

# ATTACHMENT C

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

ZITO MEDIA, L.P.,

*Complainant,*

v.

PENNSYLVANIA ELECTRIC COMPANY,

*Respondent.*

File No.

**DECLARATION OF TODD MCMANUS**

I, TODD MCMANUS, declare as follows:

1. I am Manager of Outside Plant at Zito Canton, LLC (“Zito”), with a general office address of 102 South Main Street, Coudersport, PA 16915. I make this Declaration in support of Zito’s Pole Attachment Complaint in the above-captioned case. I know the following of my own personal knowledge, and if called as a witness in this action, I could and would testify competently to these facts under oath.

2. I have served as Manager of Outside Plant for 11 years. In this role, I am responsible for Zito’s plant construction, including aerial plant construction using existing utility poles.

3. I have reviewed the allegations made in the Pole Attachment Complaint filed in this proceeding as well as the exhibit attached hereto, and verify that they are true and correct to the best of my knowledge, information and belief.

4. To construct its network in Pennsylvania, Zito requires access to poles owned or controlled by Pennsylvania Electric Company (“Penelec”).

5. When Zito seeks to attach facilities to Penelec poles, Zito submits a pole attachment application and Pole Profile sheets to Penelec. The application and Pole Profile sheets include information about the nature of the attachments as well as the particular poles to which attachment is sought including the height and class of the pole and existing facilities on the pole.

6. Penelec has allowed Zito to make temporary attachments using extension arms to obtain necessary clearances where make-ready work would otherwise be required in order to make the attachment, in circumstances where Penelec had failed to complete the application review and pre-attachment survey process and provide a make-ready cost estimate to Zito within the timeframes prescribed by Federal Communications Commission rules.

7. On August 16, 2016, I emailed Robert Chumrik and John Forbes of Penelec and requested that Penelec provide Zito with a list of approved contractors to conduct the pre-attachment inspection and engineering process on Zito's outstanding applications for attachment to Penelec's poles. Attached hereto as Exhibit 1 is a true and correct copy of my August 16, 2016 email.

8. On August 19, 2016, Penelec informed Zito that it had hired Sigma Technologies ("Sigma") "for some of our larger make ready projects." Effectively, Sigma became the contractor that is responsible for processing all of Zito's applications for attachment to Penelec's poles in its territory North of Interstate 80 (I-80). In Penelec's territory South of I-80, Penelec continues to process Zito's applications without the use of a contractor.

9. Penelec's contractor Sigma refuses to accept Zito's Pole Profile sheets and instead conducts an independent pre-attachment survey, in which it collects all data without utilizing or relying upon Zito's previous work for assistance. Upon information and belief, as part of the

survey, Sigma collects exhaustive information about the condition of the poles as well as information concerning Penelec's and other entities' facilities attached to the poles.

10. Upon information and belief, Sigma only completes surveys of approximately 15 poles per day, whereas Zito is able to complete surveys of approximately 35 poles per day in connection with the preparation of its Pole Profile sheets.

11. Subsequently, upon information and belief, Sigma processes and analyzes the pole and attachment data and decides upon the required make-ready work. Upon information and belief, Penelec directs Sigma to conduct a full pole loading analysis for every pole in Zito's applications, regardless of the age and remaining strength of the pole or the facilities attached to the pole. Utilities and third party contractors often employ less costly, more efficient methods to determine the estimated remaining strength and load capacity of a pole without having to undertake a costly and time consuming full pole loading analysis.

12. Upon information and belief, Sigma's analysis of the data exceeds what is necessary to accommodate Zito's attachments of facilities to Penelec poles.

13. Sigma refuses to accept input from Zito when Sigma conducts the survey of the poles and makes certain decisions regarding make-ready work. If permitted to do so, Zito could and would provide valuable input concerning how it can safely, efficiently and cost-effectively attach facilities to Penelec's poles.

14. Upon further information and belief, Sigma makes decisions about required make-ready work without taking into account information provided by Zito. As such, the make-ready cost estimates are higher than what they would be if Zito's input were taken into account.

15. Historically (and as remains the process in Penelec's territory South of I-80), Zito and Penelec conducted a "joint ride-out" during which representatives of each party travelled to and

physically inspected each pole included on an application to determine whether and what make-ready work was necessary. In Zito's experience, conducting a joint ride-out is an efficient and common method for determining what make-ready work is required to accommodate an attachment. A joint ride-out allows for make-ready decisions that account for the integrity and safety of the pole and attached facilities, while at the same time taking into account whether the proposed make-ready work is cost-effective. A joint ride-out also allows the participating parties to identify pre-existing non-compliant conditions that would require correction (such as pole replacement) notwithstanding the applicant's proposed attachment and for which the applicant should not be charged. It also allows obvious decisions to be made in the field and to avoid further back office analysis. For example, there may be no need to replace a pole before the end of its useful life if existing facilities can be raised or lowered, if the attaching entity can safely use an extension arm, boxing or other approved construction technique to gain required clearances, or if the pole can be guyed to balance loads. Conversely, in some situations, the parties may agree during a joint ride-out that a pole clearly needs to be replaced, thus eliminating the time and expense associated with a later-conducted full loading analysis.

16. On a single occasion, after multiple requests by Zito, Sigma participated in a joint ride-out with Zito. Ultimately, Sigma's representative that participated in the joint ride-out was inexperienced and unable to meaningfully participate in any discussion about potential make ready work. After Zito expressed its dissatisfaction about the experience, Penelec stated that a Sigma supervisor could participate in the joint ride-out for \$88/hour (in addition to Sigma's usual charges to conduct a field survey), but that Sigma would continue to collect the same extensive information about each pole and that no make-ready decisions would be made in the field.

17. Given the futility and inefficiency of the conditions placed on the joint ride-out by Sigma, no further joint ride-outs have been conducted with Sigma on Zito's applications.

18. Zito has a vested interest in the safety and integrity of the poles to which it attaches, including poles owned and controlled by Penelec. Zito's employees and contractors work on facilities attached to Penelec poles. Zito depends on the electricity drawn from the electric facilities on the pole in order to operate.

19. Instead of make-ready decisions being made jointly in the field, Sigma engages in an exhaustive pre-attachment survey process in which it makes decisions about required make-ready work without Zito's input. In Zito's experience, more poles are replaced prematurely using this process, resulting in substantial additional estimated deployment costs. Faced with such high costs, Zito often must opt to explore alternative deployment routes. Moreover, because decisions are not made in the field but are instead delayed until after extensive additional processing and analysis is performed, Zito's consideration of such alternative routes is unnecessarily delayed.

20. The make-ready cost estimates that Sigma provides to Zito do not provide sufficient details to enable Zito to assess the reasonableness of the charges. Without these essential details, Zito is unable to evaluate whether the make-ready work charges are reasonable and thus, whether to proceed with the work, consider a less costly alternative route, or whether other safe, yet more cost-effective solutions should be pursued.

21. Upon information and belief, Penelec is using the pre-attachment survey to identify poles that it believes need to be replaced for its own "betterment." For example, after Zito researched the make-ready estimates provided by Sigma on two applications indicating "will replace pole" for ten poles, Zito discovered that there were no attachments other than Penelec's

on all but one of the poles. Zito provided Penelec the photos Zito took of each such pole and requested that Penelec provide the engineering analysis to support the decision to replace those poles. One month later, Penelec responded that in fact the poles at issue “were classified during engineering as Company betterment to Penelec.” Performing Penelec betterment during the make-ready process unfairly delays attachment by Zito until after the pole is replaced. Moreover, had Penelec’s plan to replace these poles as Company betterment been identified during a joint ride-out, or at the very least had the betterment been identified at the time of the estimate, Zito could have avoided the expenditure of time and resources investigating alternative routes while it waited for Penelec to provide its explanation.

22. Upon information and belief, Sigma charges for and requires Zito to pay to correct pre-existing non-compliant conditions on Penelec’s poles even though such work is required regardless of whether Zito attaches to the pole.

23. I participated in telephone conference calls among representatives of Zito and Penelec on May 1, June 7, and June 22, 2017, during which Zito explained in detail its concerns to Penelec about Sigma’s application process. I also attended an in-person meeting among representatives of Zito and Penelec in Erie, Pennsylvania on July 25, 2017, where Zito again detailed its concerns to Penelec about Sigma’s application process.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

By: Todd McManus  
Todd McManus

Dated: November 16, 2017



# EXHIBIT 1

-----Original Message-----

From: Todd McManus [<mailto:todd.mcmanus@zitomedia.com>]

Sent: Tuesday, August 16, 2016 9:00 AM

To: 'Kelly Ragosta' <[kelly.ragosta@zitomedia.com](mailto:kelly.ragosta@zitomedia.com)>; Chumrik, Robert  
<[rchumrik@firstenergycorp.com](mailto:rchumrik@firstenergycorp.com)>

Cc: 'Gerry Kane' <[gerry.kane@zitomedia.com](mailto:gerry.kane@zitomedia.com)>; DeWitt, Deanna R  
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Subject: RE: Conference call request - outstanding applications for Tioga and Bradford  
counties

Bob/John,

As a solution under the FCC guide lines we are requesting a list of approved First Energy  
contractors to complete the remainder of the ride outs.

Thanks,  
Todd McManus  
Manager of Outside Plant

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