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August 26, 2024

Via eFiling

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Docket No. L-2018-3002672
Adoption of Federal Communications Commission Regulations Pursuant to 52 Pa. Code § 77.4 (Pole Attachments)

Dear Secretary Chiavetta,

The Energy Association of Pennsylvania (“EAP”) files this letter on behalf of its electric distribution company (“EDC”) members¹ in response to a Pennsylvania Public Utility Commission (“PUC” or “Commission”) Secretarial Letter dated July 29, 2024. The Secretarial Letter provided notice that certain federal rule changes adopted by the Federal Communications Commission (“FCC”) in its Fourth Report & Order - *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84 (December 15, 2023)* may not take effect in Pennsylvania pursuant to 52 Pa. Code §§ 77.4(c)-(e). The Secretarial Letter further seeks public comment on the federal rule changes adopted by the FCC. 52 Pa. Code § 77.4(d).

The federal rule changes adopted by the FCC include two “two distinct components” for which the PUC seeks public input as it considers whether to amend 52 Pa. Code Chapter 77 (relating to pole attachments) which allows for the automatic adoption of the federal rule changes unless the PUC takes action to accommodate Pennsylvania specific impacts. These components

¹ EDC members of EAP include Citizens’ Electric Company; Duquesne Light Company; FirstEnergy Pennsylvania Electric Company; PPL Electric Utilities Corporation; PECO Energy Company; Pike County Light & Power Company; UGI Utilities Inc.- Electric Division; and Wellsboro Electric Company.

consist of: (1) whether to adopt the new FCC rule that requires utilities to provide potential pole attachers when requested certain information contained in the utilities most recent cyclical, and any intervening, pole attachment reports for poles covered by an attacher's application, including whether any of the poles identified in the application have been "red-tagged" and, if so, the timeframe for replacement; and (2) whether to adopt a new dispute resolution procedure established at the FCC by means of "an agency-wide rapid response team" formed "to provide coordinated review and assessment of pole attachment disputes that impede or delay broadband deployment and [to] recommend effective dispute resolution procedures...,[including the adoption of] specific criteria to guide that team when considering whether a complaint (or portion thereof) should be included on the [FCC] Enforcement Bureau's Accelerated Docket."

EAP supports the PUC's decision to provide notice and an opportunity for input into whether these two distinct FCC rule changes should be automatically adopted in Pennsylvania. It is important to note that in determining to exercise its authority to reverse preemption under Section 224(c) of the Communications Act of 1934, 47 U.S.C. § 224(c), the PUC certified, *inter alia*, that it has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services. *See*, 47 U.S.C. § 224(c)(2)(B). EAP maintains that in taking into consideration the interests of both future subscribers of third-party attachers' potential services and the interests of EDC consumers/ratepayers AND considering the Pennsylvania-specific impacts of the FCC rule changes, the reasonable and prudent course of action is to initiate "an appropriate rulemaking" so as to avoid automatic adoption of these new federal rules.

With respect to the provision of pole inspection reports upon request of an attacher which has applied to the EDC, EAP contends that information contained in such internal reports is not likely to be timely or relevant so as to meaningfully assist a prospective third-party attacher. For example, in Pennsylvania an EDC's cycle for inspecting poles may be as long as twelve years such that the third-party attachers' visual inspection of poles as it determines routes in the context of preparing its application will likely provide more timely and relevant information. Further, inspection standards and methodology may differ in Pennsylvania from EDC to EDC and are developed by utility management to account for unique circumstances within each service territory such as topography and weather. The information contained in pole inspection reports will differ from EDC to EDC, may cause confusion for third-party attachers, and will inevitably add to the number of disputes. Moreover, with respect to a pole that has been "red-tagged" by the EDC prior to the attacher's request, the majority of Pennsylvania EDCs do not pass on the cost to the attacher as a part of the make ready process. EAP contends supplying the pole inspection reports will add time and cost to the make ready process and benefit neither Pennsylvania potential subscribers of the services to be offered by the attacher nor the consumers/ratepayers of the EDCs' services.

With respect to whether the Commission should allow the new FCC dispute resolution procedures to become effective in Pennsylvania, EAP maintains that the existing Pennsylvania rules and procedures in place to resolve complaints before the Commission, including the use of mediation or the filing of a formal complaint/petition are adequate and provide for due process and timely resolution. EAP does not support the creation of a Pennsylvania "rapid-response

team” which would be charged with reviewing pole attachment disputes to assess whether the dispute impedes or delays broadband development based on yet unknown “specific criteria” so that resolution of the dispute could be fast tracked. EAP contends that use of such a process could further delay resolution of a dispute by adding a preliminary evaluation, is concerned that the PUC costs of this extra procedural step would be borne by EDC consumers/ratepayers alone, and that such costs would be in addition to the costs incurred by the EDCs’ participation in this new preliminary step. It is difficult to see how the creation of a “rapid-response team” would benefit either subscribers of a future broadband service or utility ratepayers considering the existing Commission processes in place to resolve disputes.

EAP respectfully urges the Commission reject the automatic adoption of these two new FCC rule changes and initiate a rule-making as necessary under 52 Pa. Code §§ 77.4 (c)-(e).

Very truly yours,

A handwritten signature in black ink that reads "Donna M.J. Clark". The signature is written in a cursive, flowing style.

Donna M.J. Clark
Vice President & General Counsel

via email

CC:

Colin W. Scott, Assistant Counsel, Law Bureau

Tiffany L. Tran, Assistant Counsel, Law Bureau