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March 13, 2019

Via ECFS

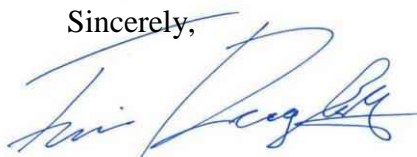
Marlene J. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 - 12th Street, SW
Washington, DC 20054

**Re: Answer of PPL Electric Utilities Corporation to the Amended Pole
Attachment Complaint of MAW Communications, Inc. (Proceeding
Number 19-29); Bureau ID Number EB-19-MD-001)**

Dear Ms. Dortch:

Please find attached Answer of PPL Electric Utilities Corporation to the Amended Pole Attachment Complaint of MAW Communications, Inc. in Proceeding Number 19-29; Bureau ID Number EB-19-MD-001.

Sincerely,



Timothy A. Doughty
Attorney for PPL Electric Utilities Corporation

Enclosure

cc: Lisa Saks, Enforcement Bureau
Adam Suppes, Enforcement Bureau

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)	
MAW Communications, Inc.,)	
<i>Complainant,</i>)	
)	Proceeding Number 19-29
v.)	Bureau ID Number EB-19-MD-001
)	
PPL Electric Utilities Corporation,)	
<i>Defendant</i>)	
)	

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March 13, 2019

SUMMARY OF ARGUMENT

The Complaint filed by MAW Communications, Inc. (“MAW”) is an illegitimate, last-ditch effort to hoodwink the Commission into pardoning MAW for the 1,095 unsafe and unauthorized attachments it has made to PPL Electric Utilities Corporation’s (“PPL”) electric distribution poles. MAW surreptitiously installed these illicit attachments, in the process recklessly endangering the lives of its contractors, jeopardizing the safety and reliability of PPL’s pole distribution system, creating a mess for others to fix later, and occupying valuable pole space that other law-abiding communications attachers cannot use. All of this widespread illicit and deceptive activity was done by MAW simply to save time and money and to give itself a competitive advantage over legitimate communications attachers.

MAW is well aware of the illicit nature of its attachments. Beginning in 2015, MAW installed new attachments to PPL’s poles without authority, installed “J-and-Raise” rebuild attachments without authority, and made numerous other unauthorized attachments to PPL’s mainline distribution poles by falsely claiming that they were “Service Drop Attachments,” all the while committing hundreds of violations of the National Electrical Safety Code (“NESC”), not to mention PPL’s construction standards and the PPL/MAW Pole Attachment License Agreement.

MAW did not submit the required applications for its rebuild project, and MAW falsely claims it received approval for the rebuild. A January 15, 2016 “letter” MAW claims it sent to PPL to inform PPL following MAW’s rebuild activity appears to be fraudulent.

MAW submitted several applications for “new build” attachment in 2016 but never did follow up with PPL to have these applications approved so that the “new build” attachments could be properly installed. Instead, faced with make-ready construction costs it did not want to

pay, MAW proceeded with installing its attachments without authorization from PPL and without even PPL's knowledge, pursuant to MAW's secret plan detailed in its Confidential January 18, 2017 "PPL Make Ready Policy Brief" addressed to certain Lancaster representatives. The only deviation from MAW's secret plan is that MAW was supposed to at least notify PPL of its attachments, but MAW never even did that.

In order to avoid PPL oversight and make-ready expenses for MAW's new build on PPL's mainline distribution poles, MAW created for itself an expansive definition of "service drop attachment" that is inconsistent with the definitions of the NESC, the FCC and the PPL/MAW Pole Attachment License Agreement. MAW's fictitious, far-fetched and self-serving interpretation of "service drop attachment" includes MAW's new-build attachments to miles of mainline distribution poles, so that MAW could make the illegitimate claim that none of its mainline distribution pole attachments requires an application.

PPL refused to grant the exception to the NESC and PPL's standards that MAW wanted to attach below ILEC facilities and to weave its facilities throughout all other existing communications attachers, simply because MAW wanted to avoid make-ready costs. Doing so would create NESC safety violations, jeopardize the reliability of the pole distribution system, disadvantage existing and new attachers, and place MAW at a competitive advantage over other communications companies. This type of anarchy on already-congested poles, while it might benefit MAW financially, is unsafe and unfair to everyone else on the pole, including those that need future access.

PPL has hundreds of photographs with measurements depicting MAW's illegal and appallingly unsafe attachment activity. MAW's activity was also observed first-hand by the PaPUC's Bureau of Investigation and Enforcement ("I&E"), whose inspectors were shocked and

appalled at the unsafe conditions they witnessed during a field conference with PPL, MAW and I&E representatives. The I&E “observed various poles and attachments that appeared to be unauthorized, noncompliant with applicable codes and regulations, or both,” and sent a letter telling MAW to cease and desist any and all broadband deployment on PPL’s poles immediately. The I&E’s cease and desist directive was issued “out of its immediate concern for the safety of the public, as well as employees of both PPL and MAW.”

PPL discovered that MAW was attaching illegally to its poles certainly not because MAW received attachment authorization from PPL, but instead only after a whistleblower and former MAW employee exposed MAW’s flagrant disregard for PPL’s pole attachment standards and application requirements. Following disclosure by MAW’s whistleblower, PPL surveyed its poles and found 1,095 unauthorized attachments by MAW, approximately 500 of which were “new build” attachments.

Prior to exercising its contract rights to remove any of MAW’s unauthorized attachments, PPL took the extraordinary step of seeking an injunction from the Court of Common Pleas of Lehigh County, Pennsylvania. Part of the two-day hearing addressing MAW’s egregious behavior was testimony from MAW’s former employee Joseph Staboleski, who testified that:

1. MAW’s unauthorized attachments were installed in disregard of PPL’s standards, in disregard of known NESC standards, and in disregard of third party attacher rights;
2. MAW’s applications were never authorized because MAW’s President did not want to pay the make-ready costs;
3. there was nothing unreasonable about PPL’s standards;
4. MAW’s violations of the 40-inch safety space were very dangerous; and
5. he left MAW because he was “hounded for months” by MAW’s decision to continue to build illegally.

Following these two days of testimony about MAW’s egregious conduct, the Lehigh County Court issued an order on April 13, 2018 which, *inter alia*:

1. prohibited MAW from accessing, working on, or connecting to any of PPL’s poles without PPL’s prior approval;

2. required MAW to file applications for MAW's unauthorized attachments;
3. permitted PPL to remove or remediate any unauthorized attachment at MAW's expense;
4. required MAW to comply with the PPL/MAW Pole Attachment License Agreement;
5. required MAW to maintain and replenish a \$75,000 escrow account to ensure reimbursement of PPL's costs;
6. required MAW to provide PPL records of MAW's attachments;
7. required MAW to pay the \$40,000 cost of the survey PPL had to perform to discover MAW's unauthorized attachments; and
8. required MAW to ensure its attachments are timely and properly recorded with PPL.

MAW has not complied with the terms of the April 2018 Lehigh County Court Order because it has failed to restore the \$75,000 escrow account necessary to comply with the Order. Accordingly, PPL has no assurance of being compensated for the make-ready work associated with MAW's pending attachment applications.

PPL will not process MAW's applications if MAW insists on keeping its facilities in place. This position is supported by PPL's right to remove unauthorized attachments under the PPL/MAW Pole Attachment License Agreement and to remove unauthorized attachments under the April 2018 Lehigh County Court Order. PPL insists that these unauthorized attachments be addressed as part of a holistic solution that achieves a fully-permitted system by: (1) removing unauthorized attachments; (2) fixing the great number of safety violations caused by MAW; (3) reconciling which of the City's and LCSC attachments these entities wish to transfer to MAW; and (4) processing MAW's applications for rebuild and new build network expansion.

MAW is a bad actor and cannot be allowed to act with impunity. To do so would encourage anarchy on PPL's electric pole distribution system and on other pole distribution systems across the country. And allowing MAW to benefit from not following critical and well-established make-ready processes would be grossly unfair to all of the other communications companies who do follow the rules.

Finally, a factual question exists whether many if not all of MAW's attachments to PPL's poles are not being used to provide any telecommunications service. This is particularly true considering MAW's attachments to PPL poles are being used for the Lan City Connect project, which does not offer a telecommunications service. To the extent MAW's attachments are not being used to provide any telecommunications service, MAW has no federal pole attachment rights to attach to PPL's poles and the Commission has no jurisdiction.

TABLE OF CONTENTS

SUMMARY OF ARGUMENT	i
I. JURISDICTION AND PARTIES	1
II. BACKGROUND AND FACTS	4
A. MAW and Its Network	4
B. MAW’s Lancaster Project.....	5
C. MAW’s “New Build” Attachments Were Deceptively Called “Service Drop Attachments” in a Reckless, Illicit and Anticompetitive Effort to Avoid PPL Oversight and Make-Ready Expenses.....	14
D. MAW’s Surreptitious J-and-Raise Rebuild Activity Was Another Reckless, Illicit and Anticompetitive Effort to Avoid PPL Oversight and Make-Ready Expenses.....	29
E. MAW’s Preposterous Definition of “Service Drop” Was Used in Yet Another Reckless, Illicit and Anticompetitive Effort to Avoid PPL Oversight and Make-Ready Expenses.....	43
F. The PaPUC Issued MAW a Cease and Desist Directive in Response to MAW’s Egregious Unsafe Activity.....	52
G. The Lehigh County Court Heard Two Days of Testimony About MAW’s Egregious Behavior and Granted PPL the Right to Remove MAW’s Unauthorized Attachments.....	55
H. MAW Must Account for Its Illicit, Dangerous and Anticompetitive Conduct by Proposing a Holistic Solution That Achieves a Fully-Permitted System.....	64
III. “DISCUSSION” SECTION OF MAW COMPLAINT	78
IV. “COUNTS” SECTION OF MAW COMPLAINT	91
V. INFORMATION DESIGNATION.....	92
VI. CONCLUSION.....	93

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)	
MAW Communications, Inc.,)	
<i>Complainant,</i>)	
)	Proceeding Number 19-29
v.)	Bureau ID Number EB-19-MD-001
)	
PPL Electric Utilities Corporation,)	
<i>Defendant</i>)	
)	

Defendant PPL Electric Utilities Corporation (“PPL”), pursuant to the Notice of Formal Complaint issued February 14, 2019 by the FCC Enforcement Bureau in this proceeding and pursuant to Section 1.726 of the Commission’s rules, 47 C.F.R. § 1.726, hereby submits the following Answer to MAW Communications, Inc.’s Amended Pole Attachment Complaint (the “Complaint”).

As explained in PPL's answers to Paragraphs 1-12 below, a factual question exists whether many if not all of MAW's attachments to PPL's poles are not being used to provide any telecommunications service. This is particularly true considering MAW's attachments to PPL poles are being used for the Lan City Connect project, which does not offer a telecommunications service. To the extent MAW's attachments are not being used to provide any telecommunications service, MAW has no federal pole attachment rights to attach to PPL's poles and the Commission has no jurisdiction.

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PPL Answer: Paragraph 1 of the Complaint contains legal conclusions to which no response is required. From a factual standpoint, it appears that many if not all of MAW's attachments to PPL's poles are not being used to provide any telecommunications service. To the extent MAW's attachments are not being used to provide any telecommunications service, MAW has no federal pole attachment rights to attach to PPL's poles and the Commission has no jurisdiction.¹

MAW 2: *The Commission has the authority and the duty to “regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions.” 47 U.S.C. § 224(b)(1); see also 47 C.F.R. § 1.1401.*

PPL Answer: Paragraph 2 of the Complaint contains legal conclusions to which no response is required.

MAW 3: *Pursuant to Section 224(f), a utility must “provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.” 47 U.S.C. § 224(f)(1).*

PPL Answer: Paragraph 3 of the Complaint contains legal conclusions to which no response is required.

MAW 4: *Pursuant to Section 224(b)(2), the Commission is charged with prescribing by rule regulations to carry out the provisions of Section 224. 47 U.S.C. § 224(b)(2).*

PPL Answer: Paragraph 4 of the Complaint contains legal conclusions to which no response is required.

MAW 5: *The Commission has implemented rules governing a utility's obligations to provide access upon just and reasonable rates terms and conditions. See 47 C.F.R. § 1.1401 et seq.*

PPL Answer: Paragraph 5 of the Complaint contains legal conclusions to which no response is required.

MAW 6: *Complainant MAW provides telecommunications services and broadband internet access to businesses and residents in Pennsylvania. MAW's network supports the provision of mobile backhaul and other high-speed services (including data, video, voice, and advanced E911*

¹ See 47 U.S.C. §224(a)(4) (“The term ‘pole attachment’ means any attachment by a cable television system or provider of telecommunications service....”); 47 USC § 153 (44) (“A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services.”); *Verizon v. Federal Communications Commission*, 740 F.3d 623, 650 (D.C. Cir. 2014), quoting *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks, Declaratory Ruling*, 22 FCC Rcd 5901, at ¶50 (2007) (“Wireless Broadband Order”) (“‘A service provider is to be treated as a common carrier for the telecommunications services it provides, but it cannot be treated as a common carrier with respect to other, non-telecommunications services it may offer, including information services.’”).

service) to businesses, households, public safety agencies and other critical community organizations and institutions. MAW has a general office address of 419 Washington Street, PO Box 978, Reading, PA 19603 and phone number of (610) 781-6279.

PPL Answer: PPL denies the allegations in Paragraph 6 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth. With respect to MAW's attachments in Pennsylvania to PPL's poles, it appears from MAW's Complaint that many if not all of MAW's attachments to PPL's poles are not being used to provide any telecommunications service. This is particularly true considering MAW's attachments to PPL poles are being used for the Lan City Connect project, which does not offer a telecommunications service.² To the extent that MAW's attachments to PPL's poles are not being used to provide any telecommunications service, they are not subject to Commission jurisdiction.³

MAW 7: *Respondent PPL is an investor-owned Pennsylvania electric utility in the business of providing electric transmission and distribution services. PPL has a general business address of 2 N. Ninth Street, Allentown, PA 18101-1179.*

PPL Answer: PPL admits the allegations in Paragraph 7 of the Complaint.

MAW 8: *PPL owns or controls poles in the State of Pennsylvania that are used for wire communication.*

PPL Answer: PPL admits the allegations in Paragraph 8 of the Complaint.

MAW 9: *MAW alleges, upon information and belief, that PPL is not owned by any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.*

PPL Answer: PPL admits the allegations in Paragraph 9 of the Complaint.

MAW 10: *MAW is attached to poles owned and controlled by PPL.*

PPL Answer: PPL admits that MAW is attached to poles owned and controlled by PPL, but as explained in this Answer, most of MAW's attachments were made without receiving authorization from PPL.⁴ Many of these were installed in an unsafe manner that endangered the life of MAW's installers, and many occupy space on PPL's

² The Lan City Connect website describes its service as follows: "LanCity Connect is a Community-Based Broadband Solution connecting friends, neighbors, and local businesses to the Internet." See <https://www.lancityconnect.com/> (last visited Mar. 12, 2019).

³ See *supra* footnote 1.

⁴ See PPL Answer to MAW Amended Pole Attachment Complaint at ¶¶ 23, 26, 36, 38, 44, 46, 48, 49, 51, 55, 57, 61, 64, 65, 66, 68, 69, 77, 78, 79, 80, 82, 84, 87, 89, 90, 91, 92, 94, 96, 97, 98, 104, 110, 111, 112, 114, 115, 120, 139, and MAW FN 32.

congested poles that cannot be used by legitimate communications companies who comply with the rules.⁵

The only MAW-owned attachments that were originally authorized are the 428 (426 of which are within the City of Lancaster) attachments that were transferred from the City of Lancaster and the Lancaster Community Safety Coalition (“LCSC”) to MAW in March or April of 2015, prior to MAW performing a rebuild of those attachments.⁶ MAW’s rebuild of these attachments and others was performed without filing the required application and without receiving any PPL authorization, and so these relocated and rebuilt attachments are now also unauthorized.⁷

MAW 11: *The Commonwealth of Pennsylvania, including its political subdivisions, agencies and instrumentalities, does not regulate pole attachments in the manner established by Section 224, which would preempt the jurisdiction of this Commission over pole attachments in Pennsylvania.*

PPL admits the allegations in Paragraph 11 of the Complaint.

MAW 12: *Attached to this Complaint is a certificate of service certifying that PPL and the Pennsylvania Public Utility Commission were served with copies of the Complaint.*

PPL admits the allegations in Paragraph 11 of the Complaint.

II. BACKGROUND AND FACTS

A. MAW and Its Network

As explained in PPL’s answers to Paragraphs 13-17 below, MAW is not completely dependent upon access to PPL’s poles to construct its network. MAW can deploy its facilities underground by, for example, micro-trenching its facilities as it has in certain areas of downtown Lancaster, Pennsylvania.

MAW 13: *Founded in 1997, MAW is a family-owned Pennsylvania telecommunications carrier with a Certificate of Public Convenience (“CPC”) issued by the Pennsylvania Public Utility Commission (“PA PUC”) to provide facilities-based telecommunications services in Pennsylvania.*

PPL Answer: PPL admits that MAW was issued a certificate of public convenience in 1998 to provide competitive local exchange carrier telecommunications services. PPL

⁵ See PPL Answer to MAW Amended Pole Attachment Complaint at ¶¶ 23, 26, 28, 31, 32, 36, 46, 47, 49, 51, 52, 55, 58, 60, 61, 64, 66, 69, and 70.

⁶ See PPL Answer to MAW Amended Pole Attachment Complaint at ¶¶ 23, 48, 49, 51, and 66.

⁷ See PPL Answer to MAW Amended Pole Attachment Complaint at ¶¶ 23, 25, 26, 38, 44, 45, 46, 47, 48, 49, 51, 52, 55, 56, 57, 64, 75, 80, 82, 83, 84, 104, and 105.

denies all other allegations in Paragraph 13 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

MAW 14: *MAW's fiber optic network includes over 4,500 strand miles of fiber in Berks and Lancaster counties.*

PPL Answer: PPL denies the allegations in Paragraph 14 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

MAW 15: *MAW provides telecommunication services to health, governmental, and educational institutions; local governments; and telecommunications carriers, including transport services for nationwide wireless carriers.*

PPL Answer: PPL denies the allegations in Paragraph 15 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

MAW 16: *To construct its fiber optic network in Lancaster and Berks counties, MAW requires access to PPL owned or controlled poles.*

PPL Answer: PPL denies that MAW requires access to PPL owned or controlled poles to construct its network. MAW has demonstrated that it is capable of deploying its network without accessing PPL's poles by deploying facilities underground. For example, MAW has micro-trenched its facilities in certain areas of downtown Lancaster, Pennsylvania.⁸ PPL notes that micro-trenching is less costly than attaching to utility poles. MAW could also install its facilities underground in more traditional fashion. Accordingly, PPL denies the allegations in Paragraph 16 of the Complaint.⁹

MAW 17: *MAW and PPL entered into a Pole Attachment Agreement in 2002 setting forth the terms of MAW's access and attachment to PPL poles. The Pole Attachment Agreement became effective January 1, 2003 and is in effect today.*

PPL Answer: PPL admits these allegations, but adds that the terms and conditions of MAW's access and attachment to PPL poles is also governed by PPL's online portal system which administers PPL's application process (which was placed into service in 2013), by PPL's management of notifications and transfers through the National Joint Utilities Notification System ("NJUNS"), and by PPL's design and construction standards, which specify how equipment must be placed on PPL's poles.¹⁰

B. MAW's Lancaster Project

⁸ See R. Yanek Meeting Notes from Meeting 1 with PPL, City of Lancaster/Lancaster Community Safety Coalition, and MAW, May 24, 2018, attached hereto at Attachment D, Exhibit 1 ("Service to City Buildings downtown Underground was provided by Micro-Trenching in street and Junction boxes in the sidewalk.").

⁹ Declaration of Ryan J. Yanek at ¶ 5, attached hereto at Exhibit 1 (hereinafter "Yanek Declaration").

¹⁰ Yanek Declaration at ¶ 6.

As explained in PPL's answers to Paragraphs 18-25 below, MAW installed its ADSS cable attachments without authorization and without using electric-qualified workers, thus endangering the lives of MAW's installers. PPL has attached photographs of the large number of such dangerous MAW installations.

A January 15, 2016 "letter" MAW claims it sent to PPL to alert PPL about MAW's rebuild activity appears to be fraudulent. MAW did not notify PPL prior to the start of the rebuild project, nor did it submit a completed attachment rebuild application. Accordingly, even if this January 15, 2016 "letter" was sent on the date that MAW claims it was sent, this document is evidence that MAW violated the PPL/MAW Pole Attachment License Agreement by completing a rebuild project without notifying PPL and submitting an application prior to the start of the rebuild.

In testimony leading up to the April 13, 2018 Lehigh County Court Order, MAW's former employee Joseph Staboleski testified that:

- (1) MAW's unauthorized attachments were installed in disregard of PPL's standards, in disregard of known NESC standards, and in disregard of third party attacher rights;
- (2) MAW's applications were never authorized because MAW's President did not want to pay the make-ready costs;
- (3) there was nothing unreasonable about PPL's standards;
- (4) MAW's violations of the 40-inch safety space were very dangerous; and
- (5) he left MAW because he was "hounded for months" by MAW's decision to continue to build illegally.

MAW 18: *In December 2014, MAW entered into a Municipal Carrier Agreement ("MCA") with the City of Lancaster ("Lancaster" or "the City") to rebuild the network that supports the City's traffic controllers and the Lancaster Community Safety Coalition's ("LCSC") camera network and to deploy Pennsylvania's first community broadband network, "LanCity Connect."*

PPL Answer: PPL admits that such a document purporting to be this agreement is attached to the Complaint at Attachment A, Exhibit 2. The Agreement speaks for itself.

MAW 19: *MAW's existing and planned network facilities in the City provide control and monitoring of hundreds of cameras and traffic lights, as well as broadband and telecommunications services for health care facilities, the City Police Department, City and County Administration Services, and Public Works, including water services, street services, code services, administration services, and other similar services. MAW also has an agreement to provide broadband and telecommunications services to Penn Medicine's Lancaster General Hospital facility ("LGH"), but has been unable to turn up services to LGH because of its dispute with PPL. The LanCity network also serves retail broadband customers; currently, MAW has approximately 300 residential and business customers on this network.*

PPL Answer: PPL lacks knowledge or information sufficient to form a belief as to whether MAW provides “telecommunications” service, and does not know how MAW defines that term. PPL lacks knowledge or information sufficient to form a belief as to the extent to which MAW provides “broadband” service, but PPL notes that broadband service does not qualify as a “telecommunications” service, so that MAW attachments used to provide such services alone are not subject the Commission’s pole attachment jurisdiction.¹¹ PPL notes that MAW’s attachments to PPL poles are being used for the Lan City Connect project, which does not offer telecommunications service.¹²

On information and belief, MAW already provides broadband services to LGH, so PPL does not understand what MAW means when it says it has been unable to “turn up” services to LGH. To the extent a response is otherwise required, the allegation that MAW is unable to “turn up” service to LGH is denied.¹³

PPL denies the allegations that MAW serves 300 residential and business retail broadband customers for lack of knowledge or information sufficient to form a belief as to its truth. PPL notes, however, that “retail broadband” service does not qualify as a “telecommunications service” so that MAW attachments used to provide such services are not subject the Commission’s pole attachment jurisdiction.¹⁴

PPL admits that MAW provides limited services to the City of Lancaster for its camera and traffic light system.

PPL denies the remaining allegations in Paragraph 19 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

MAW 20: *The LanCity Connect project involves over 50 route miles of aerial plant—27 route miles of existing fiber and approximately 26 route miles of planned fiber—requiring attachments to over 2,000 utility poles in PPL’s service area.*

PPL Answer: As explained in response to the allegations in Paragraph 16, MAW does not require access to PPL owned or controlled poles to construct its network, and instead could micro-trench its facilities as it has done in Lancaster already, or otherwise install its facilities underground.¹⁵

PPL denies the remaining allegations in this paragraph for lack of knowledge or information sufficient to form a belief as to their truth.

¹¹ See *supra* footnote 1.

¹² The Lan City Connect website describes its service as follows: “LanCity Connect is a Community-Based Broadband Solution connecting friends, neighbors, and local businesses to the Internet.” See <https://www.lancityconnect.com/> (last visited Mar. 12, 2019).

¹³ Yanek Declaration at ¶ 7.

¹⁴ See *supra* footnote 1.

¹⁵ See R. Yanek Meeting Notes from Meeting 1 with PPL, City of Lancaster/Lancaster Community Safety Coalition, and MAW, May 24, 2018, attached hereto at Attachment D, Exhibit 1 (“Service to City Buildings downtown Underground was provided by Micro-Trenching in street and Junction boxes in the sidewalk.”).

MAW 21: *MAW's existing and planned network in the City of Lancaster is an all-fiber network. The fiber utilized by MAW is lightweight, particularly as compared to copper and older coaxial facilities and does not conduct electricity. Some of the fiber cable that MAW deploys is attached using steel strand and some of the cable is all-dielectric self-supporting ("ADSS") cable. ADSS service drop cable typically weighs less than 20 pounds per 1,000 feet of strand and is comparable in size to a drinking straw. By comparison, older copper feeder cables can weigh as much as 5,000 pounds per 1,000 feet. The physical characteristics of the ADSS portion of MAW's network allows MAW's fiber to be placed closer to electric facilities than can conductive telecommunications cables.*

PPL Answer: PPL lacks knowledge or information sufficient to form a belief as to whether MAW's network in Lancaster is "all-fiber", but notes that in this paragraph MAW itself acknowledges some portion of this fiber is supported by steel strand.

PPL is aware that in general, fiber is lighter in weight than copper and older coaxial facilities, but PPL denies the allegation that all forms of fiber used by MAW do not conduct electricity for lack of knowledge or information sufficient to form a belief as to its truth. PPL admits that ADSS fiber cable is non-conductive, but notes that other non-ADSS fiber requires the support of a steel messenger wire, and that steel messenger wires do in fact conduct electricity.

PPL does not know what MAW considers to be an "ADSS service drop cable", but the issue whether MAW's attachments qualify as "Service Drop Attachments" under the parties' Pole Attachment License Agreement is an important issue that is addressed later in this Answer.¹⁶ PPL does not know the weight of ADSS fiber but some ADSS fiber is certainly larger in diameter than a drinking straw.

PPL admits that ADSS fiber that is non-conductive may be installed closer to electric facilities than can conductive telecommunications cable, but that fact is not in dispute.

The issue that is in dispute, however, and which MAW fails to mention in this paragraph or anywhere else in its Complaint, is that National Electrical Safety Code ("NESC") requires any person installing such non-conductive ADSS communications attachments close to energized facilities must be electric-qualified to perform such potentially hazardous work.¹⁷ MAW installed such attachments without authorization and without using electric-qualified workers, thus placing its installers in grave, life-threatening danger.¹⁸ The list of MAW's contractors that MAW provided to PPL does not include a single electric-qualified contractor.¹⁹ Moreover, because of the dangers associated with installations so close to energized conductors, PPL's standards require that all clearances between PPL electrical facilities and communication cable facilities must be in

¹⁶ See PPL Answer to MAW Amended Pole Attachment Complaint at ¶¶ 25, 26, 58, 59, 60, 61, 62, 63, 65, 79, 82, 85, 97, 110, 111, and 115.

¹⁷ Declaration of Kristie M. Rippke at ¶ 8, attached hereto at Attachment B (hereinafter "Rippke Declaration").

¹⁸ *Id.* at ¶ 10.

¹⁹ See MAW Contractor List provided during discovery in the Lehigh County Court proceeding at Attachment D, Exhibit 2.

accordance with the latest edition of the NESC.²⁰ MAW therefore installed these facilities not only without authorization, but also in violation of PPL's standards, which are designed to safeguard the electric distribution system and everyone working in proximity to it.

See also the 12 photographs of MAW facilities dangerously installed too close to electric facilities at A sampling of photographs of the large number of such dangerous MAW installations is available in this Answer at Attachment D, Exhibit 5, which is only a 12-pole representative sampling of only the first 100 of the 1095 unauthorized attachments surveyed and documented by PPL. The list of 1095 unauthorized attachments which identifies MAW violations associated with hundreds of its attachments to PPL poles is attached hereto at Attachment D, Exhibit 4. PPL can provide the Commission with a photograph of any of these poles upon request.

To the extent not specifically addressed in this answer to Paragraph 21, PPL's denies the allegations in Paragraph 21 for lack of knowledge or information sufficient to form a belief as to their truth.

MAW 22: *As part of the MCA, MAW assumed the rights and responsibilities for certain existing City and LCSC fiber and attachments in the City of Lancaster.*

PPL Answer: The MCA agreement speaks for itself. PPL notes, however, that the MCA requires MAW to construct all routes of fiber optic facilities in accordance with "Telecommunications industry standards."²¹ MAW has not constructed its routes in accordance with Telecommunications industry standards because no such standards would permit MAW's widespread violations of the NESC or MAW's willful refusal to seek authorization from the utility pole owner for its attachments.

MAW 23: *MAW received permission from LCSC to assume ownership of LCSC's 475 fiber optic cable attachments and promptly notified PPL. However, once MAW began the process of rebuilding the LCSC fiber network, it discovered that the City and LCSC's records were incomplete, and that the City and LCSC in fact had 960 existing attachments on PPL poles. As a result, MAW endeavored to record all relevant information regarding the attachments to correct the City and LCSC's lapse. Once the rebuild was complete, MAW alerted PPL to the total number of attachments, explained that the City's and LCSC's records were not accurate, and told PPL that profile sheets, photos, and videos of all 960 attachments (data and records created by MAW) were available upon request.*

²⁰ Rippke Declaration at ¶ 9, *See also* Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc., App. D, Communications Cable Attachment Specifications, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000226).

²¹ Municipal Carrier Agreement Between MAW Communications, Inc. and the City of Lancaster, December 2014, attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 2 (MAW000029).

PPL Answer: PPL admits that the March 17, 2015 letter from LCSC to PPL²² requested that PPL transfer from LCSC to MAW certain attachments that were specified on a list that was attached to the March 17, 2015 letter. PPL states for the record that the list of poles attached to the April 7, 2015 email contains 490 poles, not 475 poles, and that only 426 of the listed poles are poles owned and controlled by PPL in the City of Lancaster. There were two additional poles outside the City which were transferred bringing the total to 428.²³

PPL admits that the City of Lancaster and LCSC had more than 475 attachments on poles owned and controlled by PPL.

PPL takes issue with the statement, “MAW endeavored to record all relevant information regarding the attachments to correct the City and LCSC’s lapse,” because PPL is not sure whether there was any “lapse” at all. Because the City of Lancaster and LCSC own more attachments than the 426 that they actually requested to be transferred to MAW, it could be that the City and LCSC did not intend for all of their attachments to be transferred to MAW. PPL also never received a revised spreadsheet identifying 960 attachments or any correspondence from MAW, the City of Lancaster, or LCSC to correct this “lapse.”²⁴

Based on the foregoing, PPL denies the allegation that “MAW endeavored to record all relevant information regarding the attachments to correct the City and LCSC’s lapse.”

PPL denies as fraudulent MAW’s allegation in this paragraph that “[o]nce the rebuild was complete, MAW alerted PPL to the total number of attachments, explained that the City’s and LCSC’s records were not accurate, and told PPL that profile sheets, photos, and videos of all 960 attachments (data and records created by MAW) were available upon request.”

To support its claim regarding this notification, MAW relies on a “letter” dated January 15, 2016, that contains no street address and is addressed “To whom it may concern.”²⁵

This January 15, 2016 “letter” states that MAW completed its first phase of constructing a citywide fiber optic network by “J and Raising” the existing plant and replacing it with MAW’s current plant. Pursuant to Section 9.2 of the PPL/MAW Pole Attachment License Agreement, MAW is required to notify PPL of such an attachment rebuild project by submitting a completed attachment rebuild application a minimum of 30 days before the start of the attachment rebuild project.²⁶ MAW did not notify PPL prior to the

²² Letter from Wes Farmer, PhD, Exec. Dir., Lancaster Safety Coalition, to William Klokis, Pole Attachments Manager (Mar. 17, 2015), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 13 (MAW00094-MAW110).

²³ Yanek Declaration at ¶ 8.

²⁴ Yanek Declaration at ¶ 9.

²⁵ Letter from Frank Wiczowski, President, MAW Communications, Inc., to ‘To Whom it May Concern,’ (Jan. 15, 2016), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 5 (MAW000051).

²⁶ Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc., Article 9, Section 9.2, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000189).

start of the rebuild project, nor did it submit a completed attachment rebuild application. Accordingly, even if this January 15, 2016 “letter” was sent on the date that MAW claims it was sent, this document still serves as evidence that MAW violated the Pole Attachment License Agreement by completing a rebuild project without notifying PPL and submitting an application prior to the start of the rebuild project.²⁷

PPL believes this “letter” to be fraudulent for numerous compelling reasons. First, PPL has no record of ever receiving this January 15, 2016 “letter.” PPL first became aware of the “letter’s” existence during the last of several meetings between PPL and MAW that took place from May to August, 2018. Second, PPL never requested or received any of the 960 profile sheets, photos, or video logs that the “letter” states are “ready to be provided upon request.” Third, the “letter” is not properly addressed, even though it would have taken little work for MAW to contact PPL customer service to determine to whom the “letter” should be addressed. Ryan Yanek had been placed in charge of communications company attachments beginning in June of 2015. Stine Engineering was at that time in place and working on attachment requests. PPL’s Jose Silverio was assisting Mr. Yanek at PPL with attachment requests, as Mr. Silverio had been assisting Mr. Yanek’s predecessor William Klokis. So if this “letter” is authentic, MAW did not try very hard to reach anyone because nobody at PPL received it.²⁸ Fourth, even if were authentic, and even if it were actually sent when MAW claims, this “letter” mysteriously lacks any street address and would not have been deliverable to PPL without a street address. If this “letter” were instead emailed, MAW should have an email documenting where it was sent via email, but MAW’s Complaint attaches no such email correspondence and MAW failed to produce such an email correspondence after PPL requested one.²⁹ Furthermore, it would be difficult to envision a successful email transmission considering that MAW did not even bother to learn to whom the letter should be addressed. Fifth, the “letter” indicates that MAW filed certain applications electronically for the first of MAW’s 15 additional routes. It makes no sense to assume that MAW was capable of electronically filing an attachment application but was incapable of identifying the proper PPL contact to whom to send this “letter.” Sixth, PPL did not learn that MAW had performed any rebuild work at all on PPL’s poles until a whistleblower from MAW alerted PPL in October of 2017 to MAW’s reckless and dangerous unauthorized attachment activity.³⁰ In testimony leading up to the April 13, 2018 Lehigh County Court Order, MAW’s former employee Joseph Staboleski testified that:

- (1) MAW’s unauthorized attachments were installed in disregard of PPL’s standards, in disregard of known NESC standards, and in disregard of third party attacher rights;³¹

²⁷ Yanek Declaration at ¶ 10.

²⁸ *Id.*

²⁹ See R. Yanek Meeting Notes from Meeting 9 with PPL, City of Lancaster/Lancaster Community Safety Coalition, and MAW, Aug. 2, 2018, attached hereto at Attachment D, Exhibit 3.

³⁰ Yanek Declaration at ¶ 11.

³¹ *PPL Electric Utilities Corporation v. MAW Commc’ns, Inc.*, Transcript of Proceedings, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 (Mar. 23, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment F, at 48 (MAW000323).

- (2) MAW's applications were never authorized because MAW's President did not want to pay the make-ready costs;³²
- (3) there was nothing unreasonable about PPL's standards;³³
- (4) MAW's violations of the 40-inch safety space were very dangerous;³⁴ and
- (5) he left MAW because he was "hounded for months" by MAW's decision to continue to build illegally.³⁵

Seventh, this January 15, 2016 "letter" was not referenced by MAW during the entire court proceeding, which was taking place largely to address PPL claims that MAW's rebuild was unauthorized.³⁶ If the document were authentic and valid, it would arguably support MAW's argument to a limited extent. Thus, considering the value of this "letter," it strains credulity to believe MAW would not have referenced its "letter" some time prior to the court's April 13, 2018 decision in that case.³⁷ Eighth, this January 15, 2016 "letter" is not mentioned in MAW's 10-Page Confidential "PPL Make Ready Policy Brief" that MAW prepared for representatives of the City, which is dated one year after January 15, 2016, on January 18, 2017.³⁸ MAW's 10-Page Confidential "PPL Make Ready Policy Brief" complains that PPL make-ready charges associated with MAW's January 2016 attachment application are too high, then cavalierly recommends to the City that MAW: (1) disregard and not perform PPL's required make-ready work; (2) decline to seek FCC relief for any alleged overcharges; and (3) install the future MAW system on PPL's electric distribution poles without PPL authorization and as MAW sees fit. PPL will address this 10-Page Confidential "PPL Make Ready Policy Brief" in more detail later.³⁹ For now, PPL points out that in the first paragraph of this document, MAW reports that MAW had by then installed 976 attachments, with most of them on PPL poles. If MAW had received authorization from PPL for MAW's attachments to PPL poles, why did the 10-Page Confidential "PPL Make Ready Policy Brief" not mention that authorization? Ninth, prior to sending the "letter," MAW was concerned about PPL's reaction to learning that MAW had attached to far more poles than were identified in the March 17, 2015 letter from LCSC ("I'm not sure what their response will be when then [sic] learn we are attached to over 1,000 poles instead of the 475 the LCSC had reported.")⁴⁰ Tenth and finally, the fraudulent nature of the January 15, 2016 "letter" is consistent with MAW's other deceitful activity that is addressed in this Answer.⁴¹

³² *Id.* at 23-24 (MAW000298-MAW000299).

³³ *Id.* at 28 (MAW000303).

³⁴ *Id.* at 30 (MAW000305).

³⁵ *Id.*

³⁶ Yanek Declaration at ¶ 11.

³⁷ *PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Order, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 (Apr. 13, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment F (MAW000269-MAW000274).

³⁸ See *PPL Make Ready Policy Brief – rev1*, Jan. 18, 2017, attached to MAW Amended Pole Attachment Complaint at Exhibit F (MAW000694-MAW000703).

³⁹ See PPL Answer to MAW Complaint at ¶ 55.

⁴⁰ See October 5, 2015 email Frank Wiczowski to Wes Farmer, and Patricia Brogan, obtained during discovery in the Lehigh County Court proceeding and attached hereto at Attachment D, Exhibit 21.

⁴¹ Yanek Declaration at ¶ 45.

Mr. Wiczkowski's Declaration at paragraph 15 claims that the January 15, 2016 "letter" informed PPL that MAW's rebuild was complete. This statement is incorrect. As specified in the PPL/MAW Pole Attachment License Agreement, the rebuild process must be completed within 12 months by removing the old facilities that had been temporarily raised per the J-and-raise process.⁴² By the time of the January 15, 2016 "letter," those old facilities had not been removed. In fact, most of them have still not been removed as of today, more than three years later.⁴³

MAW 24: *Moreover, despite a promise to do so in 2015, the City and LCSC will not transfer their remaining attachments to MAW until MAW and PPL agree upon a remediation plan to address the parties' dispute concerning alleged unauthorized attachments. As such, the City currently retains 379 attachments and LCSC retains 380 attachments as of today that were intended to be transferred to MAW.*

PPL Answer: PPL is not privy to any promises made between the City of Lancaster and LCSC and MAW. PPL is not aware of how many attachments are currently retained by the City of Lancaster and LCSC or whether any such attachments were intended to be transferred to MAW. Based on the foregoing, PPL denies the allegations in Paragraph 24 of the Complaint for lack of knowledge or information sufficient to form a belief as to its truth. PPL adds, however, that PPL offered to MAW that if the City and LCSC wanted to transfer their facilities to MAW, PPL could consider that as part of a wholesale remediation strategy.⁴⁴

MAW 25: *To construct its network in Lancaster, MAW utilizes at least three different types of attachments on PPL poles that trigger three different levels of review under MAW's pole attachment agreement with PPL. These include (1) new fiber routes to extend the existing network ("new build"), (2) temporary attachments using a J-hook ("J-and-raise") to replace existing deteriorated plant, and (3) customer service drops on the existing network.*

PPL Answer: PPL admits that MAW employs three types of attachments, but those attachments are instead properly characterized as: (1) new build; (2) attachment rebuild; and (3) service drop attachments. The review required for each are specified in the PPL/MAW Pole Attachment License Agreement. For new build, MAW is required to follow the Article 6 application process, as supplemented several years ago by PPL's implementation of the online portal process. For attachment rebuild, MAW is required to follow the Article 9 attachment rebuild process, as supplemented several years ago by PPL's implementation of the online portal process. For service drop attachments, Section 6.4 specifies no attachment application is required, but Section 1.18 specifies such attachments must pay an attachment fee.⁴⁵ Accordingly, PPL denies the allegations in

⁴² Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc., Article 9, Section 9.4, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000190).

⁴³ Yanek Declaration at ¶ 12.

⁴⁴ Yanek Declaration at ¶ 13.

⁴⁵ Yanek Declaration at ¶ 14, *See also* Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc., Article 6, Section 6.4 and Article 1, Section 1.18, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000189, MAW000176).

Paragraph 25 of the Complaint to the extent inconsistent with PPL's characterization of MAW's attachments and the review process associated with them.

C. MAW's "New Build" Attachments Were Deceptively Called "Service Drop Attachments" in a Reckless, Illicit and Anticompetitive Effort to Avoid PPL Oversight and Make-Ready Expenses

As explained in PPL's answers to Paragraphs 26-43 below, contrary to MAW's contention that it has made no "new build" attachments, PPL's survey conducted between November 2017 and February 2018 found 1,095 unauthorized attachments by MAW, approximately 500 of which were new build attachments. Rather than go through the process of submitting rebuild applications, which would require MAW to perform make-ready construction work in order to install its attachments safely, MAW instead falsely claimed that its new build attachments are instead Service Drop Attachments that do not require any application.

MAW submitted several applications for "new build" attachment but never did follow up with PPL to have these applications approved. Instead, MAW abandoned the Applications, and did not complete others once PPL provided Make Ready feedback on the first four completed submissions. MAW decided to proceed with installing its attachments without the knowledge or authorization from PPL. This was done pursuant to MAW's secret plan detailed in its Confidential January 18, 2017 "PPL Make Ready Policy Brief" addressed to certain City of Lancaster representatives. The only deviation from MAW's secret plan is that MAW was supposed to at least notify PPL of its attachments, but MAW never did even that.

PPL has refused to grant an exception to MAW to allow MAW to attach below ILEC facilities and weave throughout all other existing communications attachers because MAW does not want to pay for make-ready. Doing so would create NESC safety violations, jeopardize the reliability of the pole distribution system, disadvantage existing and new attachers, and place MAW at a competitive advantage over other communications companies. This type of anarchy on already-congested poles, while it might benefit MAW financially, is unsafe and unfair to everyone else on the pole, including those that need future access.

Faced with similar facts but regarding attachments that were considerably less extensive, but involving another entity's reckless and dangerous unauthorized attachments, the Enforcement Bureau explained the proper course was not to disregard the application and make-ready process, but instead to pay the disputed make-ready charges and seek refunds.

The Lehigh County Court agrees that such illegal activity cannot be condoned. Following two days of testimony about MAW's egregious conduct, the Court's April 13, 2018 Order, inter alia, prohibited MAW from accessing PPL's poles without PPL's prior approval, required MAW to file applications for MAW's unauthorized attachments, and permitted PPL to remove or remediate any unauthorized attachment at MAW's expense.

MAW 26: *As part of its LanCity Connect and LGH projects, MAW must build and install significant amounts of new fiber along routes where there is no existing City, MAW, or LCSC fiber. In accordance with the Pole Attachment Agreement, MAW applied to PPL to construct this portion of the network. MAW has not made any attachments for this “new build” network.*

PPL Answer: PPL denies that MAW has not made any attachments for “new build”. To the contrary, MAW’s “new build” attachments were discovered by PPL during a survey PPL conducted in November 2017 after a tip from a MAW whistleblower. Once the extent of MAW’s duplicity became known in late December 2018, PPL engaged Katapult Engineering for an expedient and more detailed survey. As a result of those efforts, PPL found 1,095 unauthorized attachments by MAW, approximately 500 of which were new build attachments. Attached to PPL’s Answer at Attachment D, Exhibit 4 is a document prepared that PPL following the conclusion of PPL’s audit of MAW attachments, which identifies and explains all 1095 of MAW’s unauthorized attachments.⁴⁶ These documents, which were shared with MAW by correspondence dated January 30 and February 22, 2018,⁴⁷ reflect approximately 500 new build attachments and includes about a dozen pictures of representative safety violations. None of these unauthorized attachments by MAW have attachments by the City of Lancaster or LCSC, and so these MAW attachments cannot be called “rebuild”. And none of these unauthorized attachments by MAW are “Service Drop Attachments,” as that term is defined by the Agreement, the NESC and the Commission, since they are all extending MAW’s network on mainline distribution poles. In fact, based on MAW’s use of hardware alone, 295 of these attachments show that they are bolted attachments. Service drop attachments are not bolted.⁴⁸

Shockingly, large numbers of those new build attachments were installed by unqualified workers dangerously close to energized electric facilities. While the NESC permits ADSS fiber to be installed closer to electric facilities than attachments that conduct electricity, anyone attempting those installations must be electric-qualified to perform such hazardous work.⁴⁹ MAW did not use such electric-qualified personnel, and as a result endangered the lives of MAW’s installers on every one of those installations. Moreover, even after these dangerous installations were completed, the result is that many of these MAW attachments created safety violations to the detriment of all those subsequently working on those facilities.⁵⁰

⁴⁶ See Attachment D, Exhibit 4.

⁴⁷ See Attachment D, Exhibits 15 and 16.

⁴⁸ Yanek Declaration at ¶ 15, See also Attachment D, Exhibit 4, See also PPL Answer to MAW Amended Pole Attachment Complaint at ¶¶ 25, 26, 58, 59, 60, 61, 62, 63, 65, 79, 82, 85, 97, 110, 111, and 115.

⁴⁹ Rippke Declaration at ¶ 8.

⁵⁰ See MAW Contractor List provided during discovery in the Lehigh County Court proceeding at Attachment D, Exhibit 2. See also the 12 photographs of MAW facilities dangerously installed too close to electric facilities at Attachment D, Exhibit 5, which is only a 12-pole representative sampling of only the first 100 of the 1095 unauthorized attachments surveyed and documented by PPL. The list of 1095 unauthorized attachments which identifies MAW violations associated with hundreds of its attachments to PPL poles is attached hereto at Attachment D, Exhibit 4. PPL can provide the Commission with a photograph of any of these poles upon request.

Just one more specific example of these numerous unsafe, unauthorized new build attachments by MAW is depicted and explained in the photograph attached hereto at Attachment B, Exhibit 1.⁵¹ As explained in the Declaration of Ms. Rippke, this attachment is located close to a 3-phase transformer bank that has a 200 kVA, 120/240 Volt delta configuration. The secondary voltage drip loop associated with this transformer is an energized current carrying conductor, located at 22' 8" above ground. MAW attached its fiber optic communications cable at 21' 9", which is just 11" below this energized drip loop. The NESC requires 40" of clearance for such installations per NESC Table 238.1. This attachment was not part of a rebuild of an existing communication cable, and so J-and-Raise does not apply. It appears instead that MAW is using a small J hook as a permanent attachment bracket instead of using a 3 bolt bracket that PPL would require.⁵²

As explained below, rather than go through the process of submitting rebuild applications, which would require MAW to perform make-ready construction work in order to install its attachments safely, MAW instead falsely claimed that its new build attachments are instead Service Drop Attachments that do not require any application.⁵³

PPL does not know whether "MAW must build and install significant amounts of new fiber along routes where there is no existing City, MAW, or LCSC fiber," and so denies this statement for lack of knowledge or information sufficient to form a belief as to its truth.

MAW 27: *Specifically, beginning in January 2016, MAW submitted its first four attachment applications to extend the backbone network to support traffic sensors, cameras, and the LanCity Connect and LGH projects. In response, PPL issued extremely high pre-construction engineering and make-ready estimate "quotes" to complete these attachment applications.*

PPL Answer: MAW submitted its first attachment application in January of 2016 and the remaining three applications in September of 2016. All four applications requested numerous and significant exceptions to PPL's pole attachment specifications. PPL did not grant the exceptions, nor did it approve the applications.

MAW never did follow up with PPL to have these applications approved. Instead, MAW proceeded with installing its attachments without authorization from PPL and without even the knowledge of PPL, pursuant to MAW's secret plan detailed in its Confidential January 18, 2017 "PPL Make Ready Policy Brief" addressed to certain Lancaster representatives. The only deviation from MAW's secret plan as detailed in its Confidential January 18, 2017 "PPL Make Ready Policy Brief" is that the Confidential Brief proposed that MAW at least inform PPL of its new build attachments, even though

⁵¹ See "Sample MAW New Attachment," attached hereto as Attachment B, Exhibit 1.

⁵² Rippke Declaration at ¶ 11.

⁵³ See PPL Answer to MAW Amended Pole Attachment Complaint at ¶¶ 26, 58, 59, 60, 61, 62, 63, 65, 79, 82, 85, 97, 110, 111, and 115.

MAW was not going to get PPL's approval for them.⁵⁴ Instead, MAW made these installations and many more without notifying PPL at all.⁵⁵

The quotes that PPL provided MAW for its new build applications reflected the cost associated with performing the necessary pre-construction engineering and make-ready construction work.⁵⁶ Accordingly, PPL denies the allegation that it "issued extremely high pre-construction engineering and make-ready estimate 'quotes' to complete these attachment applications."

PPL lacks knowledge or information sufficient to form a belief as to the truth of whether MAW's applications in January and September of 2016 were submitted "to extend the backbone network to support traffic sensors, cameras, and the LanCity Connect and LGH projects," and so denies that allegation.

MAW 28: *First, PPL's 2016 pre-construction engineering and make-ready "quotes" were extremely high. The make-ready estimates were high in part due to the fact that PPL required that any new attaching entity—in this case MAW—occupy the highest, typically occupied point on the pole rather than available space lower on the pole, which resulted in substantially more make-ready work than was necessary.*

PPL Answer: MAW has misstated PPL's policy regarding new attachments. PPL's policy requires new communications attachers to attach one foot above the highest existing cable in the communications space. This does not translate to the highest position on the pole, nor the highest position in the communications space on the pole.

The four applications that MAW submitted in 2016 requested attachments to locations on PPL's poles that were below existing ILEC facilities and at varying heights between, above, and below existing communications attachers. Many of the poles to which MAW requested to attach in Lancaster were heavily congested poles. In response to MAW's applications, PPL offered to rearrange the communications facilities, raise the power facilities, or replace the pole. Rearranging communications facilities is a relatively inexpensive way to create space on a congested pole and is commonly accepted by attaching entities without discussion, but MAW did not want to pay for the necessary make-ready work even for this relatively minimal rearrangement work.⁵⁷

The reason why PPL does not allow communications attachers to install facilities below ILEC attachers is because ILEC facilities are the heaviest on PPL's poles and thus have the most sag. Industry standards also dictate that communications attachments not be placed lower than existing ILEC facilities.⁵⁸

⁵⁴ See *PPL Make Ready Policy Brief – rev1*, Jan. 18, 2017, attached to MAW Amended Pole Attachment Complaint at Exhibit F (MAW000695).

⁵⁵ Yanek Declaration at ¶ 16.

⁵⁶ Yanek Declaration at ¶ 17.

⁵⁷ Yanek Declaration at ¶ 18.

⁵⁸ Rippke Declaration at ¶ 12.

Also for good reason, PPL does not permit communications attachers to place attachments at varying heights between, above, and below existing communications attachers because that would result in the “weaving” of those attachments from pole to pole at all of these varying heights between, above, and below existing communications attachers. Weaving results in cables crossing one another mid-span and can cause failures. As a result, such weaving violates the NESC and is not an acceptable design standard.⁵⁹ The PPL/MAW Pole Attachment License Agreement, like many if not all such agreements, requires that all work be performed in accordance with the NESC.⁶⁰

PPL has 80 attachment agreements in place to govern core communications attachments and over 400 agreements in place for all types of attaching entities. These agreements are designed to ensure an orderly attachment process to approximately 900,000 PPL poles located throughout 10,000 square miles of PPL’s service territory. PPL cannot simply grant an exception to MAW to allow MAW to attach below ILEC facilities and weave throughout all other existing communications attachers because MAW does not want to pay for make-ready. Doing so would create NESC safety violations, jeopardize the reliability of the pole distribution system, disadvantage existing and new attachers, and place MAW at a competitive advantage over other communications companies. This type of anarchy on already-congested poles, while it might benefit MAW financially, is unsafe and unfair to everyone else on the pole, including those that need future access.⁶¹

As explained above, PPL denies that the pre-construction engineering and make-ready estimate ‘quotes’ were extremely high.

MAW 29: *As a result, the new attacher must pay to move all existing attachments down to new positions and place the new attachment on top of the pole’s communications space, forcing make-ready on nearly every pole because there are few poles that do not have any attachments located in the topmost position. In many cases, an attachment can be made below other facilities consistent with the National Electrical Safety Code (“NESC”), but PPL prohibits connections below the ILEC regardless of whether space is available per the NESC.*

PPL Answer: As explained in PPL’s response to Paragraph 28, rearranging communications facilities is a relatively inexpensive way to create space on a congested pole and is commonly accepted by attaching entities without discussion, but MAW did not want to pay for the necessary make-ready work even for this relatively minimal rearrangement work.

Such relatively inexpensive make-ready work is also not required “on nearly every pole.” Paragraph 30 of MAW’s Complaint states that of the 279 poles which MAW sought to attach to in its four applications submitted in 2016, 137 of them (less than half) required

⁵⁹ Rippke Declaration at ¶ 13.

⁶⁰ Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc., Article 5, Section 5.1, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000180).

⁶¹ Yanek Declaration at ¶ 19.

make-ready. By MAW's own acknowledgment, MAW's allegation that make-ready is required "on nearly every pole" is incorrect.⁶²

As explained above, PPL's standard not to allow communications attachers to install facilities below ILEC attachers is consistent with industry standards and with the fact that ILEC facilities are the heaviest on PPL's poles with the most sag. Moreover, allowing attachments below ILEC facilities on one or more poles where an attacher believes there might be room would require "weaving" those attachments through the ILEC's attachments and other attachments on poles where there is not any perceived room below ILEC facilities. Such installations from pole to pole at varying heights between, above, and below existing communications attachers does in fact violate the NESC and is otherwise unfair to everyone else on the pole and to subsequent attachers.⁶³

For these reasons, PPL denies the allegations in Paragraph 29 of the Complaint.

MAW 30: *Requiring the newest attacher to occupy the uppermost attachment location forces unnecessary make-ready. For example, PPL estimated that of the 279 total poles in MAW's initial submission, 137 would require make-ready based on PPL's engineering, nearly fifty percent of poles submitted. In contrast, in each of the several paths that MAW designed along the same route, using other available space in the communications zone, make-ready would be required on only 2 poles, representing less than two percent of the total number of poles identified by PPL as having required make-ready.*

PPL Answer: PPL has not seen MAW's "design," and so lacks knowledge or information sufficient to form a belief as whether the design MAW envisioned would require MAW to pay for make-ready on only two poles.

PPL can state with confidence, however, that any such self-serving MAW design would violate PPL's standards, violate NESC safety standards, create chaos on PPL's pole distribution system, disadvantage current and future attachers on that system, and work to the competitive advantage of MAW.

As explained in PPL's response to Paragraph 28: (1) rearranging communications facilities is the least expensive way to create space on a congested pole and is commonly accepted without discussion; (2) PPL's standard not to allow attachers to install facilities below ILEC attachers is consistent with industry standards and the fact that ILEC facilities are the heaviest on PPL's poles with the most sag; and (3) "weaving" attachments from pole to pole at varying heights between, above, and below existing communications attachers violates the NESC and is otherwise unfair to everyone else currently on the poles and seeking access to the poles in the future. PPL therefore denies that "[R]equiring the newest attacher to occupy the uppermost attachment location forces unnecessary make-ready."

⁶² See MAW Amended Pole Attachment Complaint at ¶ 30.

⁶³ Rippke Declaration at ¶ 13.

MAW 31: *When MAW first raised the attachment location issue with PPL in 2016, PPL attributed the problem to a “glitch” in PPL’s online portal forcing all new attachments to assume the topmost position on the pole.*

PPL Answer: There was and is no “glitch” in PPL’s online portal because the programming in the portal and related systems reflects PPL’s process for assigning the new attacher in the communications space. PPL is not willing to revise the programming in its online portal and related systems simply to make exceptions for MAW’s unreasonable, unsafe, self-serving and discriminatory attachment proposals. Also, as explained above, PPL’s policy does not require new attachers to “assume the topmost position on the pole,” but instead requires them to attach one foot above the highest existing cable in the communications space. This does not translate to the highest position on the pole, nor to the highest position in the communications space.⁶⁴ And far from this policy being a “glitch” related to the online portal in 2016, this policy had been in place for years prior to PPL implementing its online portal and remains in effect to this day, as explained by Mr. Yanek in correspondence in 2017 and 2018.⁶⁵ Accordingly, PPL denies the allegations in Paragraph 31 of the Complaint.

MAW 32: *PPL estimated that it would cost over \$200,000 to fix the software “glitch” requiring any new attacher to assume the topmost position on the pole. When MAW offered to pay to fix the “glitch,” PPL refused, and thus the portal glitch became PPL’s official policy.*

PPL Answer: As explained in PPL’s Answer to Paragraph 31: (1) MAW has misstated PPL’s policy; (2) PPL’s policy was in place well before the online portal system; and (3) there was no “glitch” caused by PPL’s policy.

MAW offered for MAW’s convenience to pay PPL to revise the programming in PPL’s online portal system and related systems contrary to PPL’s standards, contrary to the NESC and contrary to industry standard, to allow MAW to weave MAW’s attachments through multiple attachment positions in a given span of poles, and to allow MAW to attach below ILEC facilities. PPL declined to revise the programming in its online portal and related systems simply to make exceptions for MAW’s unreasonable, unsafe, self-serving, and discriminatory proposals.

Accordingly, PPL denies the allegations in Paragraph 32 of the Complaint.

MAW 33: *In the vast majority of instances where PPL is mandating unnecessary make-ready, there is enough room on the pole for the new attachment to be installed in compliance with the NESC without relocating existing attachments and still allowing for continuity in the new attacher’s facilities.*

PPL Answer: PPL has not mandated, and is not mandating, unnecessary make-ready. As explained in PPL’s response to Paragraph 28: (1) rearranging communications facilities is the cheapest way to create space on a congested pole and is commonly

⁶⁴ Yanek Declaration at ¶ 20.

⁶⁵ See Declaration of Darryl P. Preziosi at ¶¶ 8-9, attached hereto as Attachment C.

accepted without discussion; (2) PPL's standard not to allow attachers to install facilities below ILEC attachers is consistent with industry standards and the fact that ILEC facilities are the heaviest on PPL's poles with the most sag; and (3) "weaving" attachments from pole to pole at varying heights between, above, and below existing communications attachers violates the NESC and is otherwise unfair to everyone else currently on the poles and seeking access to the poles in the future.

For these reasons, PPL denies the allegations in Paragraph 33 of the Complaint.

MAW 34: *PPL's policy mandating that new attachers occupy the highest point on the pole causes extra make-ready work and needlessly increases the make-ready costs associated with each pole.*

PPL Answer: As explained in PPL's Answer to Paragraph 31, MAW has misstated PPL's policy. And as explained in PPL's response to Paragraph 28: (1) rearranging communications facilities is the cheapest way to create space on a congested pole and is commonly accepted without discussion; (2) PPL's standard not to allow attachers to install facilities below ILEC attachers is consistent with industry standards and the fact that ILEC facilities are the heaviest on PPL's poles with the most sag; and (3) "weaving" attachments from pole to pole at varying heights between, above, and below existing communications attachers violates the NESC and is otherwise unfair to everyone else currently on the poles and seeking access to the poles in the future.

The only "extra make-ready work" and "needless increase" in make-ready costs that would result from MAW's attachment proposals would be those paid for by existing and future attachers, who must eventually pay to clean up the mess caused by MAW if PPL were to accept MAW's ill-considered, self-serving proposals.

PPL therefore denies the allegations in Paragraph 34 of the Complaint.

MAW 35: *Second, the 2016 "quotes" were not sufficiently detailed for MAW to fully assess the reasonableness of the charges. The 2016 quotes break out charges between "Make Ready – Construction" and "Make Ready – Engineering," but do not identify any further details substantiating the charges, rendering them insufficient for MAW to assess or verify the reasonableness of the charges.*

PPL Answer: To process MAW's 2016 applications, PPL collected field data regarding the poles to which MAW sought to attach, and then used that data to design the make-ready construction work to be performed and to prepare a make-ready construction estimate.

This is the make-ready survey and engineering work which PPL performed and for which MAW was required to pay but to this day refuses to pay.

MAW's Complaint fails to acknowledge to the Commission the detailed and pole-specific Make-Ready Summary it received from PPL that provides a lot more information

than just a single line make-ready construction invoice. Prior to performing any work, and even prior to MAW receiving the invoice totals for make-ready engineering and the projected make-ready construction costs, MAW is provided with a pole-by-pole Make-Ready Summary document that explains the make-ready work that is proposed to be performed (if any) on every pole to which MAW has requested an attachment. A sample of this Make-Ready Summary that is sent to MAW is attached at Attachment D, Exhibit 22. This Summary describes in detail what make-ready work is required at each pole in the application for both PPL's electric facilities (Column 3 – "PPL Make Ready") and the communications facilities (Column 4 – "Foreign Utility Make Ready"). It gives specific direction for each pole regarding whatever attachment relocation, guying, transfer, pole replacement or other make-ready work, if any, is required. The Summary even identifies existing conditions which must be corrected by existing (other) attachers, such as updates or additions of proper guying.⁶⁶

Since the Make Ready Summary identifies the work to be performed on every pole, MAW can easily "assess or verify the reasonableness of the charges" in PPL's make-ready invoices.

It should also be noted that PPL recently adopted a new policy permitting PPL to provide detailed make-ready cost estimates on a per-pole basis, consistent with the FCC's August 3, 2018 Pole Attachment Order, which has yet to become effective.⁶⁷ PPL's new make-ready summary describes in detail what make-ready work is required at each pole in the application for both PPL's electric facilities and the communications facilities. It gives specific direction for each pole regarding whatever attachment relocation, guying, transfer, pole replacement or other make-ready work, if any, is required. The summary even identifies existing conditions which must be corrected by existing attachers, such as updates or additions of proper guying. Given that more than three years have passed since MAW's first 2016 attachment application was submitted, the make-ready estimates would need to be revised under PPL's new make-ready cost estimate policy.⁶⁸

Based on the foregoing, PPL denies the allegation that PPL's 2016 quotes "were not sufficiently detailed for MAW to fully assess the reasonableness of the charges," or were "insufficient for MAW to assess or verify the reasonableness of the charges."

MAW 36: *Together, PPL's 2016 quotes total \$56,624 in "Make Ready – Engineering" and \$141,926 in "Make Ready – Construction" charges. These quotes average \$202.95 per pole in pre-construction engineering costs and \$1,035.96 per pole for make-ready. Based on rough math using the limited information PPL provided, MAW estimated these charges to be up to ten times higher than historically seen from PPL or other Pennsylvania pole owners. MAW found these quotes to be inconsistent with its Pole Attachment Agreement and federal law. Cumulatively, extrapolated to MAW's planned network using PPL poles, these proposed charges would*

⁶⁶ Yanek Declaration at ¶ 21.

⁶⁷ See *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 at ¶ 112 (rel. Aug. 3, 2018).

⁶⁸ Yanek Declaration at ¶ 23.

increase the cost of MAW's planned network up to or exceeding \$2.5 million in pre-engineering and make-ready charges alone.

PPL Answer: PPL admits that its 2016 make-ready quotes totaled \$56,624 in “Make Ready – Engineering” and \$141,926 in “Make Ready – Construction” charges. PPL denies the exact per poles costs because it cannot verify the method MAW used to calculate the average \$202.95 per pole in pre-construction engineering costs and \$1,035.96 per pole for make-ready.

PPL's cost estimates reflected the cost to complete the necessary make-ready work on congested poles. In a congested pole distribution system, as exists in Lancaster, it is unreasonable to believe that make-ready construction costs will be low when PPL's costs to replace a single pole and transfer its facilities typically fall between \$4,000 and \$12,000. PPL cannot predict based on such a limited sample what the total cost might be for MAW make-ready engineering and construction costs might be for MAW to construct its entire planned network, and neither can MAW.⁶⁹

MAW's “rough math using limited information” is just that. Since MAW has provided no statistics of make-ready cost estimates from other pole owners in Pennsylvania, MAW's comparison of other pole owners to PPL is baseless. Moreover, prior to the submission of the four 2016 attachment applications, MAW had never seen a cost estimate from PPL for make-ready work, so MAW's statement that PPL's charges are “up to” ten times higher than what MAW has historically seen from PPL is simply fiction.⁷⁰ If MAW can produce cost estimates from other pole owners in Pennsylvania as proof of its claims, PPL reserves the right to respond.

Regardless of these costs, there is no justification for MAW to ignore PPL's application approval process entirely and without authorization or notification, or to install its attachments illegally in an unsafe manner that jeopardized the lives of its installers and resulted in a mess of unknown attachments. These illegal MAW attachments might remain unknown if it were not for MAW's whistleblower Joe Staboleski. In the Lehigh County Court proceeding, Mr. Staboleski testified that:

- (1) MAW's unauthorized attachments were installed in disregard of PPL's standards, in disregard of known NESC standards, and in disregard of third party attacher rights;⁷¹
- (2) MAW's applications were never authorized because MAW's President did not want to pay the make-ready costs;⁷²
- (3) there was nothing unreasonable about PPL's standards;⁷³

⁶⁹ Yanek Declaration at ¶ 23.

⁷⁰ Yanek Declaration at ¶ 24.

⁷¹ *PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Transcript of Proceedings, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 (Mar. 23, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment F, at 48 (MAW000323).

⁷² *Id.* at 23-24 (MAW000298-MAW000299).

⁷³ *Id.* at 28 (MAW000303).

- (4) MAW's violations of the 40-inch safety space were very dangerous;⁷⁴ and
- (5) he left MAW because he was "hounded for months" by MAW's decision to continue to build illegally.⁷⁵

The fact that MAW's illegal activity was premeditated is confirmed by the secret plan MAW detailed in its Confidential January 18, 2017 "PPL Make Ready Policy Brief" to the City of Lancaster. It appears that MAW significantly underestimated the make-ready engineering and construction costs that would be associated with its attachment project, and in response devised this scheme to proceed with attaching to PPL's poles without authorization in order to avoid these costs entirely.⁷⁶ Although the secret plan as MAW explained to the City called for MAW to at least inform PPL of its unauthorized attachments, MAW did not even do that.⁷⁷

MAW's premeditated, selfish and callous plan disregarded PPL's attachment approval process, disregarded the lives of MAW's installers, disregarded the effect of this illegal activity on PPL's existing and future attachers, and was implemented by MAW only in an anticompetitive effort to save money. Such reprehensible behavior cannot and should not be condoned. To allow MAW to act in this manner without any punishment or repercussions would encourage dozens more communications attachers to avoid the attachment approval process in order to save money, knowing they would suffer no repercussions. This illegal anticompetitive activity would be dangerous, and unfair to existing and future attachers who would be required later to foot the bill to clean up the mess created by the illegal activity.

Faced with similar facts but regarding attachments that were considerably less extensive, but involving another entity's reckless and dangerous unauthorized attachments, the Enforcement Bureau explained the proper course was not to disregard the application and make-ready process, but instead to pay the disputed make-ready charges and seek refunds:

Salsgiver claims that Penelec's proposed make-ready charges (1) failed to provide sufficient detail, and (2) would have required Salsgiver to "correct existing violations of previous attachers." Yet Salsgiver had the option of first paying Penelec's make-ready charges, under protest; filing a

⁷⁴ *Id.* at 30 (MAW000305).

⁷⁵ *Id.*

⁷⁶ See *PPL Make Ready Policy Brief – rev1*, Jan. 18, 2017, attached to MAW Amended Pole Attachment Complaint at Exhibit F (MAW000694-MAW000703). "Action Plan #3: Begin construction. Notify PPL of our intention to immediately initiate network construction, and begin construction using temporary attachments based on MAW's own engineering..." *Id.* at 2 (MAW000695). "This plan will allow us to continue expeditiously constructing the network." *Id.* at 9 (MAW000702). "In order to prevent us from continuing construction, PPL would have to petition the FCC to enforce their current attachment policy. If PPL decides to seek relief from the FCC, while the legal opinion is being decided with the appropriate regulatory bodies, network construction could continue. The risk exists, however minimal, that an adverse FCC opinion could require compliance with the PPL Make Ready Policy. This process may take several years; in the meantime, however, we will have a functioning network to utilize and would simply need to adjust the network in the future to comply with the Make Ready standards." *Id.* (MAW000702).

⁷⁷ Yanek Declaration at ¶ 25.

complaint with the Commission alleging that the charges violate section 224 of the Act; and, if successful, recovering those overcharges. Such a course would have obviated any alleged harm, and Salsgiver offers no explanation of why it could not have proceeded this way. Rather, Salsgiver, by its own admission, acted in violation of various communications and electrical standards. We cannot condone Salsgiver's decision simply to disregard Penelec's application/make-ready process."⁷⁸

The Lehigh County Court agrees that such illegal activity cannot be condoned. Following two days of testimony about MAW's egregious conduct, the Court's April 13, 2018 Order:

- (1) required MAW to notify its customers that their Internet service might be disrupted;
- (2) prohibited MAW from accessing, working on, or connecting to any of PPL's poles without PPL's prior approval;
- (3) required MAW to file applications for MAW's unauthorized attachments;
- (4) permitted PPL to remove or remediate any unauthorized attachment at MAW's expense;
- (5) required MAW to comply with the PPL/MAW Pole Attachment License Agreement;
- (6) required MAW to maintain and replenish a \$75,000 escrow account to ensure reimbursement of PPL's costs;
- (7) required PPL to work with Lancaster and LCSC to minimize disruption of the City's traffic light and camera systems as PPL removed MAW's unauthorized attachments;
- (8) required MAW to provide PPL records of MAW's attachments;
- (9) required MAW to provide the certificate of insurance required by the PPL/MAW Pole Attachment License Agreement;
- (10) required MAW to pay the \$40,000 cost of the survey PPL had to perform to discover MAW's unauthorized attachments; and
- (11) required MAW to ensure its attachments are timely and properly recorded with PPL.⁷⁹

PPL therefore denies the allegations in Paragraph 36 except to the extent specifically admitted.

⁷⁸ *Petition of Salsgiver Telecom, Inc. for Temporary Stay Pursuant to Section 1.1403(d) of the Federal Communications Commission Rules*, File No. EB-14-MD-005, Letter Order at 3 (Apr. 4, 2014) attached to MAW Amended Pole Attachment Complaint at Attachment F (MAW000707).

⁷⁹ *PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Order, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 (Apr. 13, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 20 (MAW000138-MAW000143). A copy of the court's order is also attached to MAW's Complaint at Attachment F (MAW000269-MAW000274). Attachment F is a letter from PPL's counsel to MAW's counsel transmitted prior to MAW's Complaint. This letter from PPL's counsel attached the court's order (MAW000269-MAW000274), the full transcript of the two days of court hearings (MAW000246-MAW000692), MAW's Confidential January 18, 2017 "PPL Make Ready Policy Brief" (MAW000694-MAW000703), and the Enforcement Bureau's April 4, 2014 *Salsgiver* decision cited above (MAW000705-MAW000707). These documents are included in MAW's Complaint, notwithstanding footnote 44 of the Complaint, which indicates these documents were omitted.

MAW FOOTNOTE 32: *Shortly after MAW complained that the proposed costs for pre-construction inspections and make ready estimates were outrageous, PPL filed suit and secured a court order preventing MAW from accessing its plant on PPL poles.*

PPL Answer: This statement is a false characterization. MAW began complaining about PPL's make-ready estimates in April of 2016 and PPL did not file its lawsuit until 1.5 years later. Moreover, PPL's lawsuit was filed in response to MAW's illegal, dangerous, self-serving, and anti-competitive unauthorized attachments, not in response to MAW's complaints about make-ready bills.⁸⁰

MAW 37: *Upon receipt of the 2016 quotes, MAW formally disputed the amounts and began executive discussions with PPL to resolve the dispute. MAW asked for additional detail regarding the basis for the quotes, but PPL did not provide any additional detail. MAW has been unable to reach a resolution with PPL regarding the 2016 quotes.*

PPL Answer: PPL admits that MAW formally disputed the amounts and began executive discussions with PPL to resolve the dispute. For the reasons stated in its Answer to Paragraph 35, PPL denies the allegation that it did not provide any additional detail.

PPL admits the allegation that MAW has been unable to reach a resolution with PPL regarding the 2016 quotes.

MAW 38: *PPL is demanding that MAW pay \$56,624 in charges for "Make Ready – Engineering" as well as costs related to the removal of MAW's attachments, unauthorized attachment penalties of five years back rent for each year that the attachments have been in place (contrary to the terms of the Pole Attachment Agreement), and for "PPL time spent managing progress under Court Order September_November" for a total of \$246,867.62. MAW disputes that it owes these amounts. Consistent with the terms of the Pole Attachment Agreement, MAW has paid PPL's fees for 428 attachments in Lancaster since 2015, totaling \$13,700.28. MAW also paid PPL for \$14,394.38 and \$30,535.80 for a survey of its attachments performed by Katapult, which PPL claimed was necessary but which did not reveal any attachments beyond those identified by MAW during the rebuild, the results of which MAW offered to PPL on numerous occasions.*

PPL Answer: PPL admits that PPL is demanding that MAW pay \$56,624 in charges for Make Ready – Engineering. These charges represent the survey and engineering costs incurred by PPL in order to prepare the make-ready construction estimate on four completed and submitted online applications by MAW. These expenses were incurred by PPL to accommodate MAW's attachment requests and therefore must be paid by MAW. PPL also admits that it is demanding costs related to the removal of MAW's attachments.⁸¹

⁸⁰ Yanek Declaration at ¶ 26.

⁸¹ Yanek Declaration at ¶ 27.

PPL is actually only demanding unauthorized attachment penalties for three years (beginning in 2017 when PPL first observed the unauthorized attachments, through 2019 because the unauthorized attachments remain to this day). The demanded payment was to make PPL whole for all costs incurred as a result of MAW's unauthorized attachments to its poles to date. Under PPL's Pole Attachment License Agreement with MAW, it is permitted to charge an unauthorized attacher five times the annual fee, so PPL's demand is actually less than what it is contractually permitted to charge.⁸² PPL therefore denies that it is demanding MAW pay "unauthorized attachment penalties of five years back rent for each year that the attachments have been in place (contrary to the terms of the Pole Attachment Agreement)."

PPL admits that PPL is demanding MAW compensate PPL for "PPL time spent managing progress under Court Order September_November' for a total of \$246,867.62." This payment demand was made in order to clear the deck and to make PPL whole for all the costs PPL had incurred to that point that were associated with MAW's unauthorized attachments.

MAW paid its 2016 and 2017 Annual Attachment rent, but has not paid its 2018 Annual Attachment rent in the amount of \$4,815 for its permitted 428 attachments.⁸³

PPL admits that MAW paid PPL \$14,394.38 and \$30,535.80 for a survey of its attachments by Katapult, which was only part of the relief granted PPL following the March 2018 hearing on PPL's Petition to hold MAW in Civil Contempt. MAW also incorrectly and falsely claims the survey of its attachments "did not reveal any attachments beyond those identified by MAW during the rebuild, the results of which MAW offered to PPL on numerous occasions." Instead, the survey documents 1,095 unauthorized attachments which PPL did not learn about until MAW's whistleblower Joseph Staboleski informed PPL on October 25, 2017. Subsequent to Mr. Staboleski coming forward, and only because the April 13, 2018 Lehigh County Court Order required it to, MAW submitted an "application" after-the-fact for its rebuild attachments on April 25, 2018.⁸⁴ Even this court-ordered, after-the-fact application by MAW was deficient in numerous respects. As explained in Mr. Yanek's August 16, 2018 response to this application, MAW's paper Form 4834 application was submitted well after work began, the paper form listed no attachments at all, the request otherwise did not include sufficient detail for PPL to evaluate the locations where the re-build is proposed or validate that they coincide with permitted attachments, PPL had updated its online portal system rebuild application process, and MAW needed to resubmit its applications using the updated rebuild process, which was explained by PPL during a WebEx hosted by PPL

⁸² Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc., App. B, Schedule of Fees and Charges, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000222).

⁸³ Yanek Declaration at ¶ 28.

⁸⁴ See Cable TV/Telecom Rebuild Report (CAT Rebuild Report), Form 4834 (Apr. 25, 2017), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 22 (MAW000149-MAW000152).

on July 30, 2018 to instruct MAW how to use the portal system.⁸⁵ The April 25, 2018 application provided maps that identified only stretches of streets along which MAW indicated it had attachments. Pushpins were used to indicate pole locations.⁸⁶ PPL's system, however, requires a pole identification number and pole position to document unauthorized attachments.⁸⁷

MAW 39: *PPL is refusing to provide supporting detail or entertain MAW's dispute concerning the make-ready engineering charges associated with MAW's four new build applications. Section 21.3 of the Pole Attachment Agreement provides that attempts to reach a resolution need not extend beyond 120 days at which point the disputing party may file a complaint with the appropriate regulatory body.*

PPL Answer: PPL does not understand what supporting detail MAW claims PPL is refusing to provide regarding PPL's make-ready engineering charges. PPL has entertained MAW's dispute regarding these charges and continues to insist that MAW pay for these charges.⁸⁸ Section 21.3 of the Pole Attachment Agreement speaks for itself.

MAW 40: *In a letter to PPL dated January 28, 2019, MAW counsel requested executive level discussions with PPL. In a letter dated February 4, 2019, PPL counsel presented PPL's version of events and stated that PPL would not meet with MAW until it pays outstanding disputed charges.*

PPL Answer: PPL admits that the letter from MAW's counsel dated January 28, 2019 letter requested executive level discussions. However, the letter from PPL's counsel dated February 4, 2019 does not state that PPL refused to meet until MAW pays outstanding disputed charges. Instead, the February 4, 2019 letter merely stated that "once MAW has restored the \$75,000 necessary to comply with the Lehigh County Court Order, PPL can discuss meeting with MAW."⁸⁹ The \$75,000 escrow fund is mandated by the Lehigh County Court Order,⁹⁰ and MAW has failed to comply with that court order by failing to replenish the \$75,000. PPL has not heard MAW raise any dispute about replenishing the court-ordered escrow fund. MAW's restoration of the \$75,000 was the only precondition identified in the February 4, 2019 letter for PPL to discuss another meeting with MAW. Instead of replenishing that amount as required by the court order, MAW filed its Complaint at the Commission.

⁸⁵ E-mail from Ryan J. Yanek, Project Manager, PPL Electric Utilities Corporation, to Frank Wiczowski, Eron Lloyd, and Mindy Wiczowski (Aug. 16, 2018, 4:37 p.m. EST), attached to MAW Amended Pole Attachment Complaint at Attachment D, Exhibit 4 (MAW000255).

⁸⁶ See Cable TV/Telecom Rebuild Report (CAT Rebuild Report), Form 4834 (Apr. 25, 2017), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 22 (MAW000149-MAW000152).

⁸⁷ Yanek Declaration at ¶ 31.

⁸⁸ Yanek Declaration at ¶ 30.

⁸⁹ Letter from Thomas B. Magee, Counsel to PPL Electric Utilities Corporation, to Maria Brown, Counsel to MAW Communications, Inc. (Feb. 4, 2019) attached to MAW Amended Pole Attachment Complaint at Attachment F (MAW000267).

⁹⁰ *PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Order, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 at ¶ 8 (Apr. 13, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment F (MAW000270).

MAW 41: *On March 23, 2017, citing the negative impacts of “PPL’s make-ready demands,” MAW’s leadership, together with the leadership of Lancaster General Hospital and the Mayor of Lancaster, wrote to PPL seeking to resolve any differences “before pursuing legal remedies” and requested a response within ten business days.*

PPL Answer: PPL admits the allegations in Paragraph 41 of the Complaint.

MAW 42: *On August 24, 2017, the City of Lancaster, through counsel, once again formally requested an executive-level meeting with PPL, MAW, and Lancaster General Hospital to resolve the make-ready issue by September 8, 2017. If resolution was not met, the City of Lancaster and MAW requested PPL’s consent to FCC mediation. Resolution was ultimately not met in September 2017 and PPL did not formally consent to FCC mediation.*

PPL Answer: The August 24, 2017 letter was from the Cohen Law Group, which represented only the City of Lancaster. The letter did not request an executive-level meeting, but rather a meeting with “all necessary PPL representatives.” And because the Cohen Law Group represented only Lancaster, the request for mediation was from Lancaster, not from both Lancaster and MAW.⁹¹ PPL admits that there was no resolution in September 2017 and PPL admits that PPL did not formally consent to FCC mediation. PPL notes that the City of Lancaster is not a telecommunications carrier with federal pole attachment rights.

MAW 43: *In October 2017, Zito Canton filed a pole attachment complaint against PPL raising similar concerns about PPL’s online application portal and excessive make-ready and engineering charges.*

PPL Answer: PPL admits that Zito Canton filed a pole attachment complaint against PPL in October 2017. PPL responded to that Complaint in November 2017. The parties are engaged in mediation and there has been no Commission ruling on the allegations made in Zito Canton’s complaint.

D. MAW’s Surreptitious J-and-Raise Rebuild Activity Was Another Reckless, Illicit and Anticompetitive Effort to Avoid PPL Oversight and Make-Ready Expenses

As explained in PPL’s answers to Paragraphs 44-57 below, MAW never submitted a rebuild application to PPL for this rebuild project. PPL discovered that MAW had initiated the rebuild project only in October of 2017 when MAW’s whistleblower employee Mr. Staboleski alerted PPL to MAW’s unauthorized construction.

Despite the fact that Article 9 of the PPL/MAW Pole Attachment License Agreement requires rebuilds to be completed within 12 months of the start date, these “temporary”

⁹¹ See Letter from Phillip M. Fraga, Counsel to the City of Lancaster, to David Bonenberger, Vice President, Distribution Operations, PPL Electric Utilities Corporation (Aug. 24, 2017) attached hereto at Attachment D, Exhibit 6.

installations are still in place. As explained above, industry standard practice is for these temporary J-Hook attachments of the old facilities to occupy the same 12-inches of space allocated to the original attachment, but MAW relocated the old attachments to a location multiple positions above other attachers, sometimes several feet above. And most egregiously, MAW in many instances violated industry standards by recklessly moving the old facilities to a location far too close to energized electric conductors, thereby endangering the lives of its contractor installers, none of whom were electric-qualified to perform such hazardous work.

Like the seemingly fraudulent January 15, 2016 “letter” MAW claims it sent to PPL to alert PPL about MAW’s rebuild activity, MAW falsely claims that PPL approved MAW’s rebuild plan.

MAW also falsely claims that it sent all of the J-and-raise rebuild pole attachment records to PPL in March 2016.

MAW 44: *As a separate part of its LanCity Connect project, MAW sought to upgrade and rebuild the existing “multimode” fiber network in use for the Traffic and Camera network operated by the City of Lancaster and LCSC (“existing municipal plant”) transferred to MAW in connection with the December 2014 MCA between MAW and the City.*

PPL Answer: Pursuant to Article 9 of PPL’s Pole Attachment License Agreement with MAW, an attachment rebuild project requires the submission of a rebuild application a minimum of 30 days before the start of the attachment rebuild project.⁹² In addition, the entire attachment rebuild project (installation and removal) must be completed within 12 months of the start date.⁹³

MAW never submitted a rebuild application to PPL for this rebuild project. PPL discovered that MAW had initiated the rebuild project only in October of 2017 when MAW’s whistleblower employee Mr. Staboleski alerted PPL to MAW’s unauthorized construction. In addition, PPL discovered that the City did not have funding secured to replace the camera system that is supported by the old multi-node fiber system. Therefore, it appears MAW had no intention of abiding by the provisions of Article 9 of the Pole Attachment License Agreement, since it did not file an application to seek approval for the project, and since MAW may have been aware that the project could not be completed by removing the old fiber system within the requisite timeframe.⁹⁴

⁹² Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc., Article 9, Section 9.2, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000189). “Licensee must notify PPL of an attachment rebuild project by submitting a completed attachment rebuild application (Appendix A – Exhibit 5; CAT Rebuild Report) a minimum of thirty (30) days before the start of the attachments rebuild project.” *Id.*

⁹³ Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc., Article 9, Section 9.4, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000190). “The entire rebuild project (installation and removal) shall be completed within twelve months of the start date.” *Id.*

⁹⁴ Yanek Declaration at ¶ 31.

The December 2014 MCA between MAW and the City speaks for itself. PPL notes, however, that only a portion of the City's attachments were transferred to MAW, not the "existing municipal plant."⁹⁵

PPL otherwise lacks knowledge or information sufficient to form a belief as to the truth of this paragraph and accordingly denies the allegations in Paragraph 44 except as indicated.

MAW 45: *The existing municipal plant had deteriorated to the point where it did not meet carrier standards. Accordingly, rather than overloading its fiber onto obsolete plant, MAW sought to rebuild the deteriorated municipal plant entirely with new, lighter fiber, and remove the obsolete plant, thereby lessening the ultimate load on the poles to which the municipal plant was attached.*

PPL Answer: PPL lacks knowledge or information sufficient to form a belief as to the truth of whether "[t]he existing plant had deteriorated to the point where it did not meet carrier standards." Unfortunately for PPL and all other attachers and prospective attachers on PPL's poles, however, that existing "deteriorated" plant is still in place on PPL's poles, despite the provision in the PPL/MAW Pole Attachment License Agreement requiring removal within 12 months.⁹⁶ The old multi-node fiber system originally installed by the City and LCSC is still in place because that older multi-node fiber is necessary to operate the camera system that the City of Lancaster does not have funding to replace. To this day, the old multi-node fiber system is taking up space on PPL's poles that could be used by another communications attacher.

Pursuant to common industry practice and the PPL/MAW Pole Attachment License Agreement, a rebuild project is typically completed by using a technique called "J-and-Raise." This technique envisions attachment of a temporary J-Hook within one foot of the existing attachment, relocating the existing attachment to the J-Hook, placing the new fiber where the existing attachment used to be, and then eventually removing the J-Hook and old fiber once the new fiber is operational.⁹⁷ As stated in Section 9.1 of the PPL/MAW Pole Attachment License Agreement:

An attachment rebuild project is defined as the transfer of the original cable to a temporary attachment position (normally a j-hook) so that the new cable can be installed on the bolt in the original attachment position. The original cable shall be removed after the new cable is placed in service. Short sections of the original cable can be bolted in the temporary attachment position if safety concerns

⁹⁵ See PPL Answer to MAW Amended Pole Attachment Complaint at ¶¶ 10, 23, 48, 49, 51, and 66.

⁹⁶ Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc., Article 9, Section 9.4, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000190).

⁹⁷ Yanek Declaration at ¶ 32.

warrant (angle poles, long spans, railroad or turnpike crossings, etc.).⁹⁸

Following PPL's November 1st, 2017 inspection of MAW's installations conducted after MAW's whistleblower Mr. Staboleski alerted PPL to MAW's illegal activity, PPL discovered that MAW adhered to this practice in very few instances. Instead, MAW used J-Hooks to attach the old facilities to a location multiple positions above other attachers, sometimes several feet above.⁹⁹ With no clear plan to remove the J-Hooks or the older facilities, MAW's use of J-Hooks appeared to be a new build instead of a rebuild.¹⁰⁰

PPL therefore denies the allegations in Paragraph 45 of the Complaint.

MAW 46: *To maintain connectivity while installing new fiber for its rebuild project, MAW temporarily relocated certain existing municipal plant attachments using industry standard processes. To wit, where there is existing City and/or LCSC fiber on a pole, MAW lifted that fiber onto a temporary attachment (typically, a J-hook), replacing the old installation with new fiber, and planned to remove the old fiber once all telecommunications functions are shifted to the newly installed fiber.*

PPL Answer: For the reasons explained in PPL's Answer to Paragraph 45, PPL denies that MAW's relocation of existing municipal plant was "temporary," and denies that MAW followed "industry standard processes." Instead, despite the fact that Article 9 of the PPL/MAW Pole Attachment License Agreement requires rebuilds to be completed within 12 months of the start date, these "temporary" installations are still in place. As explained above, industry standard practice is for these temporary J-Hook attachments of the old facilities to occupy the same 12-inches of space allocated to the original attachment, but MAW relocated the old attachments to a location multiple positions above other attachers, sometimes several feet above. And most egregiously, MAW in many instances violated industry standards by recklessly moving the old facilities to a location far too close to energized electric conductors, thereby endangering the lives of its contractor installers, none of whom was electric-qualified to perform such hazardous work.¹⁰¹

Industry standard practice would also require MAW to follow relevant pole attachment agreement instructions related to rebuild projects. Instead, contrary to the PPL/MAW Pole Attachment License Agreement, MAW: (1) did not file any applications or receive

⁹⁸ Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc., Article 9, Section 9.1, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000189).

⁹⁹ Yanek Declaration at ¶ 34.

¹⁰⁰ Yanek Declaration at ¶ 33.

¹⁰¹ CITE Yanek Declaration at ¶ 34, *See also* Rippke Declaration at ¶ 10, *See* MAW Contractor List provided during discovery in the Lehigh County Court proceeding at Attachment D, Exhibit 2. *See also* the 12 photographs of MAW facilities dangerously installed too close to electric facilities at Attachment D, Exhibit 5, which is only a 12-pole representative sampling of only the first 100 of the 1095 unauthorized attachments surveyed and documented by PPL. The list of 1095 unauthorized attachments which identifies MAW violations associated with hundreds of its attachments to PPL poles is attached hereto at Attachment D, Exhibit 4. PPL can provide the Commission with a photograph of any of these poles upon request.

approval for its rebuild activity as required by Section 9.2; and (2) did not remove the old facilities within 12 months or even seek a 6-month extension of that removal period as permitted by Section 9.4.¹⁰² PPL did not even learn of MAW's rebuild activity until October of 2017, when MAW's whistleblower employee Mr. Staboleski alerted PPL to MAW's unauthorized construction.¹⁰³

PPL denies that MAW "planned to remove the old fiber." PPL instead believes that MAW knew the City lacked funds to upgrade its camera system to move off the old fiber necessary to operate its existing camera system, and therefore understood that it would take a long time for the old fiber to be removed.¹⁰⁴

PPL therefore denies the allegations in Paragraph 46.

MAW 47: *The temporary attachment method that MAW employed for this portion of the project is specifically recognized by the Pole Attachment Agreement.*

PPL Answer: Although a temporary attachment method is envisioned by Article 9 of the PPL/MAW Pole Attachment License Agreement, the "temporary" attachment method that MAW employed for this portion of the project was not temporary at all, and violated Article 9 of the Agreement because MAW: (1) did not file any applications or receive approval for its rebuild activity as required by Section 9.2; and (2) did not remove the old facilities within 12 months or even seek a 6-month extension of that removal period as permitted by Section 9.4. In addition, MAW recklessly installed these temporary attachments too close to energized conductors using contractors that were not electric-qualified contractors, thereby endangering the lives of these contractors, in violation of the Agreement's requirement to comply with the NESC.¹⁰⁵

For the foregoing reasons, PPL denies the allegation in Paragraph 47 of the Complaint.

¹⁰² Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc., Article 9, Section 9.4, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000190). "The entire attachment rebuild project (installation and removal) shall be completed within twelve months of the start date. If requested, PPL will consider granting one rebuild time extension per project per municipality...PPL will review the attachment rebuild extension request, grant an extension for a period not to exceed six months if warranted, and return an authorized copy of the attachment rebuild extension request to the Licensee." *Id.*

¹⁰³ Yanek Declaration at ¶ 35.

¹⁰⁴ Yanek Declaration at ¶ 36.

¹⁰⁵ Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc., Article 5, Section 5.1, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000179-MAW000180). *See also* MAW Contractor List provided during discovery in the Lehigh County Court proceeding at Attachment D, Exhibit 2. *See also* the 12 photographs of MAW facilities dangerously installed too close to electric facilities at Attachment D, Exhibit 5, which is only a 12-pole representative sampling of only the first 100 of the 1095 unauthorized attachments surveyed and documented by PPL. The list of 1095 unauthorized attachments which identifies MAW violations associated with hundreds of its attachments to PPL poles is attached hereto at Attachment D, Exhibit 4. PPL can provide the Commission with a photograph of any of these poles upon request.

MAW 48: *The City and LCSC constructed the existing municipal network prior to MAW assuming responsibility for the attachments. PPL had already approved many of the underlying existing attachments made by the City of Lancaster and LCSC that formed this existing backbone network. As MAW became aware that the City and LCSC's documented records did not accurately depict the existing municipal plant in its entirety, MAW surveyed and documented all of the municipal network attachments to PPL poles prior to beginning the rebuild.*

PPL Answer: PPL lacks knowledge or information sufficient to form a belief as to the responsibility over this network MAW alleges to have assumed.

It is PPL's understanding that all of the 428 (426 within the City) attachments that were transferred to MAW were originally built by the City of Lancaster and LCSC. However, of the 960 attachments MAW claims are on PPL's poles that are owned by the City of Lancaster and LCSC, only the 428 (426 within the City) that were transferred to MAW were authorized by PPL. The remaining 534 municipal network attachments were attached to PPL's poles without authorization.¹⁰⁶

PPL denies that MAW "surveyed and documented all of the municipal network attachments to PPL poles prior to beginning the rebuild." Had MAW surveyed and documented all of the municipal network attachments to PPL's poles prior to beginning its rebuild, it should have notified PPL of the attachment rebuild project by submitting attachment rebuild applications 30 days in advance of the start of the project, and would have produced the results of the survey pursuant to the December 19, 2017 agreement (i.e., the "December 2017 Stipulation") reached as an attempted interim solution during the Lehigh County Court proceeding.¹⁰⁷ Instead, MAW did not submit attachment rebuild applications for any of the 960 poles, and in response to the December 2017 Stipulation MAW produced only a list of street names indicating where MAW claimed the poles were located.¹⁰⁸ Any meaningful survey by MAW would have included pole numbers and pole positions to adequately identify unauthorized attachments.¹⁰⁹

PPL accordingly denies the allegations in Paragraph 48 of the Complaint as indicated.

MAW 49: *In recently provided PPL documentation of the existing City and LCSC authorized attachments, MAW identified a substantial number of alleged unauthorized attachments that were made by the City and/or LCSC prior to MAW assuming responsibility for the attachments. Virtually all of the currently alleged unauthorized attachments associated with MAW's backbone network were identified in the data MAW provided to PPL in 2016. Moreover, all of the alleged unauthorized attachments in the J-and-raise project were made by either the City or LCSC prior to MAW assuming the network in 2015.*

¹⁰⁶ Yanek Declaration at ¶ 37.

¹⁰⁷ MAW's Complaint did not provide a copy of the December 2017 Stipulation, but PPL has attached a copy to its Answer at Attachment D, Exhibit 7. See *PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Agreement, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 (Dec. 12, 2017) at 2 ("MAW has agreed that they will provide a full list of all facilities to PP&L and to the PUC by 4:00 p.m. this Friday").

¹⁰⁸ See E-mail from Eric Winter, Counsel to MAW Communications, Inc., to Joseph D'Amico, Counsel to PPL Electric Utilities Corporation (Dec. 22, 2017, 3:18 p.m. EST), attached hereto at Attachment D, Exhibit 11.

¹⁰⁹ Yanek Declaration at ¶ 38.

PPL Answer: PPL is not aware of any data that MAW provided to PPL in 2016 that identifies MAW’s unauthorized attachments, much less “virtually all” of them. MAW has provided no documentation to support this claim and PPL therefore believes this claim to be false.

MAW is also incorrect to state that “all of the alleged unauthorized attachments in the J-and-raise project were made by either the City or LCSC prior to MAW assuming the network in 2015.” MAW’s own rebuild activity on every one of these facilities was unauthorized. It was not only unauthorized, it was reckless and dangerous.

PPL also disagrees with MAW’s statement that it “assum[ed] the network.” PPL believes the City and LCSC do not want to transfer much of the network to MAW. By letter dated March 17, 2015 the Executive Director of LCSC informed PPL that LCSC had 743 attachments to PPL poles.¹¹⁰ The list attached to that letter, however, which the letter states identifies the attachments that LCSC transferred to MAW, listed only attachments to 426 PPL poles.¹¹¹ PPL received no subsequent requests by the City or LCSC to transfer attachments to MAW.¹¹²

Based on the foregoing, PPL denies the allegations in Paragraph 49.

MAW 50: *NESC Rule 238 governs vertical clearance of span wires and brackets from communication lines and equipment. Table 238-2 sets forth the vertical clearance required for wires and brackets carrying luminaires (street lights) and traffic signals that are and are not effectively grounded. The clearance requirement for effectively grounded streetlights is 4 inches (except where communications lines use support arms). Until 2017, the clearance requirement for “not effectively grounded” streetlights located above communications messengers was 20 inches. In 2017, the NESC clearance requirement for “not effectively grounded” streetlights located above communications messengers changed from 20 inches to 40 inches. NESC rule 013.B. grandfathers existing installations provided they comply with the rules that were in effect at the time of the original installation, until they are brought into compliance with rules in a subsequent edition. Accordingly, any communications strand attachments 20 or more inches below a streetlight made prior to the effective date of the NESC 2017 edition are compliant, until PPL or the City brings the streetlights into compliance with the 2017 edition, which it should do by grounding the streetlights.*

PPL Answer: This interpretation of the NESC is supported solely by the Declaration of notably, Mr. Eron Lloyd, is not an electrical engineer, or Professional Engineer in any discipline. PPL further notes that Mr. Lloyd pled guilty in August of 2015 for conspiracy to commit bribery in connection with his employment as an Aide to the

¹¹⁰ Letter from Wes Farmer, PhD, Exec. Dir., Lancaster Safety Coalition, to William Klokis, Pole Attachments Manager (Mar. 17, 2015), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 13 (MAW000094).

¹¹¹ Letter from Wes Farmer, PhD, Exec. Dir., Lancaster Safety Coalition, to William Klokis, Pole Attachments Manager (Mar. 17, 2015), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 13 (MAW000095-MAW000110).

¹¹² Yane Declaration at ¶ 39.

Mayor of the City of Reading, PA. (Mr. Lloyd is awaiting sentencing and was recently a cooperating witness in the federal trial convicting the Mayor of various counts of public corruption.)¹¹³

Mr. Lloyd's interpretations of the NESC, however, are consistent with the testimony of PPL's Kristie Rippke, P.E., in the state court case.¹¹⁴

As for final sentence in this paragraph, it is MAW's responsibility, not PPL's responsibility, to have streetlights grounded as part of MAW's project, as MAW is the entity requiring the grounding. Contrary to the notion of Mr. Lloyd, PPL has no reason on its own to ground the approximately 70,135 streetlight poles that PPL owns and there is no NESC requirement to do so. Rather, PPL typically grounds its streetlight poles when requested to do so by communications attachers as part of the make-ready process. PPL or its contractors would perform the grounding work, where requested, and invoice the attacher for the work associated with grounding the pole. If PPL never received such a request, PPL would have no reason to ground its streetlight poles.¹¹⁵

MAW 51: *In April 2015, MAW notified Mr. William Klokis, PP&L Project Manager Reliability Programs and Pole Attachments, of the plans for the rebuild project for approval prior to commencing construction. MAW's president, Mr. Wiczowski, emailed Mr. Klokis to notify him that MAW would assume responsibility for the 475 existing LCSC fiber attachments and attached the necessary paperwork. MAW notified Mr. Klokis that the existing City and LCSC cable plant was "not up to carrier standards," and MAW had thus planned to J-and-raise the substandard plant so that it could replace it with new fiber, which would "ultimately result in a safer and more robust plant" The J-and-raise is expressly recognized as a permissible rebuild method in the parties' Pole Attachment Agreement. Mr. Klokis replied that he would "work with [his] team to accomplish this in a timely manner."*

PPL Answer: Mr. Klokis's reply that he would "work with his team to accomplish this in a timely manner" in no way constitutes approval by Mr. Klokis to MAW's rebuild plan, and it cannot reasonably be interpreted to be. In the first place, the primary purpose of the April 7, 2015 email from MAW was to seek PPL's assistance in transferring from LCSC to MAW hundreds of LCSC attachments which were identified by pole number on an attached list, and which transfer was approved by LCSC in an attached letter from LCSC. In the same email, MAW for the first time mentioned its plan to J-and-Raise old LCSC fiber, and in addition MAW mentioned plans for certain new build attachments.¹¹⁶ A generic statement that Mr. Klokis would "work with his team to accomplish this in a timely manner" more reasonably should be interpreted as a courtesy email acknowledging that MAW sent him an email. It might also be interpreted as a promise to accomplish the transfer of attachments from LCSC to MAW in a timely manner.

¹¹³ See *Two Plead in Allentown, Reading Corruption*, Philadelphia Inquirer (Nov. 30, 2015), attached hereto at Attachment D, Exhibit 8.

¹¹⁴ Rippke Declaration at ¶ 14.

¹¹⁵ Rippke Declaration at ¶ 15.

¹¹⁶ See E-mail from Frank Wiczowski, President, MAW Communications Inc., to William Klokis, Pole Attachments Manager, PPL Electric Utilities Corporation (Mar. 17, 2015) (MAW000093).

Fortunately, we do not need to speculate about Mr. Klokis's intent with respect to this generic statement, because Mr. Klokis later made clear that he expected MAW to submit applications for MAW's proposed J-and-Raise rebuild. On April 8, 2015, the very next day, Mr. Klokis forwarded MAW's April 7, 2015 email to his colleagues at PPL Jose Silverio and Diana Canady, and stated, "I think it's important that MAW enters this information on at least five applications, depending on the segments of the rebuild." He also copied Quay Hoffman and Andrew Bryden, two employees of PPL's contractor Katapult Engineering.¹¹⁷ Mr. Klokis's intent, as expressed to his colleagues and to his contractor, was to require MAW to submit attachment rebuild applications to cover the rebuild project that MAW mentioned in its April 7, 2015 email.

Like the fraudulent "letter" from MAW discussed in PPL's response to Paragraph 23, there are additional compelling reasons to believe PPL did not approve MAW's rebuild plan.

First, the PPL/MAW Pole Attachment License Agreement contains an entire Article 9 devoted to rebuilds, specifically requiring that rebuild applications be submitted 30 days in advance. Dispensing with such a requirement to allow hundreds of PPL poles to be modified without the oversight of PPL's application process would require much more than a simple statement that Mr. Klokis would "work with his team to accomplish this in a timely manner." Second, PPL did not learn that MAW had performed any rebuild work at all on PPL's poles until MAW's whistleblower Joe Staboleski alerted PPL in October of 2017 to MAW's reckless, dangerous and disreputable unauthorized attachment activity. In the Lehigh County Court proceeding, Mr. Staboleski testified that:

- (1) MAW's unauthorized attachments were installed in disregard of PPL's standards, in disregard of known NESC standards, and in disregard of third party attacher rights;¹¹⁸
- (2) MAW's applications were never authorized because MAW's President did not want to pay the make-ready costs;¹¹⁹
- (3) there was nothing unreasonable about PPL's standards;¹²⁰
- (4) MAW's violations of the 40-inch safety space were very dangerous;¹²¹ and
- (5) he left MAW because he was "hounded for months" by MAW's decision to continue to build illegally.¹²²

Third, this so-called "approval" by PPL of MAW's rebuild plan was not referenced by MAW during the entire state court proceeding, which was taking place largely to address PPL claims that MAW's rebuild was unauthorized. This so-called "approval" would

¹¹⁷ See E-mail from William Klokis, PPL, to Jose Silverio, PPL (April 8, 2015, 7:35 a.m. EST), attached hereto at Attachment D, Exhibit 9.

¹¹⁸ *PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Transcript of Proceedings, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 (Mar. 23, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment F, at 48 (MAW000323).

¹¹⁹ *Id.* at 23-24 (MAW000298-MAW000299).

¹²⁰ *Id.* at 28 (MAW000303).

¹²¹ *Id.* at 30 (MAW000305).

¹²² *Id.*

have allowed MAW to argue to the court that MAW had been authorized to do the rebuild and that PPL was wrong to argue that MAW had not been authorized. If MAW had seriously believed Mr. Klokis had approved his rebuild plan, it makes no sense to believe MAW would not have produced this email and other supporting documentation at some point prior to the court's April 13, 2018 decision in that case.¹²³ Fourth, this so-called "approval" of MAW's rebuild plan is not mentioned in MAW's 10-Page Confidential "PPL Make Ready Policy Brief" that MAW prepared for representatives of the City.¹²⁴ MAW's 10-Page Confidential "PPL Make Ready Policy Brief" complains that PPL make-ready charges associated with MAW's January 2016 attachment application are too high, then recommends to the City that MAW disregard PPL's make-ready work, decline to seek FCC relief, and install the future MAW system without PPL authorization and as MAW sees fit. In the first paragraph of this document, MAW states MAW had by then installed 976 attachments, with most of them on PPL poles. If MAW had received permission from PPL for MAW's attachments to PPL poles, and if MAW's recommended plan was to avoid seeking permission to attach to PPL poles in the future, why did the 10-Page Confidential "PPL Make Ready Policy Brief" not mention that MAW's 976 rebuild attachments were legitimate? Fifth and finally, the far-fetched, self-serving and fraudulent nature of MAW's interpretation of this April 7, 2015 email exchange is consistent with MAW's other deceitful activity that is addressed in this Answer.¹²⁵

Finally, PPL states for the record that the list of poles attached to the April 7, 2015 email contains 490 poles, not 475 poles. In addition, only 428 (426 of which are within the City) of the listed poles are poles owned and controlled by PPL.¹²⁶

MAW 52: *At the time the project was approved by Mr. Klokis, MAW did not submit Form 4834 because Mr. Klokis, a PPL employee for over 45 years, did not require it and the same substantive information required by the Form was included in MAW's emails to Mr. Klokis.*

PPL Answer: As explained above in PPL's Answer to Paragraph 51, Mr. Klokis did not approve MAW's rebuild project. As explained, Mr. Klokis's intent, as expressed to his colleagues and to his contractor, was to require MAW to submit five attachment rebuild applications to cover the rebuild project that MAW identified in its April 7, 2015 email. PPL therefore denies the allegations in Paragraph 52, including the allegation that Mr. Klokis did not require MAW to submit the Form 4834 application.

Instead, it appears MAW decided on its own to perform the rebuild without submitting the required applications authorization, recklessly endangering the lives of its contractors, and as a result to this day is occupying valuable pole space that others cannot use, all in an effort to save time and money and to give itself a competitive advantage over legitimate communications attachers.

¹²³ The April 13, 2018 Lehigh County Court Order is attached to MAW's Complaint at MAW000269-MAW000274.

¹²⁴ See *PPL Make Ready Policy Brief – rev1*, Jan. 18, 2017, attached to MAW Amended Pole Attachment Complaint at Exhibit F (MAW000694-MAW000703).

¹²⁵ Yanek Declaration at ¶ 40.

¹²⁶ Yanek Declaration at ¶ 41.

MAW 53: *Upon information and belief, Mr. Klokis subsequently left his employ with PPL at some point in 2015. As of January 24, 2019, he is listed as semi-retired at PPL on LinkedIn.*

PPL Answer: Mr. Klokis retired full time and permanently from PPL in June of 2015. Mr. Ryan Yanek took over Mr. Klokis' position in June of 2015.¹²⁷

MAW 54: *Consistent with its customary practice, MAW attempted to contact Mr. Klokis in December 2015 to notify PPL that it J-and-raised the old municipal network on approximately 900 existing attachments and to submit its completed documentation to PPL, but because Mr. Klokis' phone number had been disconnected and email address no longer existed in PPL's system, MAW was unable to reach him.*

PPL Answer: PPL lacks knowledge or information sufficient to form a belief as to whether MAW attempted to contact Mr. Klokis or not in December 2015 and so denies this allegation. However, had MAW attempted and failed to reach Mr. Klokis, it would have been simple for MAW to locate Mr. Klokis's replacement. MAW could have easily contacted PPL customer service to determine whom to contact in lieu of Mr. Klokis. Ryan Yanek was placed in charge of communications company attachments in June of 2015. Stine Engineering was in place and working on attachment requests. Jose Silverio, who had assisted Mr. Klokis, was assisting Ryan Yanek with attachment requests. Given the importance of such a notification, and given MAW's alleged recognition that Mr. Klokis's phone number had been disconnected and email address no longer existed, it was incumbent upon MAW to make some additional effort to contact the right person. PPL doubts that MAW ever tried to reach Mr. Klokis with this notification, but if MAW did try and fail to reach Mr. Klokis, MAW apparently elected not to make any effort at all to reach the appropriate person.¹²⁸

MAW 55: *On January 16, 2016, after MAW was unable to reach Mr. Klokis despite multiple attempts, MAW sent a letter informing PPL that it had J-and-raised the municipal network and noting that its engineering documents were available to be submitted to PPL.*

PPL Answer: The "letter" referenced in this paragraph is actually dated January 15, 2016, as correctly noted in the Complaint at footnotes 65 and 17.

PPL denies as fraudulent the allegation that MAW sent this "letter" to PPL, which contains no street address and is addressed "To whom it may concern."¹²⁹

As explained in PPL's Answer to Paragraph 23, this January 15, 2016 "letter" states that MAW completed its first phase of constructing a citywide fiber optic network by "J and Raising" the existing plant and replacing it with MAW's current plant. Pursuant to Section 9.2 of the PPL/MAW Pole Attachment License Agreement, MAW is required to

¹²⁷ Yanek Declaration at ¶ 42.

¹²⁸ Yanek Declaration at ¶ 43.

¹²⁹ Letter from Frank Wiczowski, President, MAW Communications, Inc., to "To Whom it May Concern," (Jan. 15, 2016), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 5 (MAW000051).

notify PPL of such an attachment rebuild project by submitting a completed attachment rebuild application a minimum of 30 days before the start of the attachment rebuild project.¹³⁰ MAW did not notify PPL prior to the start of the rebuild project, nor did it submit a completed attachment rebuild application. Accordingly, even if this January 15, 2016 “letter” was sent on the date that MAW claims it was sent, this document still serves as evidence that MAW violated the Pole Attachment License Agreement by completing a rebuild project without notifying PPL and submitting an application prior to the start of the rebuild project.¹³¹

PPL believes this “letter” to be fraudulent for numerous compelling reasons. First, PPL has no record of ever receiving this January 15, 2016 “letter.” PPL first became aware of the “letter’s” existence during the last of several meetings between PPL and MAW that took place from May to August, 2018. Second, PPL never requested or received any of the 960 profile sheets, photos, or video logs that the “letter” states are “ready to be provided upon request.” Third, the “letter” is not properly addressed, even though it would have taken little work for MAW to contact PPL customer service to determine to whom the “letter” should be addressed. Ryan Yanek had been placed in charge of communications company attachments beginning in June of 2015. Stine Engineering was at that time in place and working on attachment requests. PPL’s Jose Silverio was assisting Mr. Yanek at PPL with attachment requests, as Mr. Silverio had been assisting Mr. Yanek’s predecessor William Klokis. So if this “letter” is authentic, MAW did not try very hard to reach anyone because nobody at PPL received it.¹³² Fourth, even if were authentic, and even if it were actually sent when MAW claims, this “letter” mysteriously lacks any street address and would not have been deliverable to PPL without a street address. If this “letter” were instead emailed, MAW should have an email documenting where it was sent via email, but MAW’s Complaint attaches no such email correspondence and MAW failed to produce such an email correspondence after PPL requested one.¹³³ Furthermore, it would be difficult to envision a successful email transmission considering that MAW did not even bother to learn to whom the letter should be addressed. Fifth, the “letter” indicates that MAW filed certain applications electronically for the first of MAW’s 15 additional routes. It makes no sense to assume that MAW was capable of electronically filing an attachment application but was incapable of identifying the proper PPL contact to whom to send this “letter.” Sixth, PPL did not learn that MAW had performed any rebuild work at all on PPL’s poles until a whistleblower from MAW alerted PPL in October of 2017 to MAW’s reckless and dangerous unauthorized attachment activity.¹³⁴ In testimony leading up to the April 13, 2018 Lehigh County Court Order, MAW’s former employee Joseph Staboleski testified that:

¹³⁰ Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc., Article 9, Section 9.2, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000189).

¹³¹ Yanek Declaration at ¶ 44.

¹³² Yanek Declaration at ¶ 11.

¹³³ See R. Yanek Meeting Notes from Meeting 9 with PPL, City of Lancaster/Lancaster Community Safety Coalition, and MAW, Aug. 2, 2018, attached hereto at Attachment D, Exhibit 3.

¹³⁴ Yanek Declaration at ¶ 11.

- (1) MAW's unauthorized attachments were installed in disregard of PPL's standards, in disregard of known NESC standards, and in disregard of third party attacher rights;¹³⁵
- (2) MAW's applications were never authorized because MAW's President did not want to pay the make-ready costs;¹³⁶
- (3) there was nothing unreasonable about PPL's standards;¹³⁷
- (4) MAW's violations of the 40-inch safety space were very dangerous;¹³⁸ and
- (5) he left MAW because he was "hounded for months" by MAW's decision to continue to build illegally.¹³⁹

Seventh, this January 15, 2016 "letter" was not referenced by MAW during the entire court proceeding, which was taking place largely to address PPL claims that MAW's rebuild was unauthorized.¹⁴⁰ This document, if it were authentic, is arguably relevant to MAW's claim that it had received authorization for the rebuild and that PPL was wrong. Considering the value of this "letter," it strains credulity to believe MAW would not have referenced its "letter" some time prior to the court's April 13, 2018 decision in that case.¹⁴¹ Eighth, this January 15, 2016 "letter" is not mentioned in MAW's 10-Page Confidential "PPL Make Ready Policy Brief" that MAW prepared for representatives of the City, which is dated one year after January 15, 2016, on January 18, 2017.¹⁴² MAW's 10-Page Confidential "PPL Make Ready Policy Brief" complains that PPL make-ready charges associated with MAW's January 2016 attachment application are too high, then cavalierly recommends to the City that MAW: (1) disregard and not perform PPL's required make-ready work; (2) decline to seek FCC relief for any alleged overcharges; and (3) install the future MAW system on PPL's electric distribution poles without PPL authorization and as MAW sees fit. PPL will address this 10-Page Confidential "PPL Make Ready Policy Brief" in more detail later.¹⁴³ For now, PPL points out that in the first paragraph of this document, MAW reports that MAW had by then installed 976 attachments, with most of them on PPL poles. If MAW had received authorization from PPL for MAW's attachments to PPL poles, why did the 10-Page Confidential "PPL Make Ready Policy Brief" not mention that authorization? Ninth, prior to sending the "letter," MAW was concerned about PPL's reaction to learning that MAW had attached to far more poles than were identified in the March 17, 2015 letter from LCSC ("I'm not sure what their response will be when then [sic] learn we are attached to over 1,000 poles

¹³⁵ *PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Transcript of Proceedings, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 (Mar. 23, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment F, at 48 (MAW000323).

¹³⁶ *Id.* at 23-24 (MAW000298-MAW000299).

¹³⁷ *Id.* at 28 (MAW000303).

¹³⁸ *Id.* at 30 (MAW000305).

¹³⁹ *Id.*

¹⁴⁰ Yanek Declaration at ¶ 11.

¹⁴¹ *PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Order, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 (Apr. 13, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment F (MAW000269-MAW000274).

¹⁴² See *PPL Make Ready Policy Brief – rev1*, Jan. 18, 2017, attached to MAW Amended Pole Attachment Complaint at Exhibit F (MAW000694-MAW000703).

¹⁴³ See PPL Answer to MAW Complaint at ¶¶ 99, 118, and 125.

instead of the 475 the LCSC had reported.”)¹⁴⁴ Tenth and finally, the fraudulent nature of the January 15, 2016 “letter” is consistent with MAW’s other deceitful activity that is addressed in this Answer.¹⁴⁵

PPL therefore denies the allegations in Paragraph 55 of the Complaint.

MAW 56: *In March 2016, after submitting its first applications for the new build portion of the LanCity Connect network, MAW once again submitted all of the J-and-raise rebuild pole attachment records to Mr. Ryan Yanek, Project Manager for Distribution Asset Management at PPL. PPL has repeatedly refused to accept this data from MAW.*

PPL Answer: This statement is unsupported and false. PPL has no record of rebuild pole attachment records being submitted or rejected in March of 2016. More importantly, the testimony of Ryan Yanek cited to support this statement has been falsely interpreted. This statement is supported by Mr. Wiczkowski’s Declaration at ¶14 and Exhibit 15, and Exhibit 15 is purported to be an excerpt of Ryan Yanek’s March 23, 2018 testimony at page 42:3-14. Exhibit 15 instead is pages 68-69 of the March 23, 2018 testimony on an unrelated topic. Mr. Yanek’s March 23, 2018 testimony at page 42:3-14 instead appears in Attachment 7 to MAW’s Complaint at MAW000636. Mr. Yanek’s testimony here addresses only MAW’s new build application in March of 2016. The testimony states that PPL rejected these new build applications because they were in an antiquated form of pole profile sheets that did not further the application, since an online portal application system had been in place since 2013.¹⁴⁶

Mr. Yanek’s testimony does not address MAW’s rebuild applications at all. MAW is therefore attempting to rely on testimony regarding new build attachments to try to make the case that it notified PPL about its rebuild project. This mischaracterization is consistent with MAW’s duplicity throughout the course of its dealings with PPL.¹⁴⁷

Based on the foregoing, PPL denies the allegations in Paragraph 56 of the Complaint.

MAW 57: *Unfortunately, LCSC had insufficient funds to upgrade its existing security cameras to be compatible with the new, single-mode fiber network. As a result, the older, raised network could not be timely removed without disrupting the operation of the existing security cameras. Since then, LCSC has obtained the funds, but PPL refuses to allow the requisite work to be done on the poles to facilitate the transition of the traffic sensors and cameras to the single mode network.*

PPL Answer: MAW does not indicate when MAW learned that LCSC lacked the funds to upgrade its security cameras. Since a rebuild pursuant to the PPL/MAW Pole

¹⁴⁴ See October 5, 2015 email Frank Wiczkowski to Wes Farmer, and Patricia Brogan, obtained during discovery in the Lehigh County Court proceeding and attached hereto at Attachment D, Exhibit 21.

¹⁴⁵ Yanek Declaration at ¶ 45.

¹⁴⁶ *PPL Electric Utilities Corporation v. MAW Commc’ns, Inc.*, Transcript of Proceedings, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 (Mar. 23, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment F, at 42 (MAW000636).

¹⁴⁷ Yanek Declaration at ¶ 46.

Attachment License Agreement must be completed in 12 months, one would expect that such an important technological compatibility problem would have been known by MAW in advance of MAW commencing the rebuild. If MAW understood in advance that this was an issue, then MAW commenced the rebuild knowing it would take some unknown amount of time for the older equipment to be removed. Performing a rebuild with no knowledge of when it would be complete would help explain why MAW did not file applications or seek approval for the rebuild, did not request an extension of time to complete the rebuild, and did not inform PPL when the rebuild was complete. It would also explain why PPL only learned of the rebuild only in October 2017, well after MAW commenced the rebuild, through MAW's whistleblower Joseph Stabuloski.¹⁴⁸

PPL lacks knowledge or information sufficient to know whether LCSC has now obtained funding for the upgraded cameras, but denies that it is refusing to allow the requisite work to be done on the poles to facilitate the transition of the traffic sensors and cameras to the single mode network. Instead, given that MAW's unauthorized attachments have created a mess on PPL's poles, resolving this matter requires far more work than simply transitioning the traffic sensors and cameras to the single mode network. PPL must instead implement a holistic solution which achieves a fully-permitted system by: (1) removing unauthorized attachments; (2) fixing safety violations caused by MAW; (3) reconciling which of the City's and LCSC attachments these entities wish to transfer to MAW; and (4) processing MAW's applications for rebuild and new build network expansion.¹⁴⁹

PPL denies the remaining allegations in Paragraph 57 for lack of knowledge or information sufficient to form a belief as to their truth.

E. MAW's Preposterous Definition of "Service Drop" Was Used in Yet Another Reckless, Illicit and Anticompetitive Effort to Avoid PPL Oversight and Make-Ready Expenses

As explained in PPL's answers to Paragraphs 58-72 below, in order to avoid PPL oversight and make-ready expenses for MAW's new build on PPL's mainline distribution poles, MAW created for itself an expansive definition of "service drop attachment" that is inconsistent with the definitions of the NESC, the FCC and the PPL/MAW Pole Attachment License Agreement.

MAW's fictitious, far-fetched and self-serving interpretation of "service drop attachment" includes MAW's new-build attachments to miles of mainline distribution poles, so that MAW could make the illegitimate claim that none of its mainline distribution pole attachments requires an application.

By attempting to evade the oversight and attacher responsibilities for its mainline distribution pole attachments, MAW gained a competitive advantage over its communications

¹⁴⁸ Yanek Declaration at ¶ 31.

¹⁴⁹ Yanek Declaration at ¶ 47.

company competitors, all of whom follow the rules and incur the make-ready and other costs associated with maintaining a safe and reliable pole distribution system. Most egregiously, this anticompetitive and illicit activity by MAW endangered the lives of MAW's contractors who installed these attachments, none of whom was electric-qualified to perform such installations in such close proximity to energized electric conductors.

MAW 58: *Throughout 2017, MAW deployed customer service drop attachments to provide broadband service to residents and businesses using the rebuilt municipal network in the City of Lancaster.*

PPL Answer: The NESC defines “Service Drop” as “the overhead conductors between the electric supply or communication line and the building or structure being served.”¹⁵⁰

The Commission defines a “Service Drop” as follows:

A service drop is an adjunct line to the electric supply or communications main line. Where it is necessary to maintain ground clearances a pole may be used to provide support for the service drop. A subscriber service drop is a cable connecting a subscriber to the cable distribution network via a tap located on or near a distribution pole. In cases where it is necessary for the drop to cross a roadway, a drop pole is placed on the side of the roadway opposite the cable tap and the drop is hung over the roadway suspended on the distribution pole and the drop pole. The cable then enters the subscriber's premises from the drop pole. Poles used for service drops are usually 30 feet or less in height and are typically smaller in diameter than supply line poles.”¹⁵¹

The PPL/MAW Pole Attachment License Agreement defines a “Service Drop Attachment” as “a separate point of attachment on PPL’s poles used to support one or more service cables that extend from Licensee’s attachments on PPL’s poles to a point of service on a customer’s premises.”¹⁵²

These three definitions of service drop from the NESC, the FCC and the PPL/MAW Pole Attachment License Agreement are identical in intent and scope. All three define service drops as extensions from the mainline pole distribution system to the customer’s premises.

MAW has created for itself a far more expansive definition of “service drop attachment” than is inconsistent with the NESC, the FCC and the PPL/MAW Pole Attachment

¹⁵⁰ 2017 National Electrical Safety Code (C2-2017), IEEE at §2 (2017), *See also* Rippke Declaration.

¹⁵¹ *Mile Hi Cable Partners et al. v. Public Serv. Co. of Colorado*, 15 FCC Red 11450, 11460 at para. 17 (Cab. Servs. Bur. 2000) (footnotes omitted).

¹⁵² Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc., Article 1, Section 1.18, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000176). The PPL/MAW Pole Attachment License Agreement does not require applications to be submitted (Section 6.4), but Licensee must pay an attachment fee for service drops (Section 1.18). *Id.*

License Agreement definition. In his testimony in the Lehigh County Court, Mr. Wiczkowski stated that a “service drop” simply means: “if the point of termination is a customer, it’s a service drop.” When asked for clarification, Mr. Wiczkowski indicated that his interpretation of the term “service drop” meant it was possible for MAW to run a cable from the Lehigh County Courthouse in Allentown, Pennsylvania, to a business in Lancaster, Pennsylvania, and that entire line would be considered to be a “service drop”.¹⁵³ PPL notes that the distance between Allentown and Lancaster is approximately 76 miles, and that the average PPL distance between its mainline distribution poles is approximately 190 feet, which equates to approximately 28 poles per mile. That means, according to MAW’s interpretation of the term “service drop attachment,” MAW could avoid the pole attachment application process entirely for all of MAW’s attachments to the 2,128 PPL mainline distribution poles from Allentown to Lancaster.¹⁵⁴

This fictitious, far-fetched and self-serving interpretation of “service drop attachment” has been employed by MAW to avoid any PPL oversight at all of MAW’s surreptitious “new build” installations on PPL’s mainline distribution system. By taking the illegitimate and preposterous position that MAW’s mainline distribution pole attachments are actually “service drop attachments” that can extend for miles, MAW is making an illegitimate claim that none of its mainline distribution pole attachments require an application.

MAW evaded PPL scrutiny for these mainline distribution pole attachments until it was caught, which might not have happened if MAW’s whistleblower Joseph Staboleski had not alerted PPL in October of 2017 to this illegal activity. By attempting to evade the oversight and attachment responsibilities for its mainline distribution pole attachments, MAW gained a competitive advantage over its communications company competitors, all of whom follow the rules and incur the make-ready and other costs associated with maintaining a safe and reliable pole distribution system. Most egregiously, this anticompetitive and illicit activity by MAW endangered the lives of MAW’s contractors who installed these attachments, none of whom was electric-qualified to perform such installations in such close proximity to energized electric conductors.¹⁵⁵

PPL lacks knowledge or information sufficient to form a belief as to the truth of MAW’s allegation that its attachments are being used “to provide broadband service to residents and businesses,” but notes that such attachments to provide broadband service are not subject to the Commission’s pole attachment jurisdiction because they are not being used

¹⁵³ *PPL Electric Utilities Corporation v. MAW Commc’ns, Inc.*, Transcript of Proceedings, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 (Mar. 23, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment F, at 244-245 (MAW000519-MAW000520). In his own testimony, Ryan Yanek of PPL articulated the industry understanding that service drops are “generally from one pole to an end customer,” and “certainly sometimes where the point of origination and point of termination may involve a second pole, but certainly not 30 poles in a row.” *PPL Electric Utilities Corporation v. MAW Commc’ns, Inc.*, Transcript of Proceedings, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 (Mar. 28, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment F, at 70 (MAW000664).

¹⁵⁴ Yanek Declaration at ¶ 48.

¹⁵⁵ Yanek Declaration at ¶ 49.

to provide telecommunications service.¹⁵⁶ The conclusion that most, if not all, MAW attachments are being used only for broadband, and not telecommunications, services, is supported by the fact that MAW's attachments to PPL poles are being used for the Lan City Connect project, which does not offer a telecommunications service.¹⁵⁷

MAW 59: *Section 1.18 of the Pole Attachment Agreement defines "Service Drop Attachment" as "[a] separate point of attachment on PPL's poles used to support one or more service cables that extend from Licensee's attachments on PPL's poles to a point of service on a customer's premises. This shall be considered a cable attachment for which an attachment fee is required."*

PPL Answer: PPL admits the allegations in Paragraph 59 of the Complaint.

MAW 60: *The customer service drop attachments that MAW deployed in 2017 meet the definition of "Service Drop Attachment" in Section 1.18 of the Pole Attachment Agreement.*

PPL Answer: PPL admits that some of MAW's attachments qualify as "Service Drop Attachments" under the PPL/MAW Pole Attachment License Agreement, but denies that the great majority of what MAW calls "Service Drop Attachments" qualify as such under the Agreement. Instead, the great majority of these attachments are to from mainline distribution pole to mainline distribution pole, and as such were required to go through the application process.

Accordingly, PPL denies in part and admits in part the allegations in Paragraph 58.

MAW 61: *As noted above, MAW utilizes lightweight, all-dielectric self-supporting ("ADSS") fiber cable for its service drops. This material differs significantly from the facilities used for its backbone network. In addition, the feeder (backbone) cables are supported by steel strand, adding weight and conductive properties that do not exist for the ADSS fiber attachments.*

PPL Answer: MAW's claims that its ADSS cable are being used only for "service drops" is false because MAW's preposterous definition of "service drop" is inconsistent with the NESC, FCC and PPL/MAW Pole Attachment License Agreement definitions of "service drop." Instead, the great majority of MAW's ADSS cable is being used to deploy MAW's "new build" attachments from distribution pole to distribution pole, all of which require MAW to comply with the attachment application and approval process. MAW did not apply for or receive authorization for these attachments, and installed them in an unsafe manner that jeopardized the lives of the unqualified installation contractors MAW employed.

In his Lehigh County Court testimony, MAW whistleblower and former MAW employee Joseph Staboleski explained that this ADSS self-supporting cable was being used not for

¹⁵⁶ See *supra* footnote 1.

¹⁵⁷ The Lan City Connect website describes its service as follows: "LanCity Connect is a Community-Based Broadband Solution connecting friends, neighbors, and local businesses to the Internet." See <https://www.lancityconnect.com/> (last visited Mar. 12, 2019).

“service drops,” but rather for network expansion, by stating: “all the network extensions were being done on just a J hook with self-support cable.”¹⁵⁸

Moreover, as explained in PPL’s response to Paragraph 26, plenty of MAW “new build” attachments were discovered by PPL during the survey PPL conducted from November 2017 through February 2018, in which PPL found 1,095 unauthorized attachments by MAW, approximately 500 of which were new build attachments.¹⁵⁹ The document prepared by PPL following this survey shows approximately 500 new build attachments and includes about a dozen photographs of representative safety violations. None of these unauthorized attachments by MAW have attachments by the City of Lancaster or LCSC, and so these MAW attachments cannot be called “rebuild”. And none of these unauthorized attachments by MAW are “Service Drop Attachments,” as that term is defined by the Agreement, the NESC and the Commission, since they are all extending MAW’s network from mainline distribution pole to mainline distribution pole. In fact, based on MAW’s use of hardware alone, 295 of these attachments show that they are bolted attachments. Service drop attachments are not bolted.¹⁶⁰

Shockingly, large numbers of those new build attachments were installed by unqualified workers dangerously close to energized electric facilities. While the NESC permits ADSS fiber to be installed closer to electric facilities than attachments that conduct electricity, anyone attempting those installations must be electric-qualified to perform such hazardous work.¹⁶¹ MAW did not use such electric-qualified personnel, and as a result endangered the lives of MAW’s installers on every one of those installations. Moreover, even after these dangerous installations were completed, the result is that many of these MAW attachments created safety violations to the detriment of all those subsequently working on those facilities.¹⁶²

Just one more specific example of these numerous unsafe, unauthorized new build attachments by MAW is depicted and explained in the photograph attached hereto at Attachment B, Exhibit 1.¹⁶³ As explained in the Declaration of Ms. Rippke, this attachment is located close to a 3-phase transformer bank that has a 200 kVA, 120/240 Volt delta configuration. The secondary voltage drip loop associated with this transformer is an energized current carrying conductor, located at 22’ 8” above ground. MAW attached its fiber optic communications cable at 21’ 9”, which is just 11” below this energized drip loop. The NESC requires 40” of clearance for such installations per NESC Table 238.1. This attachment was not part of a rebuild of an existing communication cable, and so J-and-Raise does not apply. It appears instead that MAW is using a small J hook as a permanent attachment bracket instead of using a 3 bolt bracket

¹⁵⁸ *PPL Electric Utilities Corporation v. MAW Commc’ns, Inc.*, Transcript of Proceedings, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 (Mar. 23, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment F, at 29 (MAW000304).

¹⁵⁹ See Attachment D, Exhibit 4, which is the document prepared by PPL following the conclusion of PPL’s audit of MAW attachments, which identifies and explains all 1095 of MAW’s unauthorized attachments.

¹⁶⁰ Yanek Declaration at ¶ 15, See also Attachment D, Exhibit 4.

¹⁶¹ Rippke Declaration at ¶ 8.

¹⁶² See *supra* note 18.

¹⁶³ See Attachment B, Exhibit 1.

that PPL would require.¹⁶⁴ This is consistent with the Lehigh County Court testimony of Mr. Staboleski, who explained that MAW's ADSS self-supporting cable was being used not for "service drops," but rather for MAW's network expansion, stating: "all the network extensions were being done on just a J hook with self-support cable."¹⁶⁵

Accordingly, PPL denies the allegations in Paragraph 61 of the Complaint.

MAW 62: *As per the Pole Attachment Agreement, MAW was not required to submit applications to PPL for service drop attachments. As Section 6.4 of the agreement states: "With the exception of service drop attachments and lashing attachments to Licensee's own cable, no initial or additional attachment is allowed on a PPL pole without the prior submission of an attachment installation application and PPL's subsequent written authorization."*

PPL Answer: PPL admits this is what the PPL/MAW Pole Attachment License Agreement states. PPL denies that the vast majority of attachment MAW claims are "service drops" qualify as "service drop attachments" under the Agreement.

MAW 63: *Contrary to the terms set forth in the Pole Attachment Agreement, PPL now contends that "service drop attachments" cannot exceed more than four poles, three spans in length. PPL also now requires MAW to submit an application for each service drop, which must be approved by PPL prior to attachment. At points, PPL has also taken the position that, contrary to the Pole Attachment Agreement, no service drops may be attached without prior application. Consequently, PPL claims that MAW's service drop attachments, which typically extend beyond four poles, are unauthorized. This definition is not a part of the Pole Attachment Agreement, nor can it be found in Appendix D to the Pole Attachment Agreement, which contains PPL's utility specifications. At a minimum, this four pole, three span definition of service drop was not the applicable PPL standard at the time that MAW installed these service drops in 2017 and is not an available published standard as of the date of this filing.*

PPL Answer: The PPL/MAW Pole Attachment License Agreement nowhere contains any restriction that service drops cannot exceed more than four poles, three spans in length. The definition of "Service Drop Attachment" in the Agreement instead is clear and consistent with the NESC and FCC definitions of "service drops."

PPL did follow an informal, unpublished policy to make an exception to the commonly-accepted definitions of "service drop," and to consider "service drop attachments" to include low-tension attachments to PPL poles that do not exceed more than four poles, three spans in length. A copy of this informal, unpublished policy is attached to PPL's Answer at Attachment D, Exhibit 18. Although the unpublished policy benefits attachers by departing from the Agreement and from commonly-understood definitions of "service drop attachments," it still requires attachers to submit an application for such distribution

¹⁶⁴ Rippe Declaration at ¶ 11.

¹⁶⁵ *PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Transcript of Proceedings, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 (Mar. 23, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment F, at 29 (MAW000304).

pole attachments. MAW, of course, never submitted any applications at all for what it illicitly defined as “service drops.”¹⁶⁶

It should also be noted that PPL did not inform MAW of this informal, unpublished four-pole policy until the Summer of 2018, by which time MAW had attached a large number of its so-called “service drop” attachments. Even if MAW had learned about PPL’s informal, unpublished four-pole policy before MAW had installed its “service drop” attachments, MAW’s interpretation of “service drop,” to mean a limitless number of distribution pole attachments could be made without filing an application, would have been inconsistent even with PPL’s informal unpublished policy.

In any event, as explained above, MAW’s self-serving definition of “service drop attachment” does not comport with the Agreement, the NESC, or the Commission’s definitions.

For these reasons, PPL denies the allegations in Paragraph 63.

MAW 64: *As explained above, PPL repeatedly rejected MAW’s submissions of all attachment records regarding the rebuild of the existing fiber backbone. Consequently, PPL did not have accurate records of MAW’s rebuild of existing attachments in the City. As a result of its incomplete records, PPL argues that all of MAW’s service drop attachments do not originate from an authorized attachment and are thus subject to removal. MAW was not aware that PPL classified certain attachments in the rebuild network as unauthorized until 2018.*

PPL Answer: As explained in its responses to Paragraph 56, MAW falsely claimed that MAW submitted attachment records regarding MAW’s rebuild. Accordingly, PPL has had no opportunity to reject any such “submissions”. The reason that PPL did not have accurate records of MAW’s rebuild was because MAW never applied for those rebuilds, and instead performed its work in a secretive, and highly-dangerous manner so that it could avoid PPL review of its illicit activity, all to MAW’s benefit and to the anticompetitive detriment of existing and future attachers on PPL’s congested poles.¹⁶⁷

As explained above the vast majority of MAW’s so-called “service drops attachments” are not “service drop attachments” under the PPL/MAW Pole Attachment License Agreement, but rather are “new build” extensions of MAW’s network along PPL’s mainline distribution poles that required an application that MAW never submitted. In certain additional cases, MAW’s so-called “service drops attachments” are subject to removal because they do not originate from an authorized attachment. The fact that these “service drop attachments” do not originate from an unauthorized attachment is not due to “incomplete records,” but rather to the fact that MAW did not file any application or receive authorization for its rebuild attachments, so that they are by definition “unauthorized.”¹⁶⁸

¹⁶⁶ Yanek Declaration at ¶ 50.

¹⁶⁷ Yanek Declaration at ¶ 51.

¹⁶⁸ Yanek Declaration at ¶ 52.

PPL denies that MAW was not aware until 2018 that its rebuild attachments were unauthorized because the facts indicate MAW deceptively performed its rebuild activity in a reckless, self-serving and anticompetitive manner in order to save the time and expense of proper PPL review and approval of that rebuild activity.

Based on the foregoing, PPL denies the allegations in Paragraph 64 of the Complaint.

MAW 65: *Because PPL claims these service drops cannot be classified as service drops and are attached to purportedly “unauthorized” backbone network, PPL has removed over 100 service drop attachments made by MAW, which has resulted in a termination of telecommunications service to over 70 of MAW’s customers, including health care facilities.*

The vast majority of MAW’s so-called “service drops” are instead unauthorized mainline distribution “new build” attachments, which required applications that MAW never submitted. For the remaining MAW relatively few “service drop attachments” that actually do qualify as “service drop attachments” under the PPL/MAW Pole Attachment License Agreement, a legitimate service drop attachment cannot originate from an illegitimate unauthorized attachment.¹⁶⁹

PPL has removed over 100 unauthorized attachments, and its removal has been consistent with its rights under the April 13, 2018 Court Order and the PPL/MAW Pole Attachment License Agreement.¹⁷⁰

PPL lacks knowledge or information sufficient to form a belief as to its truth of MAW’s allegation that telecommunications service has been terminated to MAW’s customers, but notes that other communications companies provide competing communications services in MAW’s service territory.¹⁷¹

Based on the foregoing, PPL denies the allegations in Paragraph 65 of the Complaint.

MAW 66: *The City has agreed to transfer any remaining fiber network attachments to MAW provided PPL approves a remediation plan submitted by MAW in an effort to address PPL’s unauthorized attachment allegations. PPL requires the City to agree to the transfer before PPL will approve MAW’s remediation plan; a plan that PPL continues to contend is unacceptable. PPL will not approve MAW’s remediation plan, and the City will not transfer its attachments to MAW, which would render those attachments lawfully recorded and resolve the missing paperwork issue; meanwhile, MAW is being denied access to resolve service outages or perform routine maintenance on its facilities, attach new facilities to PPL poles and its network is being dismantled.*

¹⁶⁹ Yanek Declaration at ¶ 53.

¹⁷⁰ Yanek Declaration at ¶ 54; *See also PPL Electric Utilities Corporation v. MAW Commc’ns, Inc.*, Order, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 at ¶ 6 (Apr. 13, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 20 (MAW000140); *See also Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc.*, Article 6, Section 6.7, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000184).

¹⁷¹ Yanek Declaration at ¶ 55.

PPL Answer: PPL lacks knowledge or information sufficient to form a belief as to whether the City of Lancaster has agreed to transfer its remaining fiber network to MAW. PPL notes, however, that the City and LCSC have not requested that PPL make any transfers other than the original transfer of 428 (426 within the City) attachments discussed in PPL's answers to Paragraphs 23, 48 and 51. PPL does not understand what the "missing paperwork issue" is that MAW refers to, but PPL states that PPL will not transfer the remaining City-owned attachments to MAW until the City requests such a transfer.¹⁷²

PPL finds MAW's remediation plan unacceptable because it does not resolve all of the numerous unauthorized and unsafe attachment issues generated by MAW's reckless and deceitful attachment activity.¹⁷³

PPL has issued no blanket denial of service outage issues. PPL has reviewed each request and responded to them based on their own merit and conditions on the poles. There have been six requests since the original Stipulation was put in place in December 2017. Two have been approved as requested. One was approved in part and denied in part. Only one was fully denied. The June 14, 2018 instance in which MAW was denied access because the "service drop attachment" at issue was itself unauthorized and because this unauthorized "service drop attachment" originated from an attachment that was also unauthorized.¹⁷⁴ For this June 14, 2018 instance, MAW simply should not have been on that pole. There are currently two requests from MAW under review.¹⁷⁵

PPL does not recall any instance of MAW requesting access to its poles to perform routine maintenance.¹⁷⁶

PPL admits that it is currently not granting any of MAW's new attachment applications because to date, MAW has not restored the \$75,000 escrow fund as mandated by the Lehigh County Court Order. MAW has not and cannot justify its noncompliance with the Court Order, and PPL cannot be assured of cost recovery without this court-ordered escrow funding.¹⁷⁷

PPL has removed over 100 unauthorized attachments pursuant to the April 13, 2018 Court Order and the Pole Attachment License Agreement.¹⁷⁸

Based on the foregoing, PPL denies the allegations in Paragraph 66 of the Complaint to the extent discussed.

¹⁷² Yanek Declaration at ¶ 56.

¹⁷³ Yanek Declaration at ¶ 57.

¹⁷⁴ See E-mail from Joseph D'Amico, Counsel to PPL Electric Utilities Corporation, to Jeffrey Franklin, Counsel to MAW Communications, Inc. (June 14, 2018, 2:36 p.m. EST), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 24 (MAW000159-MAW000160).

¹⁷⁵ Yanek Declaration at ¶ 73.

¹⁷⁶ Yanek Declaration ¶ 59.

¹⁷⁷ Yanek Declaration at ¶ 60.

¹⁷⁸ Yanek Declaration at ¶ 54.

F. The PaPUC Issued MAW a Cease and Desist Directive in Response to MAW's Egregious Unsafe Activity

As explained in PPL's answers to Paragraphs 67-72 below, the PaPUC's Bureau of Investigation and Enforcement ("I&E") conducted a field conference with PPL, MAW and I&E representatives, which I&E "observed various poles and attachments that appeared to be unauthorized, noncompliant with applicable codes and regulations, or both." In response, the PaPUC I&E sent a letter telling MAW to cease and desist any and all broadband deployment on PPL's pole immediately. The I&E's cease and desist directive was issued "out of its immediate concern for the safety of the public, as well as employees of both PPL and MAW."

The PaPUC inspectors were shocked and appalled at the unsafe conditions they witnessed due to MAW's unauthorized attachment to PPL's poles. The group travelled to a second unauthorized MAW attachment site and everyone observed a MAW van working on unauthorized attachments with no permission to do so, and in violation of PPL's earlier instructions to cease all attachment work to its poles.

MAW 67: *In November 2017, PPL contacted the PA PUC alleging MAW had created exigent safety violations by making unauthorized attachments to PPL poles.*

PPL Answer: PPL admits the allegation in Paragraph 67 of the Complaint.

MAW 68: *On December 15, 2017, the Bureau of Investigation and Enforcement ("I&E") of the PA PUC advised MAW that it had initiated an informal, confidential investigation regarding safety concerns related to PPL's allegations and that MAW must cease and desist from any deployment on PPL poles. Despite the fact that the PA PUC's informal complaint process is nonpublic information, and the presence of a "confidential and proprietary" notice at the bottom of the PA PUC official's email, PPL released this information to the press on December 19, 2017.*

PPL Answer: The December 15, 2017 letter from the I&E stated that it had initiated an investigation, not "an informal, confidential" investigation. Significantly, but unmentioned by MAW, the letter states that I&E conducted a field conference with PPL, MAW and I&E representatives, and that during that field conference I&E "observed various poles and attachments that appeared to be unauthorized, noncompliant with applicable codes and regulations, or both." The PaPUC I&E letter states:

MAW is hereby directed to cease and desists [sic] any and all broadband deployment that attaches or touches any PPL pole or facility IMMEDIATELY. You are further directed not to remove, modify, or otherwise change any of the facilities at issue in this investigation, including, but not limited to, any and all attachments previously made by

MAW to PPL poles and any existing Lancaster attachments to PPL poles.¹⁷⁹

Although the PaPUC's cease and desist letter itself did not indicate it was confidential or proprietary, or that the investigation was "an informal, confidential investigation," PPL admits that there was customary "confidential and proprietary" language at the bottom on the email transmitting the letter but believes MAW has misinterpreted the significance of this customary language. PPL also admits that it released this letter to the press on December 19, 2017.¹⁸⁰

MAW 69: *On December 6, 2017, MAW, PPL, and the PA PUC met in the field to review all alleged safety violations. The same day, before the PA PUC had an opportunity to evaluate the allegations in the field, and without notice to anyone participating at the meeting, PPL filed its breach of contract claim against MAW and Mr. Wiczkowski.*

PPL Answer: On December 6, 2017, representatives from PPL, MAW, and a PaPUC attorney and two PaPUC inspectors met in the field to observe MAW's unauthorized attachments and safety violations. The PaPUC inspectors were shocked and appalled at the unsafe conditions they witnessed due to MAW's unauthorized attachment to PPL's poles. During the field meeting, the representatives from PPL, MAW, and the PaPUC inspectors and attorney travelled to a second unauthorized MAW attachment site and everyone observed a MAW van working on unauthorized attachments with no permission to do so, and in violation of PPL's earlier instructions to cease all attachment work to its poles. The PaPUC therefore had a full opportunity to evaluate MAW's safety violations, and the PaPUC's evaluation was expressed appropriately in its December 15, 2017 letter.¹⁸¹

Moreover, PPL was under no obligation to wait for any PaPUC determination prior to filing its breach of contract claim against MAW on December 5, 2017, as PPL had every right to protect its infrastructure and enforce its contractual rights before the Court of Common Pleas. PPL's suit was filed because of MAW's egregious behavior as reported by MAW's whistleblower Mr. Staboleski, and because of the extensive unauthorized attachments and safety violations PPL discovered after a three-day field audit. PPL in fact waited to file its suit until it was able to determine that MAW's unauthorized attachments and safety violations were not isolated incidents, but instead were widespread and habitual. PPL told MAW to stop this illegal activity and MAW did not. Instead, MAW continued to endanger the lives of its workers by installing unauthorized and dangerous attachments. It should also be noted that PPL took the extraordinary step of seeking an injunction from the court instead of simply asserting its rights under the PLL/MAW Pole Attachment License Agreement and immediately beginning removal of MAW's unauthorized attachments.¹⁸²

¹⁷⁹ Letter from Bradley R. Gorter, Prosecutor, PA Public Utility Commission, to Frank T. Wiczkowski, President, MAW Communications, Inc. at 2 (Dec. 15, 2017), attached hereto at Attachment D, Exhibit 10.

¹⁸⁰ Yanek Declaration at ¶ 61.

¹⁸¹ Yanek Declaration at ¶ 62.

¹⁸² Yanek Declaration at ¶ 63.

PPL accordingly denies the allegations in Paragraph 69, except that PPL admits the allegation that “on December 6, 2017, MAW, PPL, and the PA PUC met in the field to review all alleged safety violations,” and that PPL filed a breach of contract claim against MAW on December 5, 2017.

MAW 70: *In December 2017, MAW hired a third-party engineering firm, Robson Forensics, to review the alleged exigent safety violations. The report of two professional engineers concluded that there were no exigent safety violations made by MAW. MAW submitted this report to the PA PUC.*

PPL Answer: In his testimony in the state court proceeding, Jeffrey Kobilka of Robson Forensics stated that he had never consulted the NESC in connection with an electrical distribution system before, and that his review of MAW’s attachments were the first time he had ever offered an opinion with respect to electric distribution systems and how the NESC should be interpreted with respect to fiber cables. Mr. Kobilka moreover stated he had never performed any services for an electric utility before and had never dealt with issues of service drops before.¹⁸³

As is clear from Robson Forensic’s report, it is premised on the notion that ADSS fiber cables do not conduct electricity, and therefore “can be used in applications right up against power carrying cables.”¹⁸⁴

The Robson Forensic report, and MAW’s reliance on the Robson Forensic’s report, miss the point entirely for why MAW’s attachments are unsafe. PPL’s consultant Kristie Rippke is a professional engineer licensed in Pennsylvania. She has been associated with PPL in various engineering functions for years, and specializes in electric pole distribution safety matters. Ms. Rippke provided her own testimony in the Lehigh County Court proceeding, in which she explained that the ADSS attachments that were installed in the supply space of PPL’s poles require electric-qualified linemen under the control and supervision of PPL.¹⁸⁵ By allowing non-electric-qualified workers to install

¹⁸³ *PPL Electric Utilities Corporation v. MAW Commc’ns, Inc.*, Transcript of Proceedings, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 (Mar. 23, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment F, at 262-265 (MAW000537-MAW000540).

¹⁸⁴ *PPL Electric Utilities Corporation v. MAW Commc’ns, Inc.*, Transcript of Proceedings, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 (Mar. 23, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment F, at 270 (MAW000545); *See also* Engineer’s Report of the Safety of MAW Communications Fiber Optic Cable Installation, Prepared by Daryl E. Ebersole, P.E. and Jeffrey M. Kobilka, P.E., at 3 (Jan. 7, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 17 (MAW000126). Robson Forensic’s report clearly stated that the use of ADSS fiber optic cables with minimal clearance to supply is acceptable under the NESC, but only casually notes, “provided workers utilize supply space work rules.” *Id.* at 3. MAW’s takeaway from the report was only that the ADSS fiber cables can be installed with minimal clearance to supply, and in turn completely disregarded worker safety.

¹⁸⁵ *PPL Electric Utilities Corporation v. MAW Commc’ns, Inc.*, Transcript of Proceedings, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 (Mar. 28, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment F, at 24-27 (MAW000618-MAW000621).

ADSS cable in the supply space of PPL's poles, MAW very simply had placed its workers' lives in danger.¹⁸⁶

MAW 71: *In an email dated December 29, 2017, counsel to the PA PUC communicated its position that the dispute between the parties was primarily legal in nature (i.e., involved an interpretation of the recently changed NESC standards and not exigent safety violations) and thus not within the PUC's jurisdiction.*

PPL Answer: The December 29, 2017 email does not suggest in any way that the parties do not have a dispute concerning exigent safety violations, nor does it suggest the dispute is merely about recently changed NESC standards. To the contrary, the very subject of all four of the paragraphs in the email is the safety violation dispute between the parties. The email otherwise speaks for itself.

MAW 72: *On January 17, 2018, the PA PUC ended its investigation.*

PPL Answer: The January 17, 2018 letter from the Deputy Chief Prosecutor of the PaPUC that MAW cites to support this conclusion ended the PaPUC's investigation. Unstated by MAW, however, the letter also states that the PaPUC's Bureau of Investigation and Enforcement ("I&E") issued its December 15, 2017 Cease and Desist directive "out of its immediate concern for the safety of the public, as well as employees of both PPL and MAW." The letter then clarifies that I&E does not have authority to issue such orders, and that I&E's involvement in the PPL/MAW dispute is not necessary given the December 19, 2017 agreement (i.e., the "December 2017 Stipulation") reached during the state court proceeding.¹⁸⁷

The January 17, 2018 letter from the Deputy Chief Prosecutor of the PaPUC stated that it did not intend to be an active participant in the Lehigh County Court proceeding, and that any subsequent enforcement action from the PaPUC would be limited to safety concerns brought to the attention of I&E. The limited involvement was appropriate given the fact that PPL had initiated a breach of contract lawsuit against MAW.¹⁸⁸

G. The Lehigh County Court Heard Two Days of Testimony About MAW's Egregious Behavior and Granted PPL the Right to Remove MAW's Unauthorized Attachments

As explained in PPL's answers to Paragraphs 73-81 below, following two days of testimony about MAW's egregious conduct, the Lehigh County Court issued an order on April 13, 2018 which:

¹⁸⁶ Rippke Declaration at ¶ 10.

¹⁸⁷ Letter from Michael L. Swindler, Deputy Chief Prosecutor, PA Public Utility Commission, to Jeffrey A. Franklin, Counsel to MAW Communications, Inc. at 1 (Jan. 17, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 19 (MAW000135).

¹⁸⁸ *Id.* at 2.

- (1) required MAW to notify its customers that their Internet service might be disrupted;
- (2) prohibited MAW from accessing, working on, or connecting to any of PPL's poles without PPL's prior approval;
- (3) required MAW to file applications for MAW's unauthorized attachments;
- (4) permitted PPL to remove or remediate any unauthorized attachment at MAW's expense;
- (5) required MAW to comply with the PPL/MAW Pole Attachment License Agreement;
- (6) required MAW to maintain and replenish a \$75,000 escrow account to ensure reimbursement of PPL's costs;
- (7) required PPL to work with Lancaster and LCSC to minimize disruption of the City's traffic light and camera systems as PPL removed MAW's unauthorized attachments;
- (8) required MAW to provide PPL records of MAW's attachments;
- (9) required MAW to provide the certificate of insurance required by the PPL/MAW Pole Attachment License Agreement;
- (10) required MAW to pay the \$40,000 cost of the survey PPL had to perform to discover MAW's unauthorized attachments; and
- (11) required MAW to ensure its attachments are timely and properly recorded with PPL.

MAW 73: *On December 5, 2017, PPL filed suit against MAW in the Court of Common Pleas of Lehigh County, Pennsylvania, alleging that MAW had made unauthorized attachments in violation of PPL and NESC standards. PPL sought an injunction that MAW (1) produce all records of every attachment made by MAW to PPL facilities, (2) retain qualified electrical workers to remove every unauthorized attachment, and (3) comport itself consistent with its obligations under the Pole Attachment Agreement.*

PPL Answer: PPL admits the allegations in Paragraph 73 of the Complaint. Further, as reflected by the relief granted to PPL in response to its petition for Civil Contempt, it had sustained its burden of proof before the President Judge of the Court of Common Pleas of Lehigh County.

MAW 74: *On December 19, 2017, MAW and PPL entered into a Stipulation ("December 2017 Stipulation") that temporarily resolved the issues set forth in PPL's petition. MAW—in consideration of feedback received from its customers, including the City and LGH—believed that entering into the December 2017 Stipulation was the only way to avoid having its attachments removed and services disrupted.*

PPL Answer: PPL admits the allegations that "on December 19, 2017, MAW and PPL entered into a Stipulation," which transcript speaks for itself. PPL denies any attempt by MAW to mischaracterize the terms of the stipulation. PPL lacks knowledge or information sufficient to form a belief about what MAW was thinking when it entered

into the Stipulations and so denies the remaining allegations in Paragraph 74 of the Complaint.

MAW 75: *The Lehigh County court adopted the December 2017 Stipulation as an Order of Court. Per the December 2017 Stipulation MAW agreed, inter alia, to resubmit applications for all allegedly unauthorized attachments to PPL poles using PPL's online application portal and that it follow the Pole Attachment Agreement process through the online portal "when submitting applications for any future work involving the rebuild of the Lancaster Community Safety Coalition network and/or any service drops." To avoid removal of its attachments and disruption of its services, MAW also agreed to obtain the prior approval of PPL before "accessing, working on, or connecting to any of PPL's poles, including those on which MAW has already made attachments."*

PPL Answer: PPL agrees that the court adopted the December 2017 Stipulation as an Order of the court. MAW's Complaint did not provide a copy of the December 2017 Stipulation, but PPL has attached a copy to its Answer at Attachment D, Exhibit 7.

The December 2017 Stipulation is an Order adopting the agreement of the parties as described in the transcript attached to the Order. (The transcript is incorrectly dated December 12, 2017 on the first page but correctly dated December 19, 2019 on the second page.) Contrary to MAW's allegation above, nowhere in the December 2017 Stipulation does it mention "alleged unauthorized attachments" or that MAW would use the online application portal "when submitting applications for any future work involving the rebuild of the Lancaster Community Safety Coalition network and/or any service drops." Instead, the only place in December 2017 Stipulation that MAW's applications are mentioned is at page 6 of the transcript, in which PPL's attorney Mr. D'Amico mentions: "And this is without prejudice to MAW resubmitting applications to go through the typical application process, have the engineering make ready work, perform replacements where noted."¹⁸⁹

The Stipulation also does not contain the phrase, "accessing, working on, or connecting to any of PPL's poles, including those on which MAW has already made attachments." Instead, it states at page 3 of the transcript: "All work will cease pending further approval from PP&L. So that means no new attachments, no splicing work of any kind will be permitted on anything that attaches to a PPL pole."¹⁹⁰

MAW also fails to point out several other important requirements of the December 2017 Stipulation. First, MAW agreed to provide "a full list of all facilities to PP&L and to the PUC" by Friday, December 22, 2017.¹⁹¹ Second, with respect to exigent safety issues,

¹⁸⁹ See *PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Agreement, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 (Dec. 12, 2017) at 6 (attached hereto at Attachment D, Exhibit 7).

¹⁹⁰ *Id.* at 3.

¹⁹¹ See *PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Agreement, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 (Dec. 12, 2017) at 2-3 (attached hereto at Attachment D, Exhibit 7).

MAW had two business days after PPL notice to respond with an objection to or approval of PPL's proposed work.¹⁹² Third, PPL agreed to consider remediation, as opposed to full removal of MAW's facilities, but retained the discretion to remove MAW's facilities regardless of any disagreement.¹⁹³

For these reasons, PPL admits in part and denies in part the allegations in Paragraph 75 of the Complaint.

MAW 76: *Notably, the online portal requires attachers to choose a type of attachment—e.g., “Typical Attachment/Removal Application,” “NJUNS Ticket,” “Relocation Project.” Until late July/early August 2018, the online application portal did not include a “Rebuild” type of attachment. PPL later used this failure to reject and reset MAW’s attachment applications that were submitted four months earlier using the closest available category.*

PPL Answer: As explained in Mr. Yanek's August 16, 2018 response to this application, MAW's paper Form 4834 application from April 25, 2018 was not rejected based on the type of attachment selected in the online portal system. The online portal system for rebuild applications, in fact was not even operational in April of 2018. Instead, MAW's April 25, 2018 application was rejected because MAW's paper Form 4834 application was submitted well after work began, the paper form listed no attachments at all, the request otherwise did not include sufficient detail for PPL to evaluate the locations where the re-build is proposed or validate that they coincide with permitted attachments, PPL had updated its online portal system rebuild application process, and MAW needed to resubmit its applications using the updated rebuild process, which was explained by PPL during a WebEx hosted by on July 30, 2018 to instruct MAW how to use the portal system.¹⁹⁴ The April 25, 2018 application provided maps that identified only stretches of streets along which MAW indicated it had attachments. Pushpins were used to indicate pole locations.¹⁹⁵ PPL's system, however, requires a pole identification number and pole position to document unauthorized attachments.¹⁹⁶

PPL admits the allegations that the online portal requires attachers to choose a type of attachment—e.g., “Typical Attachment/Removal Application,” “NJUNS Ticket,” “Relocation Project,” and that until late July/early August 2018, the online application portal did not include a “Rebuild” type of attachment. PPL denies the remainder of Paragraph 76.

MAW 77: *While MAW disputes PPL's allegations in this case, MAW's CEO Frank Wiczowski entered into the December 2017 Stipulation believing that doing so would lead to a resolution that would enable MAW to resume network construction and maintenance. MAW did not*

¹⁹² *Id.* at 3.

¹⁹³ *Id.*

¹⁹⁴ See E-mail from Ryan J. Yanek, Project Manager, PPL Electric Utilities Corporation, to Frank Wiczowski, President, MAW Communications, Inc. (Aug. 16, 2018, 4:37 p.m. EST), attached to MAW Amended Pole Attachment Complaint at Attachment D, Exhibit 4 (MAW000225).

¹⁹⁵ See Cable TV/Telecom Rebuild Report (CAT Rebuild Report), Form 4834 (Apr. 25, 2017), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 22 (MAW000149-MAW000152).

¹⁹⁶ Yanek Declaration at ¶ 29.

anticipate that PPL would use the December 2017 Stipulation to begin removing MAW's customer service drops, or that over a year later, MAW would still be denied access to PPL poles.

PPL Answer: PPL lacks knowledge or information sufficient to form a belief about what Mr. Wiczkowski was thinking at the time the December 2017 Stipulation was entered into. The Stipulation speaks for itself, and MAW immediately breached the terms of the stipulation. One of the agreements in the Stipulation was that MAW would provide “a full list of all facilities to PP&L and to the PUC.”¹⁹⁷ A full list of facilities does not mean an excel spreadsheet listing street names,¹⁹⁸ or a map with street names and push pins. As evidenced by MAW's April 15, 2018 application, MAW either could not, or purposefully would not, provide the full list of MAW's attachments by pole number and pole location so that PPL could assess the extent of the unauthorized attachments on its poles.

After discovering MAW's unauthorized attachments on its poles as a result of its own internal investigation, PPL instructed MAW to remove the unauthorized attachments with properly trained electric-qualified workers.¹⁹⁹ The December 2017 Stipulation, which was in place from December 19, 2017 to April 13, 2018, was not used to demand removal. PPL had the right to remove MAW's unauthorized attachments pursuant to its Pole Attachment License Agreement.²⁰⁰

MAW was denied access to PPL's poles because it made unauthorized attachments to PPL's poles, put the lives of its workers at risk with its illicit attachment activity, put the pole distribution system at risk, gave themselves a competitive advantage over their competitors, did not abide by the parties' December 2017 Stipulation by failing to provide the requisite information to PPL about its system, and has not restored the \$75,000 escrow account necessary to comply with the Lehigh County Court Order.²⁰¹

MAW 78: *NESC Rule 214.A.5 differentiates required management of serious safety issues from other compliance issues, to wit: “Lines and equipment with recorded conditions or defects that would reasonably be **expected to endanger human life or property** shall be promptly corrected, disconnected, or isolated. . . . Other conditions or defects shall be designated for correction.” Moreover, under the terms of the Pole Attachment Agreement, MAW is afforded 180 days to remediate a non-compliant attachment; should MAW not meet this timeframe for remediation, only then can PPL, at MAW's expense, can remediate the compliance issue.*

PPL Answer: PPL's consultant Kristie Rippke gave testimony explaining that the ADSS attachments that were installed in the supply space of PPL's poles require electric-

¹⁹⁷ See *PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Agreement, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 (Dec. 12, 2017) at 2-3, attached hereto at Attachment D, Exhibit 7.

¹⁹⁸ See E-mail from Eric Winter, Counsel to MAW Communications, Inc., to Joseph D'Amico, Counsel to PPL Electric Utilities Corporation (Dec. 22, 2017, 3:18 p.m. EST), attached hereto at Attachment D, Exhibit 11.

¹⁹⁹ Letter from Michael J. Shafer, Counsel, PPL Electric Utilities Corporation, to Frank Wiczkowski, President, MAW Communications, Inc. (Nov. 3, 2017), attached hereto at Attachment D, Exhibit 12.

²⁰⁰ Yanek Declaration at ¶ 64.

²⁰¹ Yanek Declaration at ¶ 65.

qualified linemen under the control and supervision of PPL.²⁰² By allowing non-electric-qualified workers to install ADSS cable in the supply space of PPL's poles, MAW put its workers' lives in danger.²⁰³

MAW's attachments were not only non-compliant, they were unauthorized, endangered the lives of MAW's installers, were installed deceptively, and gave MAW an illicit competitive advantage over other communications companies that follow the rules. They currently occupy space on the pole that existing and future attachers cannot use. PPL is authorized to remove MAW's unauthorized attachments pursuant to its Pole Attachment License Agreement and pursuant to the Lehigh County Court Order, which was issued only after the Court took full stock of MAW's widespread illicit activity.²⁰⁴ PPL is under no obligation to grant MAW any unwarranted right to avoid all repercussions for its reprehensible behavior by simply correcting in place the mess it would not have made had it followed the rules like everyone else.

The provisions of the NESC and the PPL/MAW Pole Attachment License Agreement speak for themselves, except PPL notes that neither of them prevents PPL from exercising its contractual and legal rights to remove MAW's unauthorized attachments.

MAW 79: *After a two-day hearing in March 2018, the Lehigh County Court entered an Order on April 13, 2018 ("April 2018 Order") vacating the December 2017 Stipulation and setting forth new terms for compliance. Per the April 2018 Order, MAW did not access, work on, or connect to any of PPL's poles without PPL's prior approval, which the court ordered PPL to provide "as promptly as the situation may reasonably require giving priority to safety concerns and minimizing disruption of service to critical public services." MAW was to submit applications using PPL's portal for "all unauthorized attachments" to PPL poles, which MAW did promptly. While the April 2018 Order permitted PPL to remediate or remove any unauthorized attachment if necessary, it also obligated PPL to promptly approve MAW's applications and to minimize disruption of service to MAW's customers. Instead, PPL has not approved any of MAW's applications, has denied MAW the ability to work repair its network, and systematically removed MAW service drops in June, July and September 2018, resulting in service disruptions.*

²⁰² *PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Transcript of Proceedings, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 (Mar. 28, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment F, at 24-27 (MAW000618-MAW000621).

²⁰³ Rippe Declaration at ¶ 10, *See also Attachment D, Exhibit 2*. *See also* the 12 photographs of MAW facilities dangerously installed too close to electric facilities at *Attachment D, Exhibit 5*, which is only a 12-pole representative sampling of only the first 100 of the 1095 unauthorized attachments surveyed and documented by PPL. The list of 1095 unauthorized attachments which identifies MAW violations associated with hundreds of its attachments to PPL poles is attached hereto at *Attachment D, Exhibit 4*. PPL can provide the Commission with a photograph of any of these poles upon request.

²⁰⁴ *PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Order, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 at ¶ 6 (Apr. 13, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 20 (MAW000140); *See also* Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc., Article 6, Section 6.7, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000184).

PPL Answer: Following two days of testimony about MAW's egregious conduct, the Court's April 13, 2018 Order:

- (1) required MAW to notify its customers that their Internet service might be disrupted;
- (2) prohibited MAW from accessing, working on, or connecting to any of PPL's poles without PPL's prior approval;
- (3) required MAW to file applications for MAW's unauthorized attachments;
- (4) permitted PPL to remove or remediate any unauthorized attachment at MAW's expense;
- (5) required MAW to comply with the PPL/MAW Pole Attachment License Agreement;
- (6) required MAW to maintain and replenish a \$75,000 escrow account to ensure reimbursement of PPL's costs;
- (7) required PPL to work with Lancaster and LCSC to minimize disruption of the City's traffic light and camera systems as PPL removed MAW's unauthorized attachments;
- (8) required MAW to provide PPL records of MAW's attachments;
- (9) required MAW to provide the certificate of insurance required by the PPL/MAW Pole Attachment License Agreement;
- (10) required MAW to pay the \$40,000 cost of the survey PPL had to perform to discover MAW's unauthorized attachments; and
- (11) required MAW to ensure its attachments are timely and properly recorded with PPL.²⁰⁵

PPL lacks knowledge or information sufficient to form a belief as to whether or not MAW accessed, worked on, or connected to any of PPL's poles without prior approval following the April 2018 Order.

MAW submitted applications for a number of unauthorized attachments but the applications were missing required information (e.g., guying plans, pole numbers, wrong attachment type). Moreover, all but one of the rebuild applications submitted by MAW are for poles that MAW is not authorized to be attached to. MAW has been repeatedly told that it must submit a new build application for unauthorized attachments, not rebuild applications. Out of 91 Service Drop attachment applications filed by MAW, only 16 meet the definitions of "Service Drop" as defined by the NESC, the FCC, and the PPL/MAW Pole Attachment License Agreement.²⁰⁶ In addition, MAW has not complied

²⁰⁵ *PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Order, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 (Apr. 13, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 20 (MAW000138-MAW000143). A copy of the court's order is also attached to MAW's Complaint at Attachment F (MAW000269-MAW000274). Attachment F is a letter from PPL's counsel to MAW's counsel transmitted prior to MAW's Complaint. This letter from PPL's counsel attached the court's order (MAW000269-MAW000274), the full transcript of the two days of court hearings (MAW000246-MAW000692), MAW's Confidential January 18, 2017 "PPL Make Ready Policy Brief" (MAW000694-MAW000703), and the Enforcement Bureau's April 4, 2014 *Salsgiver* decision cited above (MAW000705-MAW000707). These documents are included in MAW's Complaint, notwithstanding footnote 44 of the Complaint, which indicates these documents were omitted.

²⁰⁶ Yanek Declaration at ¶ 66.

with the terms of the April 2018 Lehigh County Court Order because it has failed to restore the \$75,000 escrow account necessary to comply with the Order. Accordingly, PPL has no assurance of being compensated for the make-ready work associated with MAW's pending attachment applications.²⁰⁷ On August 16, 2018, following the July 30, 2018 WebEx meeting PPL conducted for MAW to discuss these applications, PPL sent several applications back to MAW to allow it to make modifications and resubmit the applications.²⁰⁸ MAW has not made such modifications to its applications nor has it resubmitted those applications. There is no obligation for PPL to approve applications that are not complete, as specified in the Commission's pole attachment regulations.²⁰⁹ For these many reasons, PPL admits that it has not approved any of MAW's applications.²¹⁰

The April 2018 Order permitted PPL to remediate or remove unauthorized attachments, but the Order did not obligate PPL to promptly approve MAW's applications, particularly those that are not complete. Nor does the Order obligate PPL to minimize disruption of services to MAW's customers. Instead, on these two points the Order states, "MAW is prohibited from accessing, working on, or connecting to any of PPL's poles, including those on which MAW has already made attachments, without the prior approval of PPL. PPL shall respond to any such requests for approval as promptly as the situation may reasonably require giving priority to safety concerns and minimizing disruption of service to critical public services."²¹¹ PPL is minimizing the disruption of service to critical public services by working with the City of Lancaster and LCSC to minimize disruption of the City's traffic light and camera systems.²¹²

PPL has issued no blanket denials of service to address outage issues. PPL has reviewed each request and responded to them based on their own merit and conditions on the poles. There have been six requests since the original Stipulation was put in place in December 2017. Two have been approved as requested. One was approved in part and denied in part. Only one was fully denied. The June 14, 2018 instance in which MAW was denied access because the "service drop attachment" at issue was itself unauthorized and because

²⁰⁷ Yanek Declaration at ¶ 67.

²⁰⁸ E-mail from Ryan J. Yanek, Project Manager, PPL Electric Utilities Corporation, to Frank Wiczowski, Eron Lloyd, and Mindy Wiczowski (Aug. 16, 2018, 4:37 p.m. EST), attached to MAW Amended Pole Attachment Complaint at Attachment D, Exhibit 4 (MAW000255).

²⁰⁹ See 47 CFR §1.1411(c): "Survey. A utility shall respond as described in section 1.1403(b) to a cable operator or telecommunications carrier within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days, in the case of larger orders as described in subsection (g)).... A complete application is an application that provides the utility with the information necessary under its procedures to begin to survey the poles."

²¹⁰ Yanek Declaration at 68.

²¹¹ *PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Order, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 at ¶ 4 (Apr. 13, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 20 (MAW000140).

²¹² Yanek Declaration at ¶ 69.

this unauthorized “service drop attachment” originated from an attachment that was also unauthorized.²¹³

For this June 14, 2018 instance, MAW simply should not have been on that pole. There are currently two requests from MAW under review.²¹⁴

PPL has removed over 100 unauthorized attachments, some of which MAW incorrectly calls “service drop” attachments.²¹⁵

PPL lacks knowledge or information sufficient to form a belief as to whether MAW’s customers have experienced service disruptions. PPL points out, however, that such service disruptions were envisioned by the April 13, 2018 Court Order, which required MAW to notify its customers that their Internet service might be disrupted.²¹⁶ In addition, PPL notes that other communications companies provide service to the residents and businesses of Lancaster.²¹⁷

MAW 80: *PPL’s allegations in the Lehigh County Court proceeding conflate the work that was the subject of MAW’s applications and the work that MAW actually performed. As noted above, MAW has not made any attachments for the “new build” network since having received the unreasonably high make-ready estimates. PPL incorrectly portrayed MAW as having made attachments for its “new build” network when in fact MAW did not proceed with those attachments. The attachments that PPL claims to be “unauthorized” were either pre-existing attachments (made by the City and LCSC), J-and-raise temporary rebuild construction (permitted by the parties’ Pole Attachment Agreement and authorized by Mr. Klokis), or customer service drops (authorized by the parties’ Pole Attachment Agreement). PPL also mischaracterized MAW’s attachments in oral representations to the Judge as creating widespread, exigent, life-threatening safety issues. In fact, PPL’s initial and subsequent correspondence with MAW indicated that of the many purported “unauthorized” attachments, only very few attachments presented safety issues.*

PPL Answer: PPL does not understand the statement: “PPL’s allegations in the Lehigh County Court proceeding conflate the work that was the subject of MAW’s applications and the work that MAW actually performed.” To the extent a response is required, PPL denies the allegation for lack of knowledge or information sufficient to form a belief as to its truth.

Contrary to MAW’s contention, MAW has made numerous attachments for the “new build” network since receiving the original make-ready estimates. MAW did not want to

²¹³ See E-mail from Joseph D’Amico, Counsel to PPL Electric Utilities Corporation, to Jeffrey Franklin, Counsel to MAW Communications, Inc. (June 14, 2018, 2:36 p.m. EST), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 24 (MAW000159-MAW000160).

²¹⁴ Yanek Declaration at ¶ 73.

²¹⁵ Yanek Declaration at ¶ 71.

²¹⁶ *PPL Electric Utilities Corporation v. MAW Commc’ns, Inc.*, Order, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 at ¶ 3 (Apr. 13, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 20 (MAW000140).

²¹⁷ Yanek Declaration at ¶ 55.

pay for the requisite make-ready work to be completed, so it made new build attachments under the guise of “Service Drop” attachments. Moreover, MAW’s J-and-Raise attachments were made in violation of the Pole Attachment License Agreement because MAW did not submit rebuild applications prior to making the attachments, did not obtain PPL’s approval to make the attachments, and did not complete the rebuild project within 12 months of the start date.²¹⁸

MAW cites PPL’s identification of 30 unauthorized attachments in a relatively early letter from PPL to support its contention that “very few” of MAW’s attachments presented safety issues.”²¹⁹ This contention is as wrong as it is disturbing. Several subsequent letters to MAW identify many, many more safety violations associated with MAW’s attachments.²²⁰ And in the document PPL prepared following its three-day audit of MAW’s attachments, PPL identified 1,065 unauthorized attachments, and cataloged an appalling and astounding 47% of these located too close to power.²²¹ Twelve photographs of these unauthorized and very dangerous attachments are attached to this Answer at Attachment D, Exhibit 5. These 12 photographs are only a 12-pole representative sampling of only the first 100 of the 1095 unauthorized attachments surveyed and documented by PPL. PPL can provide the Commission with a photograph of any of these poles upon request.²²²

Accordingly, PPL denies the allegations in Paragraph 80 of the Complaint.

MAW 81: *Despite this, under the shield of the Lehigh County Court proceeding, PPL has removed more than 100 of MAW’s attachments and, as explained below, is being denied access to repair service outages.*

PPL Answer: PPL has removed more than 100 of MAW’s unauthorized attachments, and PPL’s removal of unauthorized attachments is consistent with its rights under the April 13, 2018 Lehigh County Court Order entered into after a two-day hearing, and with

²¹⁸ See discussion of these “new build”, “service drop” and “rebuild” issues at PPL Answer to MAW Amended Pole Attachment Complaint at ¶¶ 21, 25-27, 38, 44-46, 48-49, 51-52, 55-57, 58-65, 75-77, 80-86, 90, 94, 97-98, 104-105, 107, 109, 110-112, 114-115, and 120.

²¹⁹ See MAW Amended Pole Attachment Complaint at FN 97; See also Letter from Michael J. Shafer, Counsel, PPL Electric Utilities Corporation, to Frank Wiczowski, President, MAW Communications, Inc. (Nov. 3, 2017), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 21 (MAW000145).

²²⁰ See E-mail from Michael J. Shafer, Counsel, PPL Electric Utilities Corporation, to ‘emergency@mawcom.com’ (Dec. 22, 2017, 9:51 a.m. EST), attached hereto at Attachment D, Exhibit 13; Letter from Michael J. Shafer, Counsel, PPL Electric Utilities Corporation, to Frank Wiczowski, President, MAW Communications, Inc. (Jan. 15, 2018), attached hereto at Attachment D, Exhibit 14; Letter from Michael J. Shafer, Counsel, PPL Electric Utilities Corporation, to Frank Wiczowski, President, MAW Communications, Inc. (Jan. 30, 2018), attached hereto at Attachment D, Exhibit 15; Letter from Michael J. Shafer, Counsel, PPL Electric Utilities Corporation, to Frank Wiczowski, President, MAW Communications, Inc. (Feb. 22, 2018), attached hereto at Attachment D, Exhibit 16.

²²¹ The list of 1095 unauthorized attachments which identifies MAW violations associated with hundreds of its attachments to PPL poles is attached hereto at Attachment D, Exhibit 4. On this list, 47% of the poles show MAW attachments located too close to energized electric facilities. PPL can provide the Commission with a photograph of any of these poles upon request.

²²² Yanek Declaration at ¶ 72.

its rights under the Pole Attachment License Agreement.²²³ It is also justified by MAW's reckless, self-serving, and anticompetitive activity.

PPL has issued no blanket denial of service outage issues. PPL has reviewed each request and responded to them based on their own merit and conditions on the poles. There have been six requests since the original Stipulation was put in place in December 2017. Two have been approved as requested. One was approved in part and denied in part. Only one was fully denied. The June 14, 2018 instance in which MAW was denied access because the "service drop attachment" at issue was itself unauthorized and because this unauthorized "service drop attachment" originated from an attachment that was also unauthorized.²²⁴ For this June 14, 2018 instance, MAW simply should not have been on that pole. There are currently two requests from MAW under review.²²⁵

H. MAW Must Account For Its Illicit, Dangerous and Anticompetitive Conduct by Proposing a Holistic Solution That Achieves a Fully-Permitted System

As explained in PPL's answers to Paragraphs 82-99 below, MAW has not complied with the terms of the April 2018 Lehigh County Court Order because it has failed to restore the \$75,000 escrow account necessary to comply with the Order. Accordingly, PPL has no assurance of being compensated for the make-ready work associated with MAW's pending attachment applications.

MAW's applications have been timely reviewed but have not been approved for many reasons (i.e., missing required information, no original authorization for rebuild poles, not submitted as new build, not actually "service drops," failure to comply with Court Order to replenish escrow account, failure to resubmit applications as explained in the WebEx PPL hosted for MAW).

PPL will not process MAW's applications if MAW insists on keeping its facilities in place. This position is supported by PPL's right to remove unauthorized attachments under the PPL/MAW Pole Attachment License Agreement and to remove unauthorized attachments under the April 2018 Lehigh County Court Order. PPL insists that these unauthorized attachments be addressed as part of a holistic solution that achieves a fully-permitted system by: (1) removing unauthorized attachments; (2) fixing the great number of safety violations caused by MAW; (3) reconciling which of the City's and LCSC attachments these entities wish to transfer to MAW; and (4) processing MAW's applications for rebuild and new build network expansion.

²²³ Yanek Declaration at ¶ 54; *See also PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Order, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 at ¶ 6 (Apr. 13, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 20 (MAW000140); *See also* Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc., Article 6, Section 6.7, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000184).

²²⁴ *See* E-mail from Joseph D'Amico, Counsel to PPL Electric Utilities Corporation, to Jeffrey Franklin, Counsel to MAW Communications, Inc. (June 14, 2018, 2:36 p.m. EST), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 24 (MAW000159-MAW000160).

²²⁵ Yanek Declaration at ¶ 73.

MAW surreptitiously installed more than 1,000 illicit attachments to PPL's electric distribution poles, recklessly endangering the lives of its contractors, jeopardizing the safety and reliability of PPL's pole distribution system, creating a mess and occupying valuable pole space that others cannot use. All of this widespread illicit and deceptive activity was done by MAW simply to save time and money and to give itself a competitive advantage over legitimate communications attachers.

MAW is a bad actor and cannot be allowed to act with impunity. To do so would encourage anarchy on PPL's electric pole distribution system and on other pole distribution systems across the country. And allowing MAW to benefit from not following critical and well-established make-ready processes would be grossly unfair to all of the other communications companies who do follow the rules.

Prior to exercising its contract rights to remove any of MAW's unauthorized attachments, PPL took the extraordinary step of seeking an injunction from the court first. Following a two-day hearing regarding MAW's egregious behavior, the Lehigh County Court agreed that PPL should be permitted to remove MAW's unauthorized attachments.

PPL's position is likewise supported by the Enforcement Bureau's decision when confronted with similar facts involving another entity's reckless and dangerous unauthorized attachments but involving considerably fewer attachments.

MAW 82: *Despite the fact that MAW has in good faith complied with the terms of the April 2018 Order, PPL refuses to timely process any of MAW's many pending attachment applications and continues to modify its application procedures, making it impossible for MAW to comply with PPL's shifting demands.*

PPL Answer: MAW has not complied with the terms of the April 2018 Lehigh County Court Order because it has failed to restore the \$75,000 escrow account necessary to comply with the Order. Accordingly, PPL has no assurance of being compensated for the make-ready work associated with MAW's pending attachment applications.²²⁶

MAW's applications have been timely reviewed but have not been approved for the many reasons explained in PPL's Answer to Paragraph 79 (*i.e.*, missing required information, no original authorization for rebuild poles, not submitted as new build, not actually "service drops," failure to comply with Court Order to replenish escrow account, failure to resubmit applications as explained in the WebEx PPL hosted for MAW).²²⁷

PPL does not, nor has it ever had, "shifting demands." The only modification PPL has made to its attachment application processes in recent history is revising the way rebuild applications should be submitted. PPL modified and enhanced its process to require rebuild applications to be submitted through its online portal (as opposed to via email). This process is not difficult to comply with, and instead makes it easier for applications to

²²⁶ Yanek Declaration at ¶ 67.

²²⁷ See PPL Answer to MAW Amended Pole Attachment Complaint at ¶ 79.

be submitted and to comply with the FCC's rules.²²⁸ PPL also required MAW to pre-pay for survey and engineering work beginning in July 2017 because MAW had failed to pay its outstanding survey and engineering charges, which remain outstanding to this day.²²⁹

Accordingly, PPL denies the allegations in Paragraph 82 of the Complaint.

MAW 83: *On April 25, 2018, MAW resubmitted the rebuild information, using PPL's Form 4834, along with supporting drawings for the J-and-raise rebuild project ("rebuild paperwork"). As an extra step to ensure against PPL's rejection of MAW's rebuild paperwork submission, MAW also resubmitted its rebuild applications for the J-and-raise rebuild attachments via the online portal on June 4, 2018. PPL rejected both the online portal submissions, because they were not filed in the correct portal project "type," which PPL had not yet created. On August 2, 2018, MAW resubmitted all rebuild applications via the portal using the newly created application type; PPL reset the submission date to the two month later date.*

PPL Answer: As explained in PPL's answers to Paragraphs 38 and 76, subsequent to Mr. Staboleski coming forward, and only because the April 13, 2018 Lehigh County Court Order required it to, MAW submitted an "application" after-the-fact for its rebuild attachments on April 25, 2018.²³⁰ This court-ordered, after-the-fact application by MAW was deficient in numerous respects. As explained in Mr. Yanek's August 16, 2018 response to this application, MAW's paper Form 4834 application was submitted well after work began, the paper form listed no attachments at all, the request otherwise did not include sufficient detail for PPL to evaluate the locations where the re-build is proposed or validate that they coincide with permitted attachments, PPL had updated its online portal system rebuild application process, and MAW needed to resubmit its applications using the updated rebuild process, which was explained by PPL during a WebEx hosted by on July 30, 2018 to instruct MAW how to use the portal system.²³¹ The "supporting drawing" maps provided in MAW's April 25, 2018 application identified only stretches of streets along which MAW indicated it had attachments. Pushpins were used to indicate pole locations.²³² PPL's system, however, requires a pole identification number and pole position to document unauthorized attachments.²³³

MAW's allegation that it "also resubmitted its rebuild applications for the J-and-raise rebuild attachments via the online portal on June 4, 2018" is impossible, because the online portal process for rebuilds was not developed until August of 2018.²³⁴

²²⁸ E-mail from Ryan J. Yanek, Project Manager, PPL Electric Utilities Corporation, to Frank Wiczowski, Eron Lloyd, and Mindy Wiczowski (Aug. 16, 2018, 4:37 p.m. EST), attached to MAW Amended Pole Attachment Complaint at Attachment D, Exhibit 4 (MAW000255).

²²⁹ Yanek Declaration at ¶ 74.

²³⁰ See Cable TV/Telecom Rebuild Report (CAT Rebuild Report), Form 4834 (Apr. 25, 2017), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 22 (MAW000149-MAW000152).

²³¹ E-mail from Ryan J. Yanek, Project Manager, PPL Electric Utilities Corporation, to Frank Wiczowski, Eron Lloyd, and Mindy Wiczowski (Aug. 16, 2018, 4:37 p.m. EST), attached to MAW Amended Pole Attachment Complaint at Attachment D, Exhibit 4 (MAW000255).

²³² See Cable TV/Telecom Rebuild Report (CAT Rebuild Report), Form 4834 (Apr. 25, 2017), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 22 (MAW000149-MAW000152).

²³³ Yanek Declaration at ¶ 29.

²³⁴ Yanek Declaration at ¶ 75.

PPL admits that “on August 2, 2018, MAW resubmitted all rebuild applications via the portal using the newly created attachment type,” except some of them actually were submitted on August 1. PPL admits that it reset the submission date to the two month later date pursuant to the Commission’s rules regarding receipt of incomplete applications.²³⁵

Accordingly, PPL denies the allegations not expressly admitted to, in Paragraph 83 of the Complaint.

MAW 84: *On August 16, 2018, PPL denied MAW’s rebuild paperwork because it was not submitted prior to the work being completed, allegedly lacked sufficient detail, and because PPL changed its policy in August 2018 to now require these applications to be submitted via its online portal. At no point did PPL specify the detail that MAW’s applications were missing; MAW included all of the information required on the form as well as maps and drawings. PPL constantly changed the reasons why it would not process MAW’s applications.*

PPL Answer: PPL hosted a WebEx for MAW on July 30, 2018 to provide supplemental instruction and support for MAW on how to properly file applications for all types of attachments, including rebuild projects. The online portal process requires the submission of pole numbers, which were missing from MAW’s earlier April 25, 2018 paper form submission.²³⁶ Mr. Yanek’s August 16, 2018 email denying MAW’s paperwork stated: “the request does not include sufficient detail for PPL to evaluate the locations where re-build is proposed and validate that they coincide with permitted attachments.”²³⁷ PPL also conducted discussions with MAW during a series of meetings from May-August 2018, during which Mr. Yanek informed MAW what the problems were with its applications.²³⁸ It is therefore incorrect for MAW to state: “At no point did PPL specify the detail that MAW’s applications were missing.”

²³⁵ See 47 C.F.R. §1.1411(c).

²³⁶ Yanek Declaration at ¶ 76.

²³⁷ E-mail from Ryan J. Yanek, Project Manager, PPL Electric Utilities Corporation, to Frank Wiczkowski, Eron Lloyd, and Mindy Wiczkowski (Aug. 16, 2018, 4:37 p.m. EST), attached to MAW Amended Pole Attachment Complaint at Attachment D, Exhibit 4 (MAW000255).

²³⁸ See R. Yanek Meeting Notes from Meeting 7 with PPL, City of Lancaster/Lancaster Community Safety Coalition, and MAW, July 20, 2018, attached hereto at Attachment D, Exhibit 17. “PPL has clearly laid out a path forward, and MAW is delaying progress by disputing escrow and not submitting their applications in addition to not providing information...MAW must submit applications in Portal and pass Administrative review, and then PPL will take action to send Survey and Engineering invoices...As of the beginning of the meeting 12:00 on 7/20 MAW had not yet submitted any of its applications.” *Id.* “PPL reviewed the process for Re-build applications, and again confirmed that only Authorized Permitted Attachments can be re-built.” *Id.* See also R. Yanek Meeting Notes from Meeting 9 with PPL, City of Lancaster/Lancaster Community Safety Coalition, and MAW, Aug. 2, 2018, attached hereto at Attachment D, Exhibit 3. “MAW asked for clarification on how to submit applications where an Unauthorized ‘J-and-Raised’ cable might be brought down and overlashed to a documented attachment. PPL advises that the action which leads to the documented/permitted attachment should be the action chosen on the application. In this example, Overlash would be chosen and that the additional action such as relocating the Unauthorized attachment from its J-and-Raised location would be entered as supporting comments on the application.” *Id.*

MAW has also mischaracterized Mr. Yanek's August 16, 2018 email, which is better explained in PPL's answers to Paragraphs 38, 76 and 83 and otherwise speaks for itself.

As explained in PPL's answers to Paragraphs 38, 76 and 83, MAW did not "include[] all of the information required on the form as well as maps and drawings" in its April 25, 2018 paper filing. MAW's online portal filings from August 1 and 2, 2018, contained a lot of the information PPL required because the online portal system specifically requires it. The problem with these 29 rebuild application filings is, that of the 757 poles in those applications which MAW sought to rebuild, MAW was authorized to be on only 308 of them. MAW cannot rebuild an attachment that does not belong to MAW and for which MAW is not authorized.²³⁹

It is also incorrect to state: "PPL constantly changed the reasons why it would not process MAW's applications." The problems with MAW's rebuild applications have been the same over and over (e.g., no guying plans, pole numbers, wrong attachment type, cannot rebuild an attachment that is not yours, etc.).²⁴⁰

PPL accordingly denies the allegations in Paragraph 84 of the Complaint.

MAW 85: *Separately, MAW submitted 103 service drop applications for all existing 12-count distribution fiber circuits by April 30, 2018 notwithstanding the parties' dispute concerning the definition of service drop in the parties' Pole Attachment Agreement.*

PPL Answer: MAW submitted 91 Service Drop attachment applications, but only 16 of those comport with the definitions of "service drop" by the NESC, the FCC, the PPL/MAW Pole Attachment License Agreement, or even PPL's informal unpublished policy regarding applications for service drop attachments (which allows applications to be filed for attachments to no more than four poles, as long as the attachments are for low-tension attachments that do not require a bolt to be affixed).²⁴¹ Accordingly, PPL denies the allegations in Paragraph 85 of the Complaint.

MAW 86: *MAW also submitted a total of 38 backbone applications for all existing 96- and 144-count feeder cable circuits by June 4, 2018.*

PPL Answer: MAW submitted 38 applications for "relocation" builds, and then had to resubmit those applications as "rebuild" applications. PPL lacks knowledge or information sufficient to form a belief as to whether these applications covered "all existing 96- and 144-count feeder cable circuits."

MAW 87: *At the June 6, 2018 meeting between PPL, Lancaster City, and MAW, MAW notified PPL that all applications had been submitted through PPL's portal per the April 2018 Order. Despite the Court's instruction to MAW to submit, and PPL to promptly approve, applications*

²³⁹ CITE Yanek Declaration at ¶ 77.

²⁴⁰ CITE Yanek Declaration at ¶ 78.

²⁴¹ See *ATBS Policy Governing Use of Service Drops as a Method of Attachment*, PPL Electric Utilities, XXXX-XXX-PL, Effective Date: mm/dd/yyyy, attached hereto at Attachment D, Exhibit 18.

for the disputed attachments, at that meeting, Mr. Yanek questioned why MAW had filed the applications and indicated that it would not review these applications.

PPL Answer: The April 2018 Order did not obligate PPL to promptly approve MAW's applications, particularly those that are not complete. Instead, the Order states, "MAW is prohibited from accessing, working on, or connecting to any of PPL's poles, including those on which MAW has already made attachments, without the prior approval of PPL. PPL shall respond to any such requests for approval as promptly as the situation may reasonably require giving priority to safety concerns and minimizing disruption of service to critical public services."²⁴² There is no obligation under the April 2018 Order for PPL to approve applications that are not complete, which is consistent with the Commission's pole attachment regulations.²⁴³

In his meeting notes for the June 6, 2018 meeting referenced in this paragraph, PPL's Mr. Yanek does not mention anything about PPL refusing to review applications.²⁴⁴ Mr. Yanek cannot recall any PPL representative ever having said that, and doubts that anyone did. PPL's message has been, and still is, that the parties need to address MAW's unauthorized attachments in a holistic manner, based on complete information, and following multiple paths to achieve a fully-permitted system.²⁴⁵

Accordingly, PPL denies the allegations in Paragraph 87 of the Complaint.

MAW 88: *At present, MAW has 76 applications listed as "Pending Admin Review," 48 applications listed as "In Review," and 17 applications listed as "Incomplete" in PPL's online portal. MAW resubmitted the latest such batch of applications on August 2, 2018, over five months ago.*

PPL Answer: PPL notes that 18 of MAW's currently pending 76 applications are incomplete, not 17. PPL otherwise admits the allegations in Paragraph 88 of the Complaint.

MAW 89: *At the July 2, 2018 meeting between PPL, the City, and MAW, Mr. Yanek told MAW that its applications were submitted incorrectly with the wrong application type, and were not in the right order for review. When asked how to correct the "type" and application order, Mr. Yanek responded that he would set the applications back to an "Incomplete" status purportedly to allow MAW "to make adjustments to applications before Make Ready Survey and Design work begins." In fact, doing so simply restarted the clock and further delayed the authorization of the attachments, enabling PPL to continue removing drop attachments to the backbone attachments that were the subject of the stalled applications.*

²⁴² *PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Order, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 at ¶ 4 (Apr. 13, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 20 (MAW000139).

²⁴³ See 47 C.F.R. §1.1411(c).

²⁴⁴ See R. Yanek Meeting Notes from Meeting 2 with PPL, City of Lancaster/Lancaster Community Safety Coalition, and MAW, June 6, 2018, attached hereto as Attachment D, Exhibit 19.

²⁴⁵ Yanek Declaration at ¶ 47.

PPL Answer: At the July 2, 2018 meeting, Mr. Yanek told MAW that its applications were submitted incorrectly with the wrong application type. Mr. Yanek did not reject these applications because they were not in the right order for review. Instead, PPL indicated it was willing to work with MAW to put them in the order MAW wanted in order to accommodate MAW.²⁴⁶

This willingness of PPL to work with MAW to put MAW's applications in the proper order was just one of a large number of efforts by PPL to accommodate MAW, ensure they had adequate information, meet with them to explain the process, and respond to their questions. These extraordinary measures by PPL have not been requested by any other PPL attacher besides MAW, and have not been required for any other PPL attacher besides MAW.²⁴⁷

PPL admits that the applications would be considered incomplete, so that the review clock will restart. This action is consistent with the Commission's regulations regarding incomplete applications.²⁴⁸

As for "enabling PPL to continue removing drop attachments to the backbone attachments that were the subject of the stalled applications," PPL notes that is fully authorized to remove MAW's unauthorized attachments.

PPL will not process MAW's applications if MAW insists on keeping its facilities in place. This position is supported by PPL's right to remove unauthorized attachments under the PPL/MAW Pole Attachment License Agreement²⁴⁹ and to remove unauthorized attachments under the April 2018 Lehigh County Court Order.²⁵⁰ PPL insists that these unauthorized attachments be addressed as part of a holistic solution that achieves a fully-permitted system by: (1) removing unauthorized attachments; (2) fixing the great number of safety violations caused by MAW; (3) reconciling which of the City's and LCSC attachments these entities wish to transfer to MAW; and (4) processing MAW's applications for rebuild and new build network expansion.²⁵¹

MAW surreptitiously installed more than 1,000 illicit attachments to PPL's electric distribution poles, recklessly endangering the lives of its contractors, jeopardizing the safety and reliability of PPL's pole distribution system, creating a mess and occupying valuable pole space that others cannot use. All of this widespread illicit and deceptive

²⁴⁶ See R. Yanek Meeting Notes from July 2, 2018 Meeting with PPL, City of Lancaster/Lancaster Community Safety Coalition, and MAW, July 2, 2018, attached hereto as Attachment D, Exhibit 20. "After the meeting, PPL verified that applications can be set back to 'Incomplete' status allowing applicants to make adjustments to their applications without having to start over." *Id.*

²⁴⁷ Yanek Declaration at ¶ 79.

²⁴⁸ See 47 C.F.R. §1.1411(c).

²⁴⁹ Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc., Article 6, Section 6.7, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000184).

²⁵⁰ *PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Order, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 at ¶ 6 (Apr. 13, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 20 (MAW000140).

²⁵¹ Yanek Declaration at ¶ 47.

activity was done by MAW simply to save time and money and to give itself a competitive advantage over legitimate communications attachers.

MAW is a bad actor and cannot be allowed to act with impunity. To do so would encourage anarchy on PPL's electric pole distribution system and on other pole distribution systems across the country. And allowing MAW to benefit from not following critical and well-established make-ready processes would be grossly unfair to all of the other communications companies who do follow the rules.

PPL does not take this position lightly. And as noted, prior to exercising its contract rights to remove any of MAW's unauthorized attachments, PPL took the extraordinary step of seeking an injunction from the court first. Following a two-day hearing regarding MAW's egregious behavior, the Lehigh County Court agreed that PPL should be permitted to remove MAW's unauthorized attachments.²⁵²

PPL's position is likewise supported by the Enforcement Bureau's decision when confronted with similar facts involving another entity's reckless and dangerous unauthorized attachments but involving considerably fewer attachments. The Enforcement Bureau explained that it could not condone disregarding the application and make-ready process:

Salsgiver claims that Penelec's proposed make-ready charges (1) failed to provide sufficient detail, and (2) would have required Salsgiver to "correct existing violations of previous attachers." Yet Salsgiver had the option of first paying Penelec's make-ready charges, under protest; filing a complaint with the Commission alleging that the charges violate section 224 of the Act; and, if successful, recovering those overcharges. Such a course would have obviated any alleged harm, and Salsgiver offers no explanation of why it could not have proceeded this way. Rather, Salsgiver, by its own admission, attached in violation of various communications and electrical standards. We cannot condone Salsgiver's decision simply to disregard Penelec's application/make-ready process."²⁵³

Accordingly, PPL intends to resolve the issue of MAW's unauthorized attachments as part of a holistic solution that achieves a fully-permitted system by: (1) removing unauthorized attachments; (2) fixing the large number of safety violations caused by MAW; (3) reconciling which of the City's and LCSC attachments these entities wish to transfer to MAW; and (4) processing MAW's applications for rebuild and new build network expansion.²⁵⁴

²⁵² Yanek Declaration at ¶ 63; *See also PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Order, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 at ¶ 6 (Apr. 13, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 20 (MAW000140).

²⁵³ *Petition of Salsgiver Telecom, Inc. for Temporary Stay Pursuant to Section 1.1403(d) of the Federal Communications Commission Rules*, File No. EB-14-MD-005, Letter Order at 3 (Apr. 4, 2014) attached to MAW Amended Pole Attachment Complaint at Attachment F (MAW000707).

²⁵⁴ Yanek Declaration at ¶ 47.

MAW 90: *At some point between the June 15 meeting and August 2018, PPL created a new “rebuild” job type in its portal, but did not officially notify MAW of the procedural change. MAW learned of the change on a conference call when Mr. Yanek raised the issue as an aside. PPL has consistently taken the position that attachers must monitor the PPL website to learn of changes, and that it will not notify attachers directly of changes to the application process. MAW resubmitted the applications for its backbone promptly after confirming this was PPL’s preferred new process for J-and-raise rebuilds. When these applications were completed and resubmitted on August 2, 2018, the submission timestamp was changed to the new, four-month later date.*

PPL Answer: PPL’s new rebuild job type for its online portal was discussed during the course of the several meetings between the parties that occurred throughout the summer of 2018, and also in the July 30, 2018 WebEx conference PPL hosted in order to instruct MAW regarding the online portal application process.²⁵⁵

Attachers should be monitoring PPL’s website for changes, but it is incorrect that PPL will not notify attachers directly of changes to the application process. If there are any problems with an application submission, the attacher is notified immediately.²⁵⁶

The remainder of PPL’s 400-odd communications company licensees appear to have little problem managing the online application portal, and so PPL does not understand why MAW claims it is so difficult.²⁵⁷

MAW’s applications were resubmitted on August 1 and 2, 2018. The timestamp was changed consistent with Commission rules regarding incomplete applications.²⁵⁸

MAW 91: *Several of MAW’s August 2018 resubmitted applications have been marked incomplete, but PPL has provided no details as to why, citing only to a contractual provision that it claims allows PPL to stop processing MAW’s applications based on MAW’s refusal to pay the disputed 2016 charges and filing the rebuild application after the construction was complete. MAW’s J-and-raise submission in 2018 was also consistent with PPL’s specifications on their website and associated documentation at the time of submission in 2018.*

PPL Answer: Only one of MAW’s August 2018 resubmitted applications has been marked “Incomplete.” This application was not marked “Incomplete” because of MAW’s refusal to pay the 2016 make-ready survey and engineering charges, but rather because the application is not part of a holistic solution that includes the removal of unauthorized attachments while new applications are being processed.²⁵⁹

²⁵⁵ E-mail from Ryan J. Yanek, Project Manager, PPL Electric Utilities Corporation, to Frank Wiczowski, Eron Lloyd, and Mindy Wiczowski (Aug. 16, 2018, 4:37 p.m. EST), attached to MAW Amended Pole Attachment Complaint at Attachment D, Exhibit 4 (MAW000255).

²⁵⁶ Yanek Declaration at 80.

²⁵⁷ Yanek Declaration at 81.

²⁵⁸ Yanek Declaration at 82; *See also* 47 C.F.R. §1.1411(c).

²⁵⁹ Yanek Declaration at 83.

PPL does not understand what MAW means when it alleges “MAW’s J-and-raise submission in 2018 was also consistent with PPL’s specifications on their website and associated documentation at the time of submission in 2018.” MAW’s April 25, 2018 J-and-raise rebuild application was incomplete for the many reasons detailed in PPL’s answers to Paragraphs 38, 76 and 83. And the problem with MAW’s 29 rebuild application online portal filings from August 1 and 2, 2018 is, that of the 757 poles in those applications which MAW sought to rebuild, MAW was authorized to be on only 308 of them. MAW cannot rebuild an attachment that does not belong to MAW and for which MAW is not authorized.²⁶⁰

Based on the foregoing, PPL denies the allegations in Paragraph 91 of the Complaint.

MAW 92: *As a result of its dispute regarding the December 2016 quotes with MAW and the Lehigh County lawsuit, PPL has denied MAW access to all PPL poles across the entirety of PPL’s substantial pole footprint in Pennsylvania.*

PPL Answer: The allegation in Paragraph 92 is incorrect. As explained earlier, PPL has provided MAW access on several occasions and PPL is willing to entertain a holistic solution to address MAW’s unauthorized attachments and to achieve a fully-permitted system, after which MAW can have full access to the system.²⁶¹

MAW 93: *PPL has stated that until MAW pays PPL for the December 2016 disputed pre-engineering costs as well as other charges including disputed unauthorized attachment penalties, PPL will not review or approve any connections to PPL poles. PPL’s counsel made this clear in correspondence, stating: “[I]t is PPL’s policy to not consider any additional attachment applications until past due make ready invoices are paid. If MAW wants PPL to consider its new attachment applications it must first satisfy its past due invoices from 2016. Otherwise MAW’s new applications to remediate the unauthorized attachments will not be considered by PPL.”*

PPL Answer: The language quoted in Paragraph 93 appears (without emphasis) in PPL’s counsel Michael Shafer’s July 18, 2018 email to MAW, which was included in MAW’s Complaint at Attachment A, Exhibit 7.²⁶² Mr. Shafer’s email also states that the Lehigh County Court Order is clear that his statement is consistent with MAW’s obligations under the Lehigh County Court Order to replenish the \$75,000 escrow fund which may be used to reimburse PPL’s costs, and that MAW remains obligated under the PPL/MAW Pole Attachment License Agreement to reimburse PPL for the engineering services that MAW requested to be performed as part of the attachment application process.²⁶³ PPL also adds that Section 12.5 of the Pole Attachment License Agreement entitles PPL to take this action: “PPL reserves the right not to process any new

²⁶⁰ Yanek Declaration at ¶ 84.

²⁶¹ See PPL Answer to MAW Amended Pole Attachment Complaint at ¶¶ 57, 87, 89, 91, 92, 94, 96, 98, 112, 113, 114, 120, and 124.

²⁶² E-mail from Michael J. Shafer, Counsel, PPL Electric Utilities Corporation, to Eric Winter and Jeffrey Franklin, Counsel to MAW Communications, Inc. (July 18, 2018, 9:57 a.m. EST), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 7 (MAW000059).

²⁶³ *Id.*

attachment installation or removal applications for attachment under the terms of this Agreement while any past due charges remain unpaid”.²⁶⁴

Mr. Shafer did not indicate PPL will not review or approve any connections to PPL poles, but only “new attachment applications.” PPL therefore admits in part, and denies in part, the allegations in Paragraph 93 of the Complaint.

MAW 94: *Relying upon Section 12.5 of the parties’ Pole Attachment Agreement, PPL refuses to process any of MAW’s attachment applications, including those unrelated to the Lehigh County court order, based on the disputed 2016 invoices.*

PPL Answer: PPL admits that it is exercising its contractual rights under Section 12.5 to refuse to process MAW’s attachment applications because of MAW’s refusal to pay its 2016 invoices for survey and engineering charges performed for MAW, but adds that it is also refusing to process MAW’s attachment applications: (1) to the extent they are incomplete; (2) because MAW has failed to restore the \$75,000 escrow amount required by the Lehigh County Court Order; and (3) because MAW’s applications are not part of a holistic solution that includes, among other things, removal of unauthorized attachments, as PPL is permitted to require under the PPL/MAW Pole Attachment License Agreement and the April 13, 2018 Lehigh County Court Order.²⁶⁵

PPL denies the allegation that the applications are “unrelated” to the Lehigh County Court Order. Restoration of the escrow is critical to PPL’s ability to process MAW’s applications, since PPL would have no assurance of payment without this court-ordered escrow funding.

MAW 95: *As a result of this denial of access, MAW has not been allowed to reconnect customers that have lost service or will lose service—even in areas unrelated to the disputed invoices in the City of Lancaster—if the loss of service touches a PPL pole.*

PPL Answer: PPL has issued no blanket denials of service to address outage issues. PPL has reviewed each request and responded to them based on their own merit and conditions on the poles. There have been six requests since the original Stipulation was put in place in December 2017. Two have been approved as requested. One was approved in part and denied in part. Only one was fully denied. The June 14, 2018 instance in which MAW was denied access because the “service drop attachment” at issue was itself unauthorized and because this unauthorized “service drop attachment”

²⁶⁴ Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc., Article 12, Section 12.5, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000195).

²⁶⁵ Yanek Declaration at ¶ 85; *See also PPL Electric Utilities Corporation v. MAW Commc’ns, Inc.*, Order, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 at ¶ 6 (Apr. 13, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 20 (MAW000140); *See also* Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc., Article 6, Section 6.7, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000184).

originated from an attachment that was also unauthorized.²⁶⁶ For this June 14, 2018 instance, MAW simply should not have been on that pole. There are currently two requests from MAW under review.²⁶⁷

MAW 96: *In a separate incident on June 12, 2018, a rental truck accidentally removed some of MAW's lines in the City (in addition to another provider's cable lines), disconnecting service to two of MAW's customers. MAW promptly applied to PPL to replace those damaged lines and restore service to its customers. On June 14, PPL denied MAW's request to repair its severed service drop "because it originates from Unauthorized Attachments."*

PPL Answer: PPL admits the allegations in Paragraph 96. This issue would not be a problem for MAW if MAW were to propose and acceptable holistic solution to the mess it has created, which achieves a fully-permitted system by: (1) removing unauthorized attachments; (2) fixing safety violations caused by MAW; (3) reconciling which of the City's and LCSC attachments these entities wish to transfer to MAW; and (4) processing MAW's applications for rebuild and new build network expansion.

MAW 97: *Since June 2018, PPL has removed over 100 of MAW's service drop attachments because it claims the service drops are attached to "unauthorized" backbone network. In November 2018, PPL informed MAW that an additional 50 service drop attachments would be removed resulting in the loss of service for an additional 57 of MAW's customers.*

PPL Answer: As explained above, MAW's so-called "service drop attachments" are not "service drops" at all as defined by the NESC, the FCC, or the PPL/MAW Pole Attachment License Agreement.²⁶⁸ PPL has removed over 100 of what MAW illicitly called "service drop attachments" because they were instead new build mainline distribution pole attachments that required an application that MAW never submitted, and certain other ones also originated from unauthorized attachments. PPL's removal of unauthorized attachments is consistent with its rights under the April 13, 2018 Court Order and under the PPL/MAW Pole Attachment License Agreement.²⁶⁹

PPL admits that it informed MAW that an additional 50 such attachments would be removed. PPL lacks knowledge or information sufficient to form a belief as to the MAW's customers lost service, but notes that such loss of service was envisioned by the

²⁶⁶ See E-mail from Joseph D'Amico, Counsel to PPL Electric Utilities Corporation, to Jeffrey Franklin, Counsel to MAW Communications, Inc. (June 14, 2018, 2:36 p.m. EST), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 24 (MAW000159-MAW000160).

²⁶⁷ Yanek Declaration at ¶ 73.

²⁶⁸ See PPL Answer to MAW Amended Pole Attachment Complaint at ¶¶ 25, 26, 58, 59, 60, 61, 62, 63, 65, 79, 82, 85, 97, 110, 111, and 115.

²⁶⁹ Yanek Declaration at ¶ 54; See also *PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Order, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 at ¶ 6 (Apr. 13, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 20 (MAW000140); See also Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc., Article 6, Section 6.7, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000184).

Lehigh County Court Order's directive that MAW notify its customers of such outages,²⁷⁰ and that the City of Lancaster is served by other communications companies.

MAW 98: *PPL has told MAW that its attachments and service drops would be removed, rather than allowing MAW to fix noncompliance (if any) in place because allowing the attachments to remain would "reward bad behavior." In fact, PPL has rejected all of MAW's remediation plans and settlement offers that include any remediation, claiming all unauthorized attachments will be removed. PPL will not approve any plan or settlement offer that includes the remediation of attachments.*

PPL Answer: MAW's behavior has not been "bad"; it has been reprehensible. And PPL is authorized by the PPL/MAW Pole Attachment License Agreement and by the Lehigh County Court Order to remove MAW's unauthorized attachments.²⁷¹ PPL is thus insisting that MAW's unauthorized attachments be addressed as part of a holistic solution that achieves a fully-permitted system for MAW by: (1) removing unauthorized attachments; (2) fixing the great number of safety violations caused by MAW; (3) reconciling which of the City's and LCSC attachments these entities wish to transfer to MAW; and (4) processing MAW's applications for rebuild and new build network expansion. Contrary to the allegations in Paragraph 98, PPL is willing to consider any remediation plan that is part of such a holistic approach.

This holistic approach is consistent with the PPL/MAW Pole Attachment License Agreement, with the Lehigh County Court Order, and the FCC Enforcement Bureau's *Salsgiver* decision discussed in PPL's answer to Paragraphs 36 and 89.²⁷²

PPL does not recall making any statement that allowing MAW's unauthorized attachments to remain would "reward bad behavior," but it is consistent with PPL's position that MAW should not benefit from willfully subverting the established and known make-ready process by installing unauthorized attachments, at the considerable risk to the life of its installers, to the detriment of other attachers, and to the competitive advantage of MAW.

Accordingly, PPL denies the allegations in Paragraph 98 of the Complaint.

MAW 99: *As explained above, PPL and MAW have engaged in extensive executive-level discussions regarding its dispute. Further, the parties are currently engaged in litigation in state court. In addition, MAW has offered terms by which the parties could settle their disagreements and the resultant the Lehigh County lawsuit, but they have been rejected by PPL. PPL also*

²⁷⁰ *PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Order, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 at ¶ 3 (Apr. 13, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 20 (MAW000139).

²⁷¹ *See PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Order, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 at ¶ 6 (Apr. 13, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 20 (MAW000140); *See also* Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc., Article 6, Section 6.7, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000184).

²⁷² *See* PPL Answer to MAW Amended Pole Attachment Complaint at ¶¶ 36 and 89.

previously refused to engage in FCC mediation related to this dispute. As a result, additional executive-level meetings between MAW and PPL would not be fruitful at this time.

PPL Answer: PPL and MAW have engaged in extensive business-level discussions, and the only executive-level discussions PPL can recall is one meeting involving PPL's Director Steve Gelatko.²⁷³

PPL admits that it is currently engaged in litigation against MAW in state court, and that PPL has rejected MAW's offered terms in the Lehigh County lawsuit.

As explained above in PPL's answer to Paragraph 42, PPL declined a request by the City of Lancaster to engage in FCC mediation. PPL notes that the city is not a telecommunications carrier with federal pole attachment rights.

PPL disagrees that any additional executive-level meetings between MAW and PPL would not be fruitful. PPL remains willing to review any meaningful remediation plan that MAW can propose, but to date MAW has not produced one.²⁷⁴

Based on the foregoing, PPL denies the allegations in Paragraph 99 of the Complaint.

III. "DISCUSSION" SECTION OF MAW COMPLAINT

As explained in PPL's answers to Paragraphs 100-134 below, MAW generally repeats allegations it made previously to which PPL already has responded. One new order cited by MAW supports PPL's position that a MAW service drop is not an authorized service drop if it did not originate from an authorized attachment.

PPL can remove MAW's unauthorized attachments for the same reasons the Enforcement Bureau permitted removal for similar egregious behavior. Removal is also permitted by the Lehigh County Court Order and by the PPL/MAW Pole Attachment License Agreement.

MAW is a bad actor and cannot be allowed to act with impunity. To do so would encourage anarchy on PPL's electric pole distribution system and on other pole distribution systems across the country. And allowing MAW to benefit from not following critical and well-established make-ready processes would be grossly unfair to all of the other communications companies who do follow the rules.

Contrary to MAW's assertion, PPL's efforts to police its system to keep bad actors like MAW in check are certainly related to "capacity, safety, reliability, or engineering standards."

FCC rules do not allow MAW simply to refuse to pay for survey and engineering costs. The Commission instead requires attaching entities to pay such make-ready survey and engineering charges in compliance with the pole owner's application and make-ready process.

²⁷³ Yanek Declaration at ¶ 86.

²⁷⁴ Yanek Declaration at ¶ 87.

PPL notes that MAW already has availed itself of a “self-help remedy” by devising and following the secret plan proposed by MAW in its 10-Page Confidential “PPL Make Ready Policy Brief,” which complains that PPL make-ready charges associated with MAW’s January 2016 attachment application are too high, then cavalierly recommends to the City that MAW: (1) disregard and not perform PPL’s required make-ready work; (2) decline to seek FCC relief for any alleged overcharges; and (3) install the future MAW system on PPL’s electric distribution poles without PPL authorization and as MAW sees fit.

MAW 100: *Federal law requires a pole owner to provide nondiscriminatory access to its poles, ducts, conduits, and rights of way upon just and reasonable rates, terms, and conditions.*

PPL Answer: Paragraph 100 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, the allegations of Paragraph 100 are denied.

MAW 101: *A pole owner may only deny access to its poles should the proposed access affect legitimate safety, reliability, and generally applicable engineering standards. A pole owner’s denial of access must be specific and “include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.”*

PPL Answer: Paragraph 101 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, the allegations of Paragraph 101 are denied.

MAW 102: *By limiting denial of access to poles to these discrete reasons, Congress and the Commission recognized that the attacher is at the mercy of the pole owner, given its “local monopoly ownership or control of poles” and “exclusive control over access to pole lines.” A denial of access for limited reasons helps ensure the Commission can promote its goal to accelerate the deployment of broadband infrastructure.*

PPL Answer: Paragraph 102 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, the allegations of Paragraph 102 are denied.

MAW 103: *As detailed below, PPL has expressly denied MAW access to its poles on an ongoing basis, citing technicalities stemming from its transition to an online application portal and procedural issues rather than legitimate safety, reliability, and generally applicable engineering standards. In furtherance of its ongoing denial of access, PPL went as far as securing a court order preventing MAW from accessing its plant—even for routine maintenance or service restoration—without PPL’s prior approval, which PPL has consistently and unreasonably denied, thereby harming MAW’s customers, including the City and Lancaster General Hospital, and well as harming MAW’s relationship with its customers and MAW’s relationship with the PA PUC.*

PPL Answer: PPL has already addressed these allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the allegations in Paragraph 103 of the Complaint.

MAW 104: *PPL is classifying as “unauthorized” MAW’s rebuild of the municipal network throughout the City and is rejecting MAW’s attempts to correct PPL’s records with MAW’s own contemporaneous records or submit applications via PPL’s portal to correct PPL’s records.*

PPL Answer: PPL has already addressed these allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the allegations in Paragraph 104 of the Complaint.

MAW 105: *PPL claims that MAW failed to follow proper procedure when in 2015 MAW submitted its plans to rebuild the existing municipal network directly to Mr. Klokis—who responded approvingly to MAW’s request—rather than using a particular form or submitting the request through PPL’s cumbersome online portal which, at the time, did not recognize rebuilds as a type of activity that could be processed online.*

PPL Answer: PPL has already addressed these allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the allegations in Paragraph 105 of the Complaint.

MAW 106: *PPL’s post-hoc rationalization of its denial based on the format of MAW’s application is not an accepted reason for denying MAW access under the Commission’s rules.*

PPL Answer: PPL has already addressed these factual allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the factual allegations in Paragraph 106 of the Complaint. Paragraph 106 of the Complaint contains legal conclusions that are based on these erroneous allegations and to which no response is required. To the extent a response is required, the allegations of Paragraph 106 are denied.

MAW 107: *PPL has repeatedly changed its application requirements and reset application start dates, resulting in further delay and removal of additional plant. For example, on August 16, 2018, more than four months after MAW submitted its rebuild applications, PPL denied them in part because they were not submitted using the online portal, which PPL did not require until July 30, 2018, long after the applications were submitted, and also because they allegedly lacked unspecified detail.*

PPL Answer: PPL has already addressed these allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs

1-99 and to the extent a response is otherwise required, PPL denies the allegations in Paragraph 107 of the Complaint.

MAW 108: *PPL's constant movement of the application requirement goalposts have unlawfully denied MAW access to PPL's poles for reasons that are insufficient for a denial under the FCC's rules.*

PPL Answer: PPL has already addressed these factual allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the factual allegations in Paragraph 108 of the Complaint. Paragraph 108 of the Complaint contains legal conclusions that are based on these erroneous allegations and to which no response is required. To the extent a response is required, the allegations of Paragraph 108 are denied.

MAW 109: *The Commission has held that because service drops are "adjuncts" to attachments subject to the normal application process, service drop applications may be made with reasonable notice but without prior utility approval.*

PPL Answer: The actual language used by the Commission in the *Salsgiver v. N. Pittsburgh Tel. Co.* Order that MAW cites in footnote 130 is that "attachments to drop poles are adjuncts to attachments that are approved in the normal application process."²⁷⁵ This concept from the actual language of the order is consistent with PPL's position that a MAW service drop is not an authorized service drop if it did not originate from an authorized attachment.²⁷⁶

MAW 110: *PPL claims that MAW's service drop attachments are unauthorized in part because MAW did not receive prior authorization to deploy the service drops, despite the fact that the parties' Pole Attachment Agreement excludes service drops from the application process. However, under the express terms of the parties' Pole Attachment Agreement, service drops do not require application and prior approval. As a result, PPL's claim is without merit and its denial contravenes both its own Pole Attachment Agreement as well as clear FCC precedent.*

PPL Answer: PPL has already addressed these allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the allegations in Paragraph 110 of the Complaint.

MAW 111: *PPL also claims that MAW's service drop attachments are unauthorized because the backbone to which the service drops are attached is also unauthorized. This is similarly not a legitimate basis for denying MAW access to PPL poles because it is wholly unrelated to capacity, safety, reliability, or engineering standards.*

²⁷⁵ *Salsgiver Commc'ns, Inc. v. N. Pittsburgh Tel. Co.*, 22 FCC Rcd. 20536, 20544 ¶25 (Enf. Bur. 2007) (emphasis added).

²⁷⁶ See PPL Answer to MAW Amended Pole Attachment Complaint at ¶¶ 58, 61, 63, 64, 65, and 66, which address PPL's policy of disallowing service drops that originate from unauthorized attachments.

PPL Answer: As explained in PPL's answer to Paragraph 109, the *Salsgiver v. N. Pittsburgh Tel. Co.* Order that MAW cites in footnote 130 stands for the proposition that a service drop is not an authorized service drop if it did not originate from an authorized attachment. This is consistent with PPL's position in this proceeding, which MAW has characterized in this Paragraph.²⁷⁷

MAW is not being denied access to PPL's system for reasons unrelated to capacity, safety, reliability, or engineering standards. MAW surreptitiously installed more than 1,000 illicit attachments to PPL's electric distribution poles, recklessly endangering the lives of its contractors, jeopardizing the safety and reliability of PPL's pole distribution system, creating a mess and occupying valuable pole space that others cannot use. All of this widespread illicit and deceptive activity was done by MAW simply to save time and money and to give itself a competitive advantage over legitimate communications attachers.

MAW is a bad actor and cannot be allowed to act with impunity. To do so would encourage anarchy on PPL's electric pole distribution system and on other pole distribution systems across the country. And allowing MAW to benefit from not following critical and well-established make-ready processes would be grossly unfair to all of the other communications companies who do follow the rules.

PPL's efforts to police its system to keep bad actors like MAW in check are certainly related to capacity, safety, reliability, or engineering standards.

MAW 112: *In accordance with the Lehigh County Court's order, MAW nevertheless submitted applications for these existing service drops to comport with PPL's contrary interpretation of the Pole Attachment Agreement.*

PPL Answer: PPL has already addressed these allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the allegations in Paragraph 112 of the Complaint.

MAW 113: *PPL has not approved any of MAW's service drop applications that were submitted pursuant to the court order.*

PPL Answer: PPL has already addressed these allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the allegations in Paragraph 113 of the Complaint.

MAW 114: *Moreover, PPL will not approve MAW's request to repair service drop lines that were damaged due to no fault of PPL or MAW. When MAW applied to PPL to repair lines that*

²⁷⁷ *Id.*

were damaged by a rental box truck, seeking to restore service to two MAW customers, PPL denied MAW's request "because it originates from Unauthorized Attachments.

PPL Answer: PPL has already addressed these allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the allegations in Paragraph 114 of the Complaint.

MAW 115: *As a result of PPL's claim that MAW's service drops are unauthorized, PPL has removed 100 service drops attached pursuant to the Pole Attachment Agreement, resulting in a loss of service to at least 70 MAW customers, including critical healthcare facilities.*

PPL Answer: PPL has already addressed these allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the allegations in Paragraph 115 of the Complaint.

MAW 116: *PPL is preventing MAW from accessing its facilities, impairing MAW's ability to repair service outages, including two recent outages on the 600 block of West Chestnut Street, where MAW's facilities were damaged as a result of tree trimming, and the 200 block of West Walnut Street and 300 block of Mulberry Street, where MAW is being denied access to its splice boxes to troubleshoot an outage created by unknown causes.*

PPL Answer: PPL has issued no blanket denials of service to address outage issues. PPL has reviewed each request and responded to them based on their own merit and conditions on the poles. There have been six requests since the original Stipulation was put in place in December 2017. Two have been approved as requested. One was approved in part and denied in part. Only one was fully denied. The June 14, 2018 instance in which MAW was denied access because the "service drop attachment" at issue was itself unauthorized and because this unauthorized "service drop attachment" originated from an attachment that was also unauthorized.²⁷⁸ For this June 14, 2018 instance, MAW simply should not have been on that pole. There are currently two requests from MAW under review.²⁷⁹

MAW 117: *PPL's refusal to grant MAW's applications for service drops and its exercise of such extraordinary measures as to remove MAW's existing plant denies MAW the access it is afforded under Section 224 and the FCC's rules.*

PPL Answer: PPL has already addressed these factual allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the factual allegations in Paragraph 117 of the Complaint.

²⁷⁸ See E-mail from Joseph D'Amico, Counsel to PPL Electric Utilities Corporation, to Jeffrey Franklin, Counsel to MAW Communications, Inc. (June 14, 2018, 2:36 p.m. EST), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 24 (MAW000159-MAW000160).

²⁷⁹ Yane Declaration at ¶ 73.

PPL can remove MAW's unauthorized attachments for the same reasons the Enforcement Bureau permitted removal for similar egregious behavior.²⁸⁰ Removal is also permitted by the Lehigh County Court Order and by the PPL/MAW Pole Attachment License Agreement.²⁸¹

MAW is a bad actor and cannot be allowed to act with impunity. To do so would encourage anarchy on PPL's electric pole distribution system and on other pole distribution systems across the country. And allowing MAW to benefit from not following critical and well-established make-ready processes would be grossly unfair to all of the other communications companies who do follow the rules.

PPL's efforts to police its system to keep bad actors like MAW in check are certainly related to capacity, safety, reliability, or engineering standards.

MAW 118: *The Commission has held that a pole owner may not "condition access on payment of a disputed claim," explaining that "[d]ebt collection is not permissible grounds for denial of access."*

PPL Answer: FCC rules do not allow MAW simply to refuse to pay for survey and engineering costs. The Commission instead requires attaching entities to pay such make-ready survey and engineering charges in compliance with the pole owner's application and make-ready process. As explained in the April 2014 Enforcement Bureau Order:

Salsgiver claims that Penelec's proposed make-ready charges (1) failed to provide sufficient detail, and (2) would have required Salsgiver to "correct existing violations of previous attachers." Yet Salsgiver had the option of first paying Penelec's make-ready charges, under protest; filing a complaint with the Commission alleging that the charges violate section 224 of the Act; and, if successful, recovering those overcharges. Such a course would have obviated any alleged harm, and Salsgiver offers no explanation of why it could not have proceeded this way. Rather, Salsgiver, by its own admission, attached in violation of various communications and electrical standards. We cannot condone Salsgiver's decision simply to disregard Penelec's application/make-ready process.²⁸²

²⁸⁰ See PPL Answer to MAW Amended Pole Attachment Complaint at ¶¶ 36, 89, and 118.

²⁸¹ See *PPL Electric Utilities Corporation v. MAW Commc'ns, Inc.*, Order, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 at ¶ 6 (Apr. 13, 2018), attached to MAW Amended Pole Attachment Complaint at Attachment A, Exhibit 20 (MAW000140); See also Telecommunications Pole Attachment License Agreement Between PPL Electric Utilities Corporation and MAW Communications, Inc., Article 6, Section 6.7, attached to MAW Amended Pole Attachment Complaint at Attachment C (MAW000184).

²⁸² *Petition of Salsgiver Telecom, Inc. for Temporary Stay Pursuant to Section 1.1403(d) of the Federal Communications Commission Rules*, File No. EB-14-MD-005, Letter Order at 3 (Apr. 4, 2014) attached to MAW Amended Pole Attachment Complaint at Attachment F (MAW000707) (footnotes omitted).

In another ruling based on Pennsylvania events, the Commission explained again the proper course is for the attaching entity to pay the amount due and then seek refunds:

More fundamentally, Fibertech has failed to demonstrate that the actual or threatened termination of the Pole Attachment Agreement has caused or will cause Fibertech to suffer irreparable harm - a showing required under section 1.1403(d). Duquesne's February 7 Letter indicated that Fibertech could avoid termination of the Pole Attachment Agreement by paying the \$565,814 amount that Duquesne claims it is due. Although we understand that Fibertech contends that the \$565,814 constitutes an overcharge in violation of section 224, Fibertech fails to explain, in either the Stay Petition or the Complaint, how it would be irreparably harmed if it simply paid Duquesne the \$565,814 amount now, with the expectation that it would later recover this payment as a refund if it succeeds in proving the section 224 violations alleged in its Complaint.²⁸³

MAW, of course, did not decide to pay its make-ready expenses and seek refunds from the Commission. Instead, as explained below in PPL's Answer to Paragraphs 23 and 55, MAW devised and followed the secret plan proposed by MAW in its 10-Page Confidential "PPL Make Ready Policy Brief," which complains that PPL make-ready charges associated with MAW's January 2016 attachment application are too high, then cavalierly recommends to the City that MAW: (1) disregard and not perform PPL's required make-ready work; (2) decline to seek FCC relief for any alleged overcharges; and (3) install the future MAW system on PPL's electric distribution poles without PPL authorization and as MAW sees fit, and in disregard of both the NESC and PPL standards.²⁸⁴

Such a premeditated, illicit scheme to avoid paying for make-ready costs and to avoid Commission scrutiny cannot be countenanced.

MAW 119: *PPL is unlawfully conditioning access to its poles upon MAW's agreement to pay excessive and unsubstantiated pre-attachment engineering charges.*

PPL Answer: PPL has already addressed these factual allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the factual allegations in Paragraph 119 of the Complaint.

PPL has already addressed the legal issue raised by Paragraph in its answers to Paragraphs 111, 117 and 118, and incorporates those answers by reference here.

²⁸³ *Fiber Technologies Networks, L.L.C v. Duquesne Light Co.*, Order, 18 FCC Rcd 10628, 10632, ¶12 (2003) (footnotes omitted).

²⁸⁴ See PPL Answer to MAW Amended Pole Attachment Complaint at ¶¶ 23 and 55; See also *PPL Make Ready Policy Brief – rev1*, Jan. 18, 2017, attached to MAW Amended Pole Attachment Complaint at Exhibit F (MAW000694-MAW000703).

MAW 120: *PPL has refused to process any pole attachment applications, including new, unrelated applications, unless MAW pays PPL the disputed pre-engineering charges from the 2016 quotes in full, as well as other unreasonable charges related to the alleged unauthorized attachments.*

PPL Answer: PPL has already addressed these factual allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the factual allegations in Paragraph 120 of the Complaint.

MAW 121: *PPL's demands that MAW pay the disputed, unreasonable pre-attachment engineering invoices as a condition to processing MAW's pole attachment applications constitutes an express denial of access. Moreover, PPL's refusal to process any of MAW's applications, including new, unrelated applications, unless MAW pays the disputed amount in full, unlawfully and expressly denies MAW access to PPL's poles.*

PPL Answer: PPL has already addressed these factual allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the factual allegations in Paragraph 121 of the Complaint.

PPL has already addressed the legal issue raised by Paragraph in its answers to Paragraphs 111, 117 and 118, and incorporates those answers by reference here.

MAW 122: *As detailed below, PPL has also taken several steps that, while not an express denial, have effectively denied MAW from accessing PPL's poles to attach new facilities or maintain its existing facilities.*

PPL Answer: PPL is willing to grant access to MAW pursuant to of a holistic solution that achieves a fully-permitted system for MAW by: (1) removing unauthorized attachments; (2) fixing the great number of safety violations caused by MAW; (3) reconciling which of the City's and LCSC attachments these entities wish to transfer to MAW; and (4) processing MAW's applications for rebuild and new build network expansion. PPL is willing to consider any remediation plan that is part of such a holistic approach.

PPL has already addressed these factual allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the factual allegations in Paragraph 122 of the Complaint.

PPL has already addressed the legal issue raised by Paragraph in its answers to Paragraphs 111, 117 and 118, and incorporates those answers by reference here.

MAW 123: *The FCC's rules require pole owners to process attachment applications within a specified time frame; namely, within 45 days of receipt for most orders or within 60 days of receipt for larger orders.*

PPL Answer: Paragraph 123 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, the allegations of Paragraph 123 are denied. PPL notes that there are exceptions and limitations to this rule, including that these deadlines apply only to the submission of completed applications and that they apply only to attachments used to provide telecommunications or cable television service.

MAW 124: *PPL has steadfastly refused to process MAW's applications and has thus failed to meet the FCC's timeframes for application approval, despite PPL's attempts to game the shot clock. PPL wrongfully rejected MAW's applications as incomplete, despite the fact that PPL's application portal categories were insufficient, not MAW's application. For example, MAW submitted 38 backbone applications for all existing feeder cable circuits by June 2, 2018. Subsequent to this submission, PPL changed its policy to require MAW's rebuilt backbone applications to use a new "Rebuild" option. Nevertheless, MAW resubmitted its backbone applications on August 1, 2018. PPL has not acted on these applications as of February 6, 2019, approximately **189 days later** or even provided a status update on any of the applications.*

PPL Answer: PPL has already addressed these allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the allegations in Paragraph 124 of the Complaint.

MAW 125: *Should a utility fail to meet the FCC's application timeframes, as PPL has done here, the FCC's rules provide that a prospective attacher may hire a utility-approved contractor to complete the survey and to perform make-ready. In fashioning this self-help remedy, the FCC acknowledged that "time is of the essence" for the success of a proposed attacher's business and that "[r]equesters need a way to obtain access to poles if a utility does not meet the deadlines we impose."*

PPL Answer: PPL has already addressed these factual allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the factual allegations in Paragraph 125 of the Complaint.

Paragraph 125 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, the allegations of Paragraph 125 are denied.

PPL notes that MAW already has availed itself of a "self-help remedy" by devising and following the secret plan proposed by MAW in its 10-Page Confidential "PPL Make Ready Policy Brief," which complains that PPL make-ready charges associated with MAW's January 2016 attachment application are too high, then cavalierly recommends

to the City that MAW: (1) disregard and not perform PPL's required make-ready work; (2) decline to seek FCC relief for any alleged overcharges; and (3) install the future MAW system on PPL's electric distribution poles without PPL authorization and as MAW sees fit.²⁸⁵

Pursuant to this "self-help remedy," MAW surreptitiously installed more than 1,000 illicit attachments to PPL's electric distribution poles, recklessly endangering the lives of its contractors, jeopardizing the safety and reliability of PPL's pole distribution system, creating a mess and occupying valuable pole space that others cannot use. All of this widespread illicit and deceptive activity was done by MAW simply to save time and money and to give itself a competitive advantage over legitimate communications attachers.

MAW is a bad actor and cannot be allowed to act with impunity. To do so would encourage anarchy on PPL's electric pole distribution system and on other pole distribution systems across the country. And allowing MAW to benefit from not following critical and well-established make-ready processes would be grossly unfair to all of the other communications companies who do follow the rules.

MAW 126: *In this case, because PPL secured a state court order prohibiting MAW from accessing any PPL poles without PPL's prior approval, MAW cannot make use of the appropriate FCC self-help remedies to deploy or maintain its plant despite the fact that PPL continues to delay action on MAW's applications past the FCC's specified deadlines.*

PPL Answer: PPL has already addressed these factual allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the factual allegations in Paragraph 126 of the Complaint.

Paragraph 126 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, the allegations of Paragraph 126 are denied.

PPL incorporates by reference here its discussion of MAW's "self-help remedy" from PPL's answer to Paragraph 125. PPL incorporates by reference here its discussion of deadlines from PPL's answer to Paragraph 123.

MAW 127: *Consequently, PPL's actions constitute an effective denial of access.*

PPL Answer: PPL has already addressed these allegations in its answers to Paragraphs 1-126 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-126 and to the extent a response is otherwise required, PPL denies the allegations in Paragraph 127 of the Complaint.

²⁸⁵ *Id.*

MAW 128: *While the Commission acknowledges that utilities “are entitled to recover their costs from attachers for reasonable make-ready work necessitated by requests for attachment,” utilities may not charge attachers for “unnecessary, duplicative, or defective make-ready work.” Moreover, the Commission has held that a prospective attacher may only be held responsible “for make-ready costs generated by its own attachments;” the utility may not require a prospective attacher to pay for the costs of other entities’ safety violations.*

PPL Answer: Paragraph 126 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, the allegations of Paragraph 126 are denied.

MAW 129: *PPL is unreasonably requiring MAW’s attachments to be placed at the topmost position on its poles, resulting in prohibitively costly make-ready estimates. As explained above, PPL’s unjust policy mandates attachment in the topmost position, even when space is available at other locations within the communications space that do not necessitate make-ready work.*

PPL Answer: PPL has already addressed these allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the allegations in Paragraph 129 of the Complaint.

MAW 130: *There is no legitimate safety reason to explain PPL’s requirement that MAW attach in the topmost position. PPL may not charge MAW for unnecessary make-ready work. If an attachment can be made consistent with NESC, it should be permitted. Moreover, if less costly, more efficient make-ready alternatives exist, the Commission has explained that such alternatives should be considered and permitted.*

PPL Answer: PPL has already addressed these allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the allegations in Paragraph 130 of the Complaint.

MAW 131: *Moreover, PPL’s topmost position requirement, which results in excessive and unnecessary make-ready requirements and costs constitute an unlawful attempt to correct preexisting noncompliance not caused by MAW or its attachments. Through this topmost position policy, PPL can correct any previous violations using the process and expenses paid by the prospective attacher.*

PPL Answer: PPL has already addressed these allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the allegations in Paragraph 131 of the Complaint. MAW has not supported this claim that there are “preexisting noncompliance” on PPL’s poles, and so PPL’s denies this allegation for lack of knowledge or information sufficient to form a belief as to their truth.

MAW 132: *A pole owner is required to provide an attacher with detailed support of its charges for pre-attachment engineering and any proposed make-ready work. Even before the recent changes to the FCC's rules, it was well-settled that a utility has "an obligation to provide a reasonable amount of information sufficient to substantiate its make-ready charges."*

PPL Answer: PPL has already addressed these allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the allegations in Paragraph 132 of the Complaint.

MAW 133: *Despite MAW's requests, PPL declined to provide more detailed information regarding the disputed 2016 invoices. PPL's invoices, which simply have line items for "Make Ready – Construction" and "Make Ready – Engineering," do not provide information sufficient for MAW to evaluate or substantiate these charges. PPL's invoices do not specify unit cost or labor cost per hour, the cost of itemized materials, or other charges for each make-ready task performed by PPL's third-party contractors.*

PPL Answer: PPL has already addressed these allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the allegations in Paragraph 133 of the Complaint.

MAW 134: *PPL must provide MAW with an opportunity to review a detailed cost estimate before incurring make-ready construction or engineering charges. Such estimate must provide a reasonable amount of information sufficient to substantiate these charges. PPL's requirement that MAW pay the amounts in dispute on vague and unsubstantiated invoices prior to attaching to PPL's poles effectively denies MAW access.*

PPL Answer: PPL has already addressed these allegations in its answers to Paragraphs 1-99 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-99 and to the extent a response is otherwise required, PPL denies the allegations in Paragraph 133 of the Complaint.

MAW 135: *The following individuals are believed to have first-hand knowledge of the facts alleged in this complaint:*

*Frank Wiczowski
President and CEO, MAW Communications
419 Washington Street, PO Box 978, Reading, PA 19603
See Declaration at Attachment A for description of facts within such person's knowledge*

*Mindy Wiczowski
Vice President of Strategic Development, MAW Communications
419 Washington Street, PO Box 978, Reading, PA 19603
See Declaration at Attachment B for description of facts within such person's knowledge*

Eron Lloyd
Director of Information and Communication Technology
419 Washington Street, PO Box 978, Reading, PA 19603
See Declaration at Attachment D for description of facts within such person's knowledge

PPL Answer: PPL admits that the individuals identified in Paragraph 134 of the Complaint have first-hand knowledge of the facts alleged in this complaint except to the extent discussed in this Answer.

IV. "COUNTS" SECTION OF MAW COMPLAINT

As explained in PPL's answers to Paragraphs 136-139 below, MAW generally repeats allegations it made previously to which PPL already has responded.

MAW 136: *MAW incorporates by reference as if fully set forth herein paragraphs 1 through 134 of this Complaint.*

PPL Answer: Paragraph 136 of the Complaint does not require an answer.

MAW 137: *PPL's refusal to accept or process MAW's pole attachment applications until MAW pays its disputed invoices for the third party contractor pre-engineering and make-ready design in full is a violation of PPL's duty to provide access to any pole it owns or controls, except in narrowly defined circumstances, which do not apply here. See 47 C.F.R. § 1.1403(a).*

PPL Answer: PPL has already addressed these allegations in its answers to Paragraphs 1-134 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-134 and to the extent a response is otherwise required, PPL denies the allegations in Paragraph 137 of the Complaint.

MAW 138: *PPL's refusal to accept or process MAW's pole attachment applications until MAW pays its unsubstantiated, disputed third party contractor pre-engineering and make-ready design in full is a violation of PPL's duty to provide access to any pole it owns or controls, except in narrowly defined circumstances, which do not apply here. See 47 C.F.R. § 1.1403(a).*

PPL Answer: PPL has already addressed these allegations in its answers to Paragraphs 1-134 and will not repeat them here. To the extent discussed in its answers to Paragraphs 1-134 and to the extent a response is otherwise required, PPL denies the allegations in Paragraph 138 of the Complaint.

MAW 139: *PPL's denial of access is not legitimately based on capacity, safety, reliability, or engineering concerns as to any particular pole, or in general.*

PPL Answer: PPL has already addressed these allegations in its answers to Paragraphs 1-134 and will not repeat them here. To the extent discussed in its answers to Paragraphs

1-134 and to the extent a response is otherwise required, PPL denies the allegations in Paragraph 139 of the Complaint.

V. INFORMATION DESIGNATION

The following individuals are believed to have first-hand knowledge of the facts alleged in this Answer:

Ryan J. Yanek
Manager – Vegetation Management
PPL
2 North Ninth Street, GENTW3, Allentown, PA 18101
610-774-2092
See attached Declaration for description of facts within such person's knowledge

Michael J. Shafer
Senior Counsel
PPL
2 North Ninth Street, GENTW3, Allentown, PA 18101
610-774-2599
Mr. Shafer has general knowledge of the facts within this Answer

Mallory J. Sweeney
Counsel
PPL
2 North Ninth Street, GENTW3, Allentown, PA 18101
610-774-5314
Ms. Sweeney has general knowledge of the facts within this Answer

Kristie M. Rippke
Contractor
Mainline Energy Consultants
C/o
2 North Ninth Street, GENTW3, Allentown, PA 18101
610-774-3564
See attached Declaration for description of facts within such person's knowledge

Joseph S. D'Amico, Jr.
Shareholder
Fitzpatrick Lentz & Bubba, P.C.
4001 Schoolhouse Lane, Center Valley, PA 18034
Mr. D'Amico has general knowledge of the facts within this Answer

Darryl P. Preziosi
Manager of Attachment and Telecom Business Services
PPL

2 North Ninth Street, GENTW3, Allentown, PA 18101
610-774-6242

See attached Declaration for description of facts within such person's knowledge

VI. CONCLUSION

WHEREFORE, PPL respectfully requests that the Commission deny MAW's Complaint for the reasons stated herein.

Respectfully submitted,



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Attorneys for PPL Electric Utilities Corporation

March 13, 2019

CERTIFICATE OF SERVICE

I, Timothy A. Doughty, hereby certify that on this 13th day of March 2019, a true and authorized copy of PPL Electric Utilities Corporation's Answer to the Amended Pole Attachment Complain of MAW Communications, Inc. was served on the parties listed below via electronic mail, unless noted otherwise, and was filed with the Commission via ECFS.

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/s/
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