

## Legislation Text

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**File #:** 000318, **Version:** 0

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Granting permission to PECO Energy Company, a Pennsylvania corporation, and its successors, assigns, agents, and contractors, to construct, install, maintain and operate, use, repair, replace, and remove a wireless communications system and appurtenances, in, over, under and across the public rights-of-way and City streets; and/or on certain City-owned or controlled street light fixtures, street light poles, and traffic signal poles as designated by the Streets Commissioner and the Commissioner of Public Property; and/or within or on the existing facilities owned by other entities holding a grant of permission pursuant to other City ordinances; with use of such wireless communication system restricted solely to the internal use by PECO Energy Company for activities and services directly related to telemetric meter reading, including meter reading, outage management, metering services directly related thereto, and other related services for its electric and gas customers which may be approved by the Commissioner of Public Property; all under certain terms and conditions.

*THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. Permission is hereby granted to PECO Energy Company, a Pennsylvania corporation, and its successors, assigns, agents, and contractors (collectively, "PECO"), to construct, install, maintain and operate, use, repair, replace, and remove a wireless communications system and appurtenances, in, over, under and across the public rights-of-way and City streets; and/or on certain City-owned or controlled street light fixtures, street light poles, and traffic signal poles as designated by the Streets Commissioner and the Commissioner of Public Property; and/or within or on the existing facilities owned by other entities holding such a grant of permission, pursuant to other City ordinances, with respect to other communications or telecommunications systems; with a use of such wireless communication system authorized by this Ordinance restricted solely to the internal use by PECO for activities and services directly related to telemetric meter reading, including meter reading, outage management, metering services directly related thereto, and other related services for its electric and gas customers which may be approved by the Commissioner of Public Property; and for the purpose of providing such wireless communications system, to mount, install, operate and maintain on such light fixtures, street light poles, and traffic signal poles, certain automatic meter reading devices ("AMR

Devices") that utilize a spread spectrum radio technology, operating with approval of the Federal Communications Commission in the unlicensed 902-928 MHz band and the licensed 928-952 MHz band, to read electricity and gas usage meters and to transmit such data to PECO's billing offices, together with associated cables and equipment reasonably necessary for the installation or use thereof (such communications system, devices, cables, equipment, and appurtenances are hereinafter referred to collectively as the "Communications Facilities"); provided, that PECO is not authorized by this Ordinance to provide within the City of Philadelphia any form of "telecommunications service" as that term is defined at 47 U.S.C. § 153(46), as amended, or "cable service" as that term is defined at 47 U.S.C. § 522(6), as amended, or to provide video programming service as an "open video system" operator within the meaning of 47 C.F.R. § 76.1500(a), as amended.

The Communications Facilities shall be constructed and operated in accordance with the requirements and under the supervision of the Department of Streets and the Department of Public Property; without interference with any existing surface, subsurface, or aerial structures or facilities; and in accordance with all ordinances of the City of Philadelphia and regulations of the Committee of Highway Supervisors governing the construction, maintenance, and operation of underground and aerial structures and facilities; and shall be solely for the internal use by PECO for activities and services directly related to telemetric meter reading, including meter reading, outage management, metering services directly related thereto, and other related services for its electric and gas customers which may be approved by the Commissioner of Public Property.

The permission granted by this Ordinance shall not be exclusive to PECO and shall not preclude the City from authorizing others to construct facilities similar to the Communications Facilities in, over, under, and across the public rights-of-way and/or on City owned or controlled street light poles, traffic signal poles, and street light fixtures, for the purpose of providing communications or telecommunications services that are

similar to or different from those expected to be provided to PECO by the Communications Facilities.

The permission granted by this Ordinance is conditioned upon the approval of the Department of Streets as to underground construction; the approval of the Department of Streets and the Department of Public Property as to aerial construction (including but not limited to the installation of AMR Devices or other devices on any City-owned or controlled street light pole, traffic signal pole, or street light fixture); the approval of the Department of Streets and the Department of Public Property as to construction within or on the existing facilities owned by other entities holding a grant of permission pursuant to other City ordinances; and the approval of the Department of Licenses and Inspections, by permit, wherever required by the City's building, electrical, fire, zoning, and/or other code(s). The permission granted by this Ordinance is not a guaranty that PECO's Communications Facilities can be placed at any location in the City of Philadelphia or on any City-owned or controlled street light pole, traffic signal pole, or street light fixture. No City department, agency, board or commission shall be required solely by virtue of this Ordinance to issue any permit, license, or approval that PECO must by law obtain prior to the construction or installation of the Communications Facilities or any part thereof.

SECTION 2. In the event that any portion of the Communications Facilities must be relocated to accommodate a public improvement or public facility, whether such improvement or facility is constructed by the City or other governmental entity itself or by contract, the Department of Streets shall provide PECO with written notice prior to any required action of PECO to relocate said portion of the Communications Facilities. Within no more than fifteen (15) days of service of said notice upon PECO, PECO shall relocate said portion of the Communications Facilities. PECO shall restore at its own expense any streets or right-of-way affected by such relocation, including both the sidewalk and the roadway, and any street light fixture, street light pole, traffic signal pole or other City property, to the City standards in effect at the time any portion of the public right-of-

way or other City property was disturbed, ordinary wear and tear excepted, to the reasonable satisfaction and approval of the Department of Streets or other affected department of the City. In the event that PECO is required by this Section 2 to remove any portion of the Communications Facilities at the request of the City, the Department of Streets shall cooperate with PECO in order to attempt to identify a replacement and alternative right-of-way for the relocation of said portion of the Communications Facilities which may be utilized without unreasonable inconvenience.

SECTION 3. The permission granted to PECO by this Ordinance shall be and is subject to the terms and conditions of this Ordinance and other applicable ordinances of the City of Philadelphia, including, but not limited to, all ordinances of general application currently in existence or hereafter enacted related to the right-of-occupancy and use in, under, over and across the streets, sidewalks, alleyways, easements and right-of-ways within the City of Philadelphia, and all applicable agreements, to the extent that such agreements are not inconsistent with the terms and conditions of this Ordinance.

SECTION 4. Before exercising any rights and privileges under this Ordinance, PECO shall enter into an agreement (“Agreement”) with the appropriate City department or departments, in form satisfactory to the City Solicitor, to provide that PECO shall, *inter alia*:

(a) furnish the City with a bond with corporate surety in an amount required by the Department of Streets and Department of Public Property in form satisfactory to the City Solicitor to ensure the compliance with all the terms and conditions of this Ordinance and the Agreement and to protect and to indemnify the City from and against all damages or claims for damages which may arise directly as a result of the construction, maintenance, operation or removal of PECO's Communications Facilities;

(b) secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards, or commissions of the City or other governmental entity as may be required by law;

(c) assume the costs of all changes and adjustments to, and relocation and abandonment of, all utilities and structures wherever located as may be necessary by reason of the installation of PECO's Communications Facilities;

(d) carry insurance protecting against liability for injury to persons or property of others, naming the City as an additional insured party in such amounts as shall be reasonably satisfactory to the City Solicitor; and

(e) pay all charges, rents, franchise fees or other fees that the City may now or in the future impose for a licensee's occupation of City property, streets and rights-of-way, including but not limited to an annual fee (prorated for any partial year) in an amount equal to sixty dollars (\$60.00), during the initial five-year term of agreement, for every attachment by PECO of any part of its wireless communications system and appurtenances to any City-owned streetlight, City-owned streetlight pole, City-owned traffic signal pole, City-owned streetlight mast arm on a traffic signal pole or former trolley pole owned by the City, or City-owned mast arm on a pole owned by PECO or a third party.

SECTION 5. The City Solicitor shall include in the Agreement such other terms and provisions as shall be deemed necessary to protect the interest of the City.

SECTION 6. The permission granted to PECO for installation and or construction of the Communications Facilities shall expire without any further action by the City as to such portions not constructed three (3) years after the date this Ordinance becomes law unless PECO has substantially completed the construction of the

Communications Facilities authorized herein. A change in ownership of the assets of PECO does not, without express written permission of the City of Philadelphia, extend the time for substantially completing the construction of the new facilities authorized herein.

SECTION 7. Any agreement transferring the permission granted by this Ordinance from one entity to another shall be subject to the approval of the City of Philadelphia and the right of the City of Philadelphia to charge a transfer fee, so as to insure that all costs incurred by the City related to the transfer are reimbursed. The transferee must pay the City's costs associated with such transfer within 30 days of the costs being submitted to the transferee or the transferee's authorized agent.

SECTION 8. This Ordinance shall not become effective unless the sum of two hundred dollars (\$200.00), toward costs thereof, is paid into the City Treasury within sixty (60) days after this Ordinance becomes law.