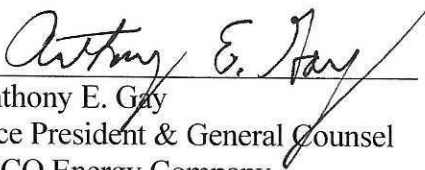
the Borough that PECO's performance of the Project will violate any law or regulation, including but not limited to the Borough's allegations that PECO must comply with the Tree Ordinance, the Excavation Ordinance, and the Stormwater Management Ordinance. The Borough acknowledges, agrees, and covenants that it will not apply or enforce its Tree Ordinance and Stormwater Management Ordinance to PECO's performance of the Project and that this Agreement resolves and satisfies all concerns that the Borough has with any potential stormwater runoff that could result from the Project.

10. **SATISFACTION OF FORMAL COMPLAINT.** In accordance with 52 Pa. Code § 5.24, the Borough authorizes PECO to provide a certified writing to the Commission that PECO has addressed the Formal Complaint and the Borough has acknowledged satisfaction to PECO.
11. **REVIEW OF CONTRACT BY COMMISSION.** The Borough understands and acknowledges that PECO will file this Agreement with the Commission for the Commission's review pursuant to Sections 507 and 508 of the Pennsylvania Public Utility Code.
12. **PUBLICITY.** The Borough Council of the Borough is required under Pennsylvania law to approve any contract, including this Settlement Agreement, by a vote held in public session, and this Settlement Agreement is conditioned upon such approval. Further, the Borough is required by the Pennsylvania Right-to-Know Law to provide a copy of this Settlement Agreement in response to a request made under the Right to Know Law.
13. **ENTIRE AGREEMENT.** This Agreement constitutes the full agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations and understandings with respect thereto. Each Party represents and warrants to the other that it has not relied upon any representation or warranty, express or implied, in entering into this Agreement except those which are expressly set forth herein.

14. **WAIVER**. No failure to exercise or any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
15. **AMENDMENT AND VARIATION**. No variation of this Agreement (or of any of the documents referred to in this Agreement) shall be valid unless it is in writing and signed by or on behalf of each of the parties to it. The expression "variation" shall include any amendment, variation, supplement, deletion or replacement however effected.
16. **COUNTERPARTS**. This Agreement may be executed by electronic or facsimile signature and in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.
17. **THIRD PARTY RIGHTS**. Except to the extent expressly stated to the contrary in this Agreement, this Agreement does not create or limit any rights in any other person.
18. **GOVERNING LAW**. The construction and validity and performance of this Agreement and the transactions contemplated by it shall be governed by the laws of the Commonwealth of Pennsylvania, without regard to its conflicts of laws principles.

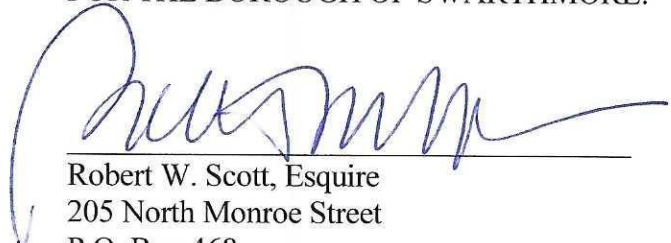
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

FOR PECO ENERGY COMPANY:



Anthony E. Gay
Vice President & General Counsel
PECO Energy Company
2301 Market Street / S23-1
Philadelphia, PA 19103

FOR THE BOROUGH OF SWARTHMORE:



Robert W. Scott, Esquire
205 North Monroe Street
P.O. Box 468
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