

FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Market Disputes Resolution Division
445 12th St., S.W.
Washington, DC 20554

November 7, 2017

By E-mail

Zito Canton, LLC,)	
Complainant,)	
)	Proceeding No. 17-284
v.)	File No. EB-17-MD-005
)	
Pennsylvania Power & Light Company,)	
Respondent.)	

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Dear Counsel:

On November 6, 2017, Enforcement Bureau Staff (“Staff”) presided over a conference call in the above-referenced proceeding. The conference call was attended telephonically by counsel for both parties, Zito Canton, LLC, (“Zito”) and Pennsylvania Power & Light Company (“PPL”). Staff scheduled the conference call to discuss the schedule for this matter in light of the Motion to Dismiss¹ that PPL filed on November 2, 2017. In its Motion, PPL asserted that Zito had failed to include the parties’ current pole attachment agreement (“the 1991 Agreement”) in

¹ Motion to Dismiss Pole Attachment Complaint, Proceeding No. 17-284, File No. EB-17-MD-005 (filed Nov. 2, 2017) (Motion to Dismiss).

its Complaint.² Shortly after staff scheduled the conference call, Zito filed its opposition to the Motion to Dismiss.³ This letter memorializes Staff's rulings made during the conference call.

- 1) During the call, staff directed PPL to email Zito and Staff a copy of the 1991 Agreement. PPL did so the same day, shortly after the conference call ended. Staff also ruled that the schedule of this proceeding shall be amended as follows: Zito may, on or before, **November 13, 2017**, file and serve an amended complaint that includes the 1991 Agreement and that complies with 47 C.F.R. §§ 1.1404.⁴
- 2) PPL shall, on or before **November 20, 2017**, file and serve a response to the amended complaint (or the original complaint if Zito chooses not to amend it) that complies with 47 C.F.R. §§ 1.1407 and 1.1408. Failure to respond may be deemed an admission of the material factual allegations contained in the amended complaint. *See* 47 C.F.R. § 1.1407(d). To the extent that PPL's Motion to Dismiss remains pending, any arguments in reply to Zito's Opposition to Motion to Dismiss shall be included with the response to the amended complaint.⁵
- 3) Zito shall, on or before **December 11, 2017**, file and serve a reply to the response that complies with 47 C.F.R. §§ 1.1407 and 1.1408.

Please note that the parties must file using the Commission's Electronic Comment Filing System ("ECFS") **all** written submissions in this proceeding, and all such submissions shall prominently contain, *inter alia*, the Proceeding Number and File Number referenced above. *See, e.g.,* 47 C.F.R. § 1.7. *See Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure Relating to the Filing of Formal Complaints Under Section 208 of the Communications Act and Pole Attachment Complaints Under Section 224 of the Communications Act*, FCC 14-179 (rel. Nov. 12, 2014) ("*ECFS Order*"); *see also* 47 C.F.R. § 1.1405.

Please be certain that the Commission Secretary (as opposed to Commission counsel) is the addressee on any written submission filed in this proceeding. The parties shall serve all filings via e-mail, hand-delivery, or overnight, together with a proof of all such service. *See* 47 C.F.R. § 1.1408, as amended by the *ECFS Order*. In addition, we request that the parties send to the Commission counsel handling this proceeding courtesy copies of all filings via e-mail and two copies via overnight delivery (if counsel is located outside of the Washington, DC area). If there is both a public and a confidential version of a filing, the courtesy copy to staff need only include the confidential version.

² Pole Attachment Complaint, Proceeding No. 17-284, File No. EB-17-MD-005 (filed Oct. 12, 2017) (Complaint).

³ Opposition to Motion to Dismiss, Proceeding No. 17-284, File No. EB-17-MD-005 (filed Nov. 6, 2017).

⁴ PPL has indicated to Zito and Staff that the proper name for the Respondent is PPL Electric Utilities Corporation. If Zito agrees this is the correct name for the Respondent, the amended complaint should so state.

⁵ PPL indicated on the conference call that it would review its Motion to Dismiss Pole Attachment Complaint, in light of the exchange of the parties' current pole attachment agreement, to determine whether the motion should remain pending, and that it will indicate to Staff and Zito if the motion is withdrawn.

The parties should note that this proceeding is restricted for *ex parte* purposes pursuant to 47 C.F.R. Part 1, Subpart H. Further, the parties shall retain all records that may be relevant to the complaint, including electronic records, until the Commission's decision in this proceeding is final and no longer subject to judicial review. See 47 U.S.C. § 154(i), 47 C.F.R. § 1.1415. This letter ruling is issued in accordance with the Commission's pole attachment rules, 47 C.F.R. §§ 1.1401-1.1424.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink that reads "Lisa Saks" with the initials "ME" written in a smaller font above the end of the name.

Lisa J. Saks
Assistant Chief, Market Disputes Resolution Division
Enforcement Bureau