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MCDERMOTT, WILL & EMERY

May 22, 2001

VIA MESSENGER

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

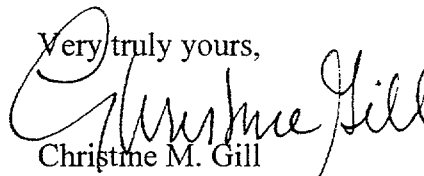
**Re: RCN Telecom Services of Philadelphia, Inc. v. PECO Energy Company and
Exelon Infrastructure Services, Inc.
PA No. 01-003**

Dear Ms. Salas:

Enclosed for filing in connection with the above-referenced matter on behalf of PECO Energy Company and Exelon Infrastructure Services, Inc., please find the original and five copies of the Motion for Extension of Time of PECO Energy Company and Exelon Infrastructure Services, Inc.

Please return a file-stamped copy of this pleading to our office with our courier.

Thank you for your attention to this matter.

Very truly yours,

Christine M. Gill

Enclosures

cc: Kathleen Costello
Karen D. Cyr
L. Elise Dieterich
William L. Fishman
Marsha Gransee
John C. Halderman
William H. Johnson
Cheryl King
Deborah Lathen
James P. McNulty
Louise Fink Smith

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
RCN TELECOM SERVICES OF PHILADELPHIA, INC.)	PA No. 01-003
)	
v.)	
)	
PECO ENERGY COMPANY and EXELON INFRASTRUCTURE SERVICES, INC.)	
)	
To: Cable Services Bureau)	

**MOTION FOR EXTENSION OF TIME
OF PECO ENERGY COMPANY
AND EXELON INFRASTRUCTURE SERVICES, INC.**

Shirley S. Fujimoto
Christine M. Gill
John R. Delmore
Erika E. Olsen
McDermott, Will & Emery
600 13th Street, N.W.
Washington, D.C. 20005
202-756-8000

Counsel for Respondents PECO Energy
Company and Exelon Infrastructure
Services, Inc.

Dated: May 22, 2001

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
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RCN TELECOM SERVICES OF PHILADELPHIA, INC.)	PA No. 01-003
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v.)	
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PECO ENERGY COMPANY)	
and)	
EXELON INFRASTRUCTURE SERVICES, INC.)	

To: Cable Services Bureau

**MOTION FOR EXTENSION OF TIME
OF PECO ENERGY COMPANY
AND EXELON INFRASTRUCTURE SERVICES, INC.**

Respondents PECO Energy Company ("PECO") and Exelon Infrastructure Services, Inc. ("EIS"), through the undersigned counsel, hereby jointly file this Motion for Extension of Time to request a fourteen-day extension of time in which to file their responses to the Amended Complaint. Complainant RCN Telecom Services of Philadelphia, Inc. ("RCN"), through its counsel, consents to this request.

RCN filed its initial Complaint regarding pole attachment fees on March 16, 2001, and PECO and Exelon Corporation jointly filed a Response on April 16, 2001. RCN subsequently filed an Amended Complaint changing the Respondents to PECO and EIS

and adding a new allegation (and new evidence in support) regarding make-ready fees.¹ Although there are no specifically stated rules for when a response to an amended complaint is due, out of an abundance of caution Respondents are proceeding on the assumption that a response is due thirty days after the filing of the amended complaint, in this case June 4, 2001.² With a fourteen-day extension, a response would be due June 18, 2001.

Respondents are mindful that the Commission does not routinely grant extensions of time. However, as explained below, the extraordinary circumstances of this case warrant an extension. Additionally, this is not a denial of access case, so a limited fourteen-day extension will not unduly infringe on any need for the Commission to expeditiously review and resolve the issues. Rather, an extra fourteen days will provide Respondents with more of the time they need to provide the Commission with comprehensive responses that will enable it to make a better informed decision. As described in more detail below, good cause exists for a fourteen-day extension for the following reasons:

1. Due to an apparent mail delay, counsel for PECO and EIS did not receive the Amended Complaint until seven days after it was filed; and
2. The Amended Complaint raises very complicated issues of fact that, among other things, involve detailed inquiry into the systems, policies, and practices of both PECO and EIS, two separate corporations.

¹ In addition to the Response, Exelon Corporation had filed a Motion to Dismiss on the ground it was not a proper party. RCN agreed to dismiss it.

² Given the lack of rules in this regard, Respondents do not contend or concede that responses to amended complaints are due thirty days after filing. Nor do Respondents concede that filing an amended complaint with new allegations is permitted under the Commission's rules.

Mail Delay

Counsel for RCN filed the Amended Complaint on May 4, 2001, and its certificate of service indicates a copy was mailed to counsel for Respondents that same day. However, counsel for Respondents never received that copy. Counsel for RCN had also mailed a copy directly to PECO, which received its copy and subsequently faxed it to counsel for Respondents on May 11, 2001. Thus, due to problems unforeseeable by and beyond the control of Respondents, their time to respond to the Amended Complaint was cut to twenty-one days. While that fact alone may not justify a fourteen-day extension, it should be taken into account in connection with the other factors described below.³

Complicated Issues of Fact

Respondents will not detail in this Motion each of the many issues of fact raised by the Amended Complaint. However, they would note that RCN's new make-ready allegations cover 17 pages of text and are supported by five new affidavits totaling 40 pages. The factual issues raised are wide-ranging and involve, among other things, the make-ready billing systems, policies, and practices of both PECO and EIS, two separate corporations. RCN also levels allegations against PECO regarding its several hundred thousand poles, principally that many of them are out of compliance with various safety codes.⁴ PECO believes it should have an additional fourteen days to respond to these allegations. Additionally, RCN has enlisted three former employees and contractors of Respondents to sign detailed factual declarations describing their experiences working with Respondents, as they believe are pertinent to the issues raised in the Amended

³ Taken alone, it does, however, justify at least a seven-day extension.

⁴ Amended Complaint at 14.

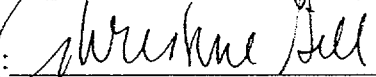
Complaint.⁵ Were this matter in court, such declarations would spur rounds of depositions to fully explore the relevant facts. In the context of pole attachment complaint proceedings, they at least justify a fourteen-day extension to enable to Respondents to assemble a full response.

PECO and EIS believe that a two-week extension is minimal and in the public interest. In addition, this brief extension will not adversely impact Complainant, who has consented to it.

WHEREFORE, THE PREMISES CONSIDERED, Respondents respectfully request that the Commission grant them a fourteen-day extension, through and including June 18, 2001, to respond to the Amended Complaint. Complainant consents to this extension.

Respectfully submitted,

PECO Energy Company
Exelon Infrastructure Services, Inc.

By: 

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Christine M. Gill
John R. Delmore
Erika E. Olsen
McDermott, Will & Emery
600 13th Street, N.W.
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202-756-8000

Their Attorneys

Dated: May 22, 2001

⁵ Declarations of Susan Snow, Arthur Russell, and Jonathan Troy Stinson.

CERTIFICATE OF SERVICE

I, Gloria Smith, hereby certify that on this 22nd day of May, 2001, a single copy of the foregoing "Consent Motion for Extension of Time of PECO Energy Company and Exelon Infrastructure Services, Inc." was served on the following as indicated:

By Messenger

Deborah Lathen
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By U.S. Mail

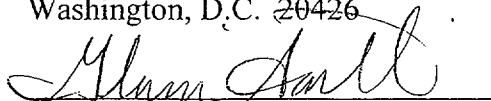
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Gloria Smith