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MCDERMOTT, WILL & EMERY

June 20, 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:

On June 18, 2001, we filed a Response to Amended Complaint of PECO Energy Company on behalf of PECO Energy Company in the above-referenced proceeding. As noted in the cover letter with which we filed the Response, the Response contained a photocopy of the Declaration of Michael Williams due to the fact that we initially received it via fax. Accordingly, attached herewith for appropriate insertion in the original Response to Amended Complaint of PECO Energy Company on file at the Commission is the original of the Declaration of Michael Williams.

We are also enclosing a copy of the Declaration of Michael Williams. Please file-stamp this copy and return it to our office with our courier.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to call me.

Very truly yours,



Shirley S. Fujimoto

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Federal Communications Commission
June 20, 2001
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Enclosure

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

**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.)	

**DECLARATION OF
MICHAEL A. WILLIAMS**

I, Michael A. Williams, pursuant to FCC Rule Sections 1.16 and 1.1407, hereby declare as follows:

1. I am an individual over the age of 18 and am employed by PECO Energy Company ("PECO") in its Real Estate & Facilities division. My job title is Director, Real Estate & Facilities, PECO Energy Company. I am familiar with the facts of this case, including the pole attachment agreement between PECO and RCN Telecom Services of Philadelphia ("RCN"). I have actual knowledge of the facts and exhibits discussed in this declaration.

2. During the time PECO has been doing make-ready work for RCN, PECO has permitted other companies with pole attachment agreements with it to have the option of hiring contractors other than PECO to do the telecom portion of the make-ready work.

However, PECO would prefer to perform all the make-ready work to sure that it is performed properly. When an attacher decides to hire PECO to do its make-ready work, PECO does not generally perform the work itself due to the volume of the work. Rather, it subcontracts a large portion of the work to Exelon Infrastructure Services of Pennsylvania ("EIS"), a subsidiary of Exelon Infrastructure Services. EIS does an initial review of the poles to determine a make-ready cost estimate for PECO (*i.e.*, what EIS will charge PECO plus PECO's costs), and PECO then prepares an invoice for the attacher based on that information. The attacher then pays PECO directly.

3. Some companies that have pole attachment agreements with PECO have negotiated the right to hire a make-ready contractor with employees that are qualified to work on the poles to complete the telecom portion of the make-ready work. In other words, that have employees that have at least the minimum of the level of training that PECO requires its own employees to have.

4. PECO recoups its make-ready costs (including EIS's fee) solely from the fee it charges the attacher. It does not allocate any make-ready costs to its general pole attachment rate calculation. In other words, PECO does not recoup make-ready costs through its pole attachment rates.

5. In the Amended Complaint, RCN suggests that PECO's make-ready fees are designed to "handicap a competitor of its affiliated telecommunications companies" That is not true; PECO's make-ready fees are not designed to "handicap" any companies, but to provide value in a competitive environment.

6. PECO's make-ready fees are designed to recover its and EIS's costs and provide PECO with appropriate levels of profitability for these services. PECO has always considered its make-ready fees and policies to be in accordance with the Pole Attachments Act and the FCC's regulations.

7. During the time PECO has been doing make-ready work for RCN, PECO's policy has been to pay for the make-ready work to be done to a pole if one of PECO's attachments is out of compliance with the National Electrical Safety Code ("NESC"). In many instances, however, it is the placement of a new attachment on the pole that triggers the requirement that the pole be modified for NESC compliance. For example, in some circumstances the present attachments to the pole are in compliance with the NESC, but the new attacher would be causing the existing attachments to be out of compliance, so PECO would expect the new attacher to pay the make-ready fees.

8. It is PECO's policy to have all of its poles in compliance with the NESC. What determines compliance with the NESC, however, can only be determined on a pole-by-pole basis by having a complete record of the installation and subsequent history of work on a particular pole. Since the amount of time and effort involved in determining the exact NESC status of a particular pole is extraordinary, and may not even be possible to accomplish, it is PECO's policy to require new attachers to simply bring the pole into compliance with the most current edition of the NESC.

9. If one of PECO's attachments is out of compliance with the NESC, PECO would either correct the violation itself or subcontract to correct it. However, if an attachment is out of compliance with the NESC due to action of another attacher (for example, if a third-party attacher improperly attached a strand), PECO's policy, during the time it has been doing make-ready work for RCN, was to require the attacher causing the problem to be responsible for correcting it. This means that PECO policy would be to contact the attacher and require it to undertake corrective measures by making the correction itself or through a non-utility make-ready contractor, or by paying PECO to perform the work involved. That process would likely take no more than three to four months. Alternatively, the new attacher could expedite the process by paying the make-ready fee on behalf of the out-of-compliance attacher.

10. PECO believes that its curative make-ready policies are in full compliance with the Pole Attachments Act and the Commission's regulations.

11. PECO strives to fix all violations of which it is aware as soon as reasonably possible. When PECO becomes aware of an out-of-compliance attachment, it schedules the problem to be fixed. The severity of the problem, generally measured by the danger it presents, dictates how quickly it will be fixed. However, given the size of PECO's electric network and the demands such a large network places on its resources, it is impossible to fix all problems immediately.

12. In terms of comprehensively reviewing PECO's poles for possible out-of-compliance attachments, it is virtually impossible to do that based solely on records. PECO would have to examine each pole in person. However, because PECO has approximately 430,000 poles, comprehensively evaluating all of its poles for out-of-compliance attachments would be extraordinarily expensive for its ratepayers and virtually impossible from a standpoint of time and resource allocation. For that matter, even limiting such a survey to all the poles to which RCN may prospectively attach would be extraordinarily expensive and virtually impossible from a standpoint of time and resource allocation (in the Amended Complaint, RCN estimates it may eventually attach to approximately 94,500 poles). Additionally, such a review could only tell PECO whether the pole currently has third-party attachments that are out of compliance with the NESC's spacing requirements. It would be extraordinarily difficult, based on PECO's records, to do a historical reconstruction of whether a pole was out of compliance *before* RCN or another third-party attached to it.

13. PECO strongly disagrees with RCN's estimate that nearly 25% of its poles contain out-of-compliance attachments. PECO's policy is to erect all its poles, and place all its attachments on its poles, in accordance with the NESC. With regard to other

companies placing attachments on PECO's poles, a standard clause in PECO's pole attachment (attached as Exhibit A) agreements is a requirement that attachers comply with the NESC.

14. In the Declaration of Marvin Glidewell attached to the Amended Complaint, Mr. Glidewell discusses a situation in which ^{he} ~~has~~ says RCN paid for make-ready work for a particular pole, but as of March 21, 2001 the make-ready had not been performed. To my knowledge RCN had not brought this situation to PECO's attention. PECO and its subcontractor EIS strive to perform RCN's make-ready in a timely manner. When PECO and EIS become aware of such cases, they act to correct them as soon as reasonably possible.

15. With regard to generally performing RCN's make-ready work in a timely manner, I would note that EIS increased its workforce to accommodate RCN's needs. It also provided RCN with schedules of its planned make-ready work, reports of those poles for which make-ready had been completed, and reports of when the paperwork associated with make-ready had been completed.

16. I have reviewed the Response to Amended Complaint of PECO Energy Company, and to the best of my knowledge and belief, all the facts stated therein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 15th, 2001 at Philadelphia, Pennsylvania.



Michael A. Williams, Declarant

EXHIBIT A

the cost of review, the excess may be applied to the cost of make-ready work or will be refunded if no make-ready work is required.

c) If facilities of PECO Energy or others must be rearranged or relocated, or other work done, to make ready for the requested Attachment, Attacher shall be responsible for the cost of such make-ready work. Prior to the start of make-ready work, PECO Energy may require Attacher to pay the costs of such work. Attacher shall send notice to, and obtain any required consents from, other attachers or occupiers of the poles regarding rearrangement of their facilities.

(d) After completion of its review of the application, PECO Energy shall notify Attacher whether the application has been approved or denied. Upon approval of the application, payment of required deposits, and completion of any necessary make-ready work, PECO Energy shall issue a Permit substantially in the form attached hereto as Exhibit B. PECO Energy may include in the Permit such conditions as it deems appropriate.

(e) The Permit when issued shall be accompanied by a bill for rental for each pole to which an Attachment is authorized at the rate specified in Exhibit C attached hereto, pro-rated for the fraction of the year between the date of issuance of the Permit and the date of the next regular semi-annual billing specified in Section 10 hereof. If the costs incurred by PECO Energy in application review and make-ready work are greater than the amounts deposited by Attacher to cover those costs, PECO Energy shall bill for the excess costs.

(f) PECO Energy, or at PECO Energy's discretion, PECO Energy's approved contractor, will install Attachments for Attacher at Attacher's cost on facilities or property of PECO Energy, in accordance with and subject to the provisions of this Agreement and the Permit. PECO Energy may, at its discretion, allow Attacher to install Attachments. The Permit shall terminate if approved Attachments are not made within ninety (90) days from the date of approval of the Permit, unless a written waiver of this provision is granted by PECO Energy or unless such delay is caused by PECO Energy. In the event of such termination, PECO Energy shall have the right to retain any fees or charges paid to PECO Energy on account of such Permit.

3. Construction Specifications. When Attacher is approved to perform work, Attacher shall install, construct, maintain, and remove in accordance with the regulations and specifications of the National Electric Safety Code, latest Edition, or any amendments or revisions thereof, in compliance with any applicable rules, regulations or orders now in effect or hereafter issued by any Federal or state commission or any other public authority having jurisdiction, and in conformity with the requirements of PECO Energy. Such requirements may include but not be limited to approval by PECO Energy of contractors, methods, and hardware to be used by Attacher and establishment by PECO Energy of procedures to be followed by employees and contractors of Attacher when working on PECO Energy property. Attacher shall place identifying markers on its Attachments at each pole in a manner acceptable to PECO Energy.