

STEVENS & LEE
LAWYERS & CONSULTANTS

17 North Second Street
16th Floor
Harrisburg, PA 17101
(717) 234-1090 Fax (717) 234-1099
www.stevenslee.com

DIRECT DIAL: (717) 255-7365
EMAIL: MAG@STEVENSLEE.COM
Direct Fax: (610) 988-0852

March 20, 2009

VIA HAND DELIVERY

James J. McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Evan Acres Farmco, LTD v. Pennsylvania Electric Company
Docket No. C-2009-2084030


Dear Secretary McNulty:

Enclosed please find of an Motion for Judgment on the Pleadings on behalf of Pennsylvania Electric Company, which was filed electronically today. Copies have been served in accordance with the enclosed Certificate of Service.

If you have any questions, please feel free to contact me.

Very truly yours,

STEVENS & LEE


Michael A. Gruin

Enclosures

cc: Certificate of Service

Philadelphia • Reading • Valley Forge • Lehigh Valley • Harrisburg • Lancaster • Scranton
Williamsport • Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

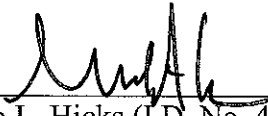
EVAN ACRES FARMCO, LTD.	:	
Complainant	:	
	:	
v.	:	Docket No. C-2009-2084030
	:	
PENNSYLVANIA ELECTRIC COMPANY	:	
Respondent	:	

NOTICE TO PLEAD

TO: Gary Eiben, Esquire
456 West Sixth Street
Erie, PA 16507

Pursuant to 52 Pa. Code §§ 5.61(a)(2) and 5.101(b) & (f)(1), you are hereby notified that an answer to the enclosed Motion for Judgment on the Pleadings of Pennsylvania Electric Company shall be filed within twenty (0) days of the date of service of the objection. All pleadings, such as an answer to the Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for Pennsylvania Electric Company. Failure to respond to this Preliminary Objection could result in the dismissal of your case.

Respectfully submitted,



Renardo L. Hicks (I.D. No. 40404)
Michael A. Guin (I.D. No. 78625)
17 North Second Street, 16th Floor
Harrisburg, PA 17101
Telephone: 717-255-7365
Facsimile: 610-988-0852

Counsel for Pennsylvania Electric Company

DATE: March 20, 2009

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

EVAN ACRES FARMCO, LTD.	:	
Complainant	:	
	:	
v.	:	Docket No. C-2009-2084030
	:	
PENNSYLVANIA ELECTRIC COMPANY	:	
Respondent	:	

**PENNSYLVANIA ELECTRIC COMPANY'S
MOTION FOR JUDGMENT ON THE PLEADINGS**

AND NOW, Pennsylvania Electric Company (“Penelec” or “Company”), by and through its counsel, Renardo L. Hicks and Michael A. Gruin of the Law Firm of Stevens & Lee, P.C., files this Motion for Judgment on the Pleadings pursuant to 52 Pa. Code § 5.102, requesting dismissal of the Complaint of Evan Acres Farmco, Ltd. (hereinafter “Complainant”). As set forth below, the Complaint should be dismissed pursuant to 52 Pa. Code § 5.102(d)(1), because there is no genuine issue as to a material fact, and because Penelec is entitled to a judgment as a matter of law. In further support of its Motion, Penelec avers as follows

I. INTRODUCTION

1. On January 14, 2009, Penelec was served with a notice of the Formal Complaint (“Complaint”) filed by the Complainant against Penelec. A copy of the Formal Complaint is attached hereto as Exhibit 1 and incorporated herein by reference.

2. On February 3, 2009, Penelec filed its Answer and New Matter to the Formal Complaint, a copy of which is attached hereto as Exhibit 2 and incorporated herein by reference.

3. On February 19, 2009, the Complainant filed a Reply to New Matter, a copy of which is attached hereto as Exhibit 3 and incorporated herein by reference. The pleadings are closed and a motion for judgment on the pleadings is ripe for disposition pursuant to 52 Pa. Code § 5.102(a).

4. The Formal Complaint should be dismissed because the pleadings in this case show that there is no genuine issue as to a material fact, the Complaint fails to state a claim for which relief can be granted, and Penelec is entitled to a judgment as a matter of law. The relief which the Complainant seeks is to force Penelec to back-bill Complainant's tenants for Complainant's electric bill, which under the facts in this Complaint, is expressly precluded by Commission rulings.

II. STANDARD OF REVIEW

5. The Commission's regulations at 52 Pa. Code 5.102(a) permits any party to move for summary judgment or judgment on the pleadings after the pleadings are closed, but within such time as to not delay a hearing. The presiding officer will grant the motion if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

6. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. First Mortgage Co. of Pennsylvania v. McCall, 459 A.2d 406(Pa. Super. 1983).

7. The provision at 52 Pa. Code §5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of the case exists, a hearing is unnecessary. Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission, 563 A.2d. 557 (Pa. Cmwlth. 1989).

III. ARGUMENT

The Formal Complaint Should Be Dismissed Because It Sets Forth No Claim For Which Relief Can Be Granted.

8. Pursuant to 52 Pa. Code § 5.102, a Motion for Judgment on the Pleadings shall be granted if there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law.

9. The pleadings in this case reveal that Penelec is entitled to judgment as a matter of law because the Complaint fails to state a claim for which relief can be granted.

10. PENELEC provides electric service to the property at 5019 Hannon Road, Erie, Pennsylvania.

11. It is undisputed that Complainant in this matter owns the property at 5019 Hannon Road, Erie, Pennsylvania (the "Property"). It is further undisputed that the Property consists of a farmhouse and a barn, and that the farmhouse contains a first floor residence and a separate second floor apartment.

12. The Complainant admits that PENELEC provides service to this Property through two separate meters, Meter #G59986033, (hereinafter referred to as "Meter 1") and, Meter #A89619309, (hereinafter referred to as "Meter 2"). See Complainant's Reply to New Matter, at paragraph 13.

13. The Complainant admits that during the period relevant to the Complaint, Meter 1 served the barn, first floor of the farmhouse, and one light in the second floor apartment. See Complainant's Reply to New Matter, at paragraph 13.

14. The Complainant admits that since April 10, 2003, the account served by Meter 1 has been in the Complainant's name. See Complainant's Reply to New Matter, at paragraph 15. The Complainant further admits that Meter 2 is currently under a tenant's name (effective 1/2/09), and that prior to the current tenant's occupancy, Meter 2 was in Complainant's name from 8/7/08 to 1/1/09. See Complainant's Reply to New Matter, at paragraph 15

15. The Complaint seeks relief in the form of forcing PENELEC to acknowledge that “all past due amounts are the responsibilities of tenants who asked Penelec to put service in their name”.

16. The relief requested by the Complainant cannot be granted, because:

a) Complainant has admitted that the account balance on the account served by Meter 1 was incurred while Complainant was the customer named on the account from April 10, 2003 to the present;

b) Complainant has admitted that Meter 1 served the first floor of the farmhouse and at least one light in the second floor apartment;

c) Because Meter 1 served two separate residential units, Penelec is required to list the account in the name of the owner of the property, by Commission regulations;

d) Penelec never had a service contract with the tenant.

17. Where a divided residence can not provide exclusive usage for each meter, it is deemed to have a “foreign load.” *See David P. Boyce v. Duquesne Light Company*, Docket Number Z-00223698, Opinion and Order adopted June 30, 1994, entered September 1, 1994.

18. Foreign load exists where tenants have a meter and are direct utility customers and utility service for other tenants or for the landlord is being billed through their meter. *Boyce* at 4-5.

19. The Commission has clearly established that the presence of “foreign load” prevents a dwelling unit from being deemed “individually metered” as that term is used in 66 Pa. C. S. § 1529.1. *David P. Boyce v. Duquesne Light Company*, Docket Number Z-00223698, Opinion and Order adopted June 30, 1994, entered September 1, 1994, *Elizabeth Santos v. Metropolitan Edison Company*, Docket Number C-00967757, Opinion and Order adopted July 10, 1997, entered August 7, 1997.

20. When a residential building contains one or more dwelling units not individually metered, the Public Utility Code, requires that a public utility “list the account for the premises in question in the name of the owner.” 66 Pa. C. S. § 1529.1(b).

21. To the extent that the Complainant seeks to attribute past usage on the Meter 1 account to one or more of its past tenants, PENELEC notes that the Commission has previously ruled that apportionment of past billings in foreign load situations is a landlord/tenant issue that need not involve the utility. See *Afshari v. PPL Electric Utilities Corp. and Kim and Mike Fanazier*, Docket No. C-20055547 (Order and Opinion entered April 9, 2008). Furthermore, in contrast to the *Afshari* case, where the issue was the transfer of an account balance to a landlord when such balance was incurred while the account was in the name of a tenant, in the present case, the Meter 1 account was in the name of the Complainant during the entire time the balance was incurred. Therefore, the facts of the present case are even more clear than the *Ashfari* case in justifying the landlord's responsibility for the entire balance on the account served by Meter 1.

22. According to the Commission's decision in *Santos*, unpaid bills in foreign load situations must be collected only from the landlord. Therefore, in the present case the Complainant, as the landlord, is solely responsible for the balance due on the account served by Meter 1.

23. The Commission in *Santos* made it clear that "the utility...is not the arbiter of such [billing] disputes between a landlord and tenant."

24. PENELEC is required to list the account for the premises in the name of the owner of the property, and the owner is responsible for payment of the utility services rendered thereunto. See 66 Pa.C.S. § 1529.1.


25. In accordance with the authority set forth above, Complainant is solely responsible for the unpaid balance on the account served by Meter 1, PENELEC is entitled to collect the full unpaid balance due on the Meter 1 account from Complainant, and to the extent that Complainant seeks to attribute a portion of the unpaid balance to his tenant(s), PENELEC should not be interjected in that dispute..

26. Because the material facts listed above are not in dispute and because as a matter of law, the Complainant can not be granted the relief that it seeks, PENELEC respectfully requests that the Commission grant the Company's Motion and dismiss the Complaint of Evans Acre Farmco, Ltd.

IV. CONCLUSION

WHEREFORE, Penelec respectfully requests that the Commission grant the Company's Motion and dismiss the Complaint of Evan Acres Farmco, Ltd. PENELEC requests that the Complaint be dismissed, with prejudice, pursuant to 52 Pa. Code § 5.102(d)(1) because it sets forth no relief that can be granted by the Commission and therefore PENELEC is entitled to judgment as a matter of law.

Respectfully submitted,



Renardo L. Hicks (I.D. No. 40404)
Michael A. Gruin (I.D. No. 78625)
17 North Second Street, 16th Floor
Harrisburg, PA 17101
Telephone: 717-255-7365
Facsimile: 610-988-0852
mag@stevenslee.com

Counsel for Pennsylvania Electric Company

Dated: March 20, 2009

EXHIBIT 1



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

DATE SERVED: January 14, 2009

C-2009-2084030

PENNSYLVANIA ELECTRIC COMPANY
C/O LEILA L VESPOLI
SR VICE PRESIDENT AND GENERAL COUNSEL
FIRSTENERGY CORP
76 S MAIN ST
AKRON OH 44308-1890

Dear Ms. Vespoli:

A complaint has been filed against you before the Pennsylvania Public Utility Commission by Evan Acres Farmco, LTD c/o Neil K. Evans. To defend yourself against the claims stated in the following pages, you must act within twenty (20) days by filing in writing with the Commission, either personally or through your attorney, your defenses or objections to the claims stated against you. Or, you may satisfy the complaint by settling the matter with the Complainant and submitting proof of settlement to the Commission within twenty (20) days.

IF YOU FAIL TO RESPOND WITHIN TWENTY (20) DAYS, THE CASE MAY GO FORWARD IN YOUR ABSENCE AND A JUDGEMENT MAY BE ENTERED AGAINST YOU BY THE COMMISSION WITHOUT FURTHER NOTICE.

CUSTOMER OF A UTILITY

A payment schedule may be prescribed or a termination of utility services may be authorized. You may lose money or property or other rights important to you.

COMPANY/UTILITY

An Administrative Law Judge may revoke or suspend any certificate or permit held by you, or impose a fine, or any other appropriate penalty or remedy authorized by the Public Utility Code. You may lose money or property or other rights important to you.

Detailed instructions on how to proceed are contained in the attached pages. You are advised to read them carefully.

RECEIVED

JAN 15 2009

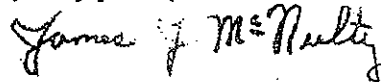
Leila L. Vespoli

January 14, 2009

Unless you are a corporation or other organization, you may proceed without a lawyer. However, if you want a lawyer and do not have one or cannot afford one, the office listed below can tell you where you can get legal help:

Pennsylvania Lawyer Referral Service
Pennsylvania Bar Association
P.O. Box 186
Harrisburg, PA 17108
(800) 692-7375

Very truly yours,

A handwritten signature in cursive script that reads "James J. McNulty".

James J. McNulty
Secretary

lam

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

DATE SERVED: January 14, 2009

EVAN ACRES FARMCO, LTD

Complainant

v.

PENNSYLVANIA ELECTRIC COMPANY

Respondent

Complaint Docket

No: C-2009-2084030

FORMAL COMPLAINT NOTICE TO RESPONDENT TO ANSWER OR SATISFY

TO: PENNSYLVANIA ELECTRIC COMPANY

TAKE NOTICE:

That a complaint in the above entitled matter, of which the attached is a true and correct copy, has been presented and filed of record with the Pennsylvania Public Utility Commission. Section 702 of the Public Utility Code, 66 Pa. C.S. Section 702, requires the Commission to serve on each party named in a complaint a copy of the complaint and notice calling upon each party to satisfy the complaint, or to answer the same in writing within a specified time; THEREFORE,

1. You have twenty (20) days from the date on which this complaint is served to either satisfy this complaint or to file with the **Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265**, an answer (original and three copies), in writing, under oath, which, as required by Section 5.61 of the Commission's Rules of Practice and Procedure, 52 Pa. Code Section 5.61, either affirms or specifically denies the allegations in this complaint. You must also serve a copy of the answer upon the complainant. The date of service is the mailing date as indicated by the date at the top of this Notice. Section 1.56(a) of the Commission's Rules of Practice and Procedure, 52 Pa. Code Section 1.56(a).

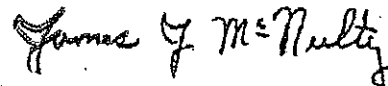
2. If you fail to either satisfy this complaint or to file answer or other responsive pleading within twenty (20) days, you will be deemed to have admitted all the allegations in this complaint in accordance with Section 5.61 of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code Section 5.61. In that event, the Commission may, without hearing, enter an order which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. Section 101, et seq.; and, if

you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

3. If you elect to satisfy this complaint you must file, within twenty (20) days from the date on which this complaint is served, affidavits executed by each complainant that this complaint has been satisfied. Such affidavits must describe the basis on which this complaint was satisfied; any settlement agreement between the parties must be reduced to writing and attached to the affidavit. Such affidavits are to be filed with the Secretary of the Commission at the address set forth in paragraph 1. Upon receipt of affidavits of satisfaction from all complainants, this complaint may be dismissed by the Commission in accordance with Section 703(a) of the Public Utility Code, 66 Pa. C.S. Section 703(a), unless the Commission determines that such dismissal would be contrary to the public interest, in which event the Commission may direct that hearings be held upon the complaint.

4. If you file an answer which admits the allegations in this complaint, or which fails to specifically deny the allegations in this complaint, the Commission may, without hearing, enter an order which either revokes or suspends any certificate held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

5. If you file a timely answer which specifically denies the allegations in this complaint, or which raises material questions of law or fact, this matter shall be referred to the Office of Administrative Law Judge for hearing and decision. If, after hearing on the issues raised by that answer, you are found to have committed any of the violations alleged in the complaint, the Administrative Law Judge may render a decision which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. In the imposition of a penalty after a hearing the Administrative Law Judge is not bound by the relief sought by the complainant in paragraph 4 of the attached complaint.



James J. McNulty
Secretary

(SEAL)

Certified Mail
Return Receipt Requested

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

Please print in ink or type.

C-2009-2084030

1. CUSTOMER (COMPLAINANT) INFORMATION

Your name, mailing address, county, telephone number, utility account number and service address:

Name: Evan Acres Farmco, LTD, c/o Neil K. Evans - Manager

Street/P.O. Box 3230 Green Road Apt #

City Beachwood State OH Zip 44122-4049

County Erie

Daytime Telephone Number Where We Can Contact You:

Gary Eiben, Counsel
Telephone: 814-456-5318
Facsimile: 814-456-3840

Neil K. Evans, Manager
Evans Acres Farmco, LTD
(home) 216-751-8201
(daytime) 216-274-2256

E-mail Address (optional): geiben@tmgattys.com

Utility Account Number 10 00 53 5486 3 0
(from your bill)

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name: Evan Acres Farmco, LTD

Street/P.O. Box 5019 Hannon Road

City State Zip Erie, PA 16510

RECEIVED

JAN 7 2009

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Penelec

3. TYPE OF UTILITY (check one)

ELECTRIC

STEAM HEAT

GAS

WASTE WATER

WATER

MOTOR CARRIER

(e.g., taxi, moving company, limousine)

TELEPHONE

(local, long distance)

4. COMPLAINT (check one)

A. In general, what is your complaint?

I want to oppose the company's proposed rate increase.

There are incorrect charges on my bill.

There is a reliability, safety or quality problem with my utility service.

I received a notice that my utility service is being terminated.

I would like a payment agreement.

Other (explain). Penelec's refusal to acknowledge that service to a unit consisting of a farmhouse and a barn, is to be separately billed to the occupant and not the owner of the property.

B. State the facts of your complaint.

Include any specific dates, times or places that may be important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

At issue in this Complaint is a farmhouse with a barn which are regularly rented to tenants. A smaller, second floor apartment (part of the farmhouse), is completely distinct and has electrical service entirely separate from the farmhouse. The tenant who leases the farmhouse also agrees to lease the barn and the farmhouse and the barn are on a single service. Further, tenants in the past have requested directly of Penelec that it place service in their name. Penelec refused to comply with these requests or to advise the owner of the property of their position until such time as a large bill had already been accrued.

5. RELIEF

How do you want your complaint to be resolved? Use additional paper if you need more space.

Complainant wants for Penelec to acknowledge that the farmhouse and barn are one unit and the apartment another, separate and distinct unit, that they are not shared, and that all past due amounts are the responsibilities of the tenants who asked Penelec to put the service in their name. Evan Acres Farmco also requests that Penelec be required to maintain power in effect as long as current bills are paid and this dispute is unresolved.

6. PROTECTION FROM ABUSE

Answer the following question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NO

7. PRIOR UTILITY CONTACT

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations)

NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

8. LEGAL REPRESENTATION (IF ANY)

If you are represented by a lawyer in this matter you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Lawyer's Name: Gary Eiben, Esquire

Street 456 West Sixth Street, P.O. Box 1757

City Erie State PA Zip 16507

Area Code/Phone Number 814-456-5318

E-mail Address (If Known) geiben@imgattys.com

9. VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification:

I Gary Eiben, Esquire, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Gary Eiben 1/7/2009
(Signature) (Date)
Attorney for Complainant
Title of authorized employee or officer

10. FILING

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

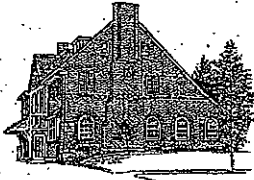
If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 nd Floor Harrisburg, Pennsylvania 17120
---	--

Facsimiles and/or electronic filings of the complaint will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your complaint for your records.



THE McDONALD GROUP, L.L.P.
ATTORNEYS AT LAW

January 7, 2009

VIA CERTIFIED MAIL
7007 1490 0002 3720 9960

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Dear Sir or Madam:

Enclosed please find the Formal Complaint that we are filing on behalf of Evan Acres Farmco, LTD this date. Please direct all future correspondence in this matter to the undersigned.

Very truly yours,

THE McDONALD GROUP, L.L.P.

By: _____

GE/hjs

Gary Eiben

Enclosure: Formal Complaint Form

Copy to: Evan Acres Farmco, Ltd.
Neil Evans - Manager
3230 South Green Road
Beachwood, OH 44122

456 WEST 6TH STREET
P.O. BOX 1757
ERIE, PA 16507-0757

814/456-5318
fax: 814/456-3840
www.tmgattys.com

JAMES D. McDONALD, JR.
GARY RIBEN
THOMAS J. BUSECK
JOSEPH P. CONTI
DANIEL J. PASTORE
GARY V. SKIBA
JOHN J. ESTOK
BETHANY A. BLOOD
JOHN G. GENT (1921-2004)
FRANK J. SCUTELLA (1949-2000)
ESTABLISHED 1986
DIRECT E-MAIL:
geiben@tmgattys.com

RECEIVED

JAN 7 2009

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BN-24922

EXHIBIT 2

STEVENS & LEE
LAWYERS & CONSULTANTS

17 North Second Street
16th Floor
Harrisburg, PA 17101
(717) 234-1090 Fax (717) 234-1099
www.stevenslee.com

DIRECT DIAL: (717) 255-7365
EMAIL: MAG@STEVENSLEE.COM
Direct Fax: (610) 988-0852

February 3, 2009

VIA HAND DELIVERY

James J. McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Evan Acres Farmco, LTD v. Pennsylvania Electric Company
Docket No. C-2009-2084030

Dear Secretary McNulty:

I am enclosing the original and three copies of an Answer to Complaint and New Matter on behalf of Pennsylvania Electric Company for filing in the referenced docket. Copies have been served in accordance with the enclosed Certificate of Service.

If you have any questions, please feel free to contact me.

Very truly yours,

STEVENS & LEE


Michael A. Gruin

RECEIVED
2009 FEB -3 PM 4:13
PA PUC
SECRETARY'S BUREAU

Enclosures

cc: Office of Administrative Law Judge
Certificate of Service

Philadelphia • Reading • Valley Forge • Lehigh Valley • Harrisburg • Lancaster • Scranton
Williamsport • Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RECEIVED
2009 FEB -3 PM 4:13
PA PUC
SECRETARY'S BUREAU

EVAN ACRES FARMCO, LTD. :
Complainant :
 :
v. : Docket No. C-2009-2084030
 :
PENNSYLVANIA ELECTRIC COMPANY: :
Respondent :

**ANSWER TO COMPLAINT AND NEW MATTER
OF METROPOLITAN EDISON COMPANY**

On January 14, 2009, Pennsylvania Electric Company ("PENELEC") was served with a formal Complaint from Evan Acres Farmco, Ltd. ("Complainant"), in the above captioned Docket Number. Pursuant to 52 Pa Code § 5.61, PENELEC hereby responds to the Complaint of the Complainant as follows:

ANSWER

1. Admitted in part and Denied in part. PENELEC admits that Complainant's account number is 100053548630. PENELEC is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 1 and, therefore, such allegations are deemed denied.
2. Admitted.
3. Admitted.
4. Denied. PENELEC properly bills Complainant's account in accordance with its PUC-approved tariff Electric Pa. P.U.C. No. 79. To the extent the allegations contained in Paragraph 4 constitute conclusions of law or ultimate fact to which no responsive pleading is required, they are as such deemed denied.

5. Denied. To the extent the allegations contained in Paragraph 5 constitute conclusions of law or ultimate fact to which no responsive pleading is required, they are as such deemed denied.

6. Denied. PENELEC is without knowledge or information sufficient to form a belief as to the truth of this averment and, therefore, such allegation is deemed denied.

7. Admitted.

8. Denied. To the extent the allegations contained in Paragraph 8 constitute conclusions of law or ultimate fact to which no responsive pleading is required, they are as such deemed denied.

NEW MATTER

9. PENELEC incorporates by reference responses contained in Paragraphs 1 through 8 above as though fully set forth at length.

10. PENELEC is represented in this matter by:

Renardo L. Hicks and
Michael A. Guin
Stevens & Lee
17 North Second Street
16th Floor
Harrisburg, PA 17101
Telephone: 717-255-7365

11. PENELEC provides electric service to the property at 5019 Hannon Road, Erie, Pennsylvania.

12. Complainant in this matter owns the property at 5019 Hannon Road, Erie, Pennsylvania (the "Property"). The Property consists of a farmhouse and a barn. The farmhouse contains a first floor residence and a separate second floor apartment.

13. PENELEC provides service to this Property through two separate meters. Prior to November 8, 2008, one meter, Meter # G59986033, (hereinafter referred to as "Meter 1") served the first floor of the farm house, part of the second floor apartment and the barn. The second meter, Meter #A89619309, (hereinafter referred to as "Meter 2") served the remainder of the second floor apartment. On November 8, 2008, the Complainant performed the electrical work necessary to place all 2nd floor service onto Meter 2. Therefore, as of today, Meter 1 serves the first floor and the barn, and Meter 2 serves the entire second floor.

14. Historically, the Complainant has rented the Property to two separate tenants as follows: One tenant rents the first floor of the farmhouse, and shares use of the barn with Complainant, and a second tenant rents the second floor apartment.

15. Meter 1 is in Complainant's name and has been since 4/10/03; Meter 2 is currently under a tenant's name (effective 1/2/09). Prior to the current tenant, Meter 2 was in Complainant's name from 8/7/08 to 1/1/09.

16. In March, 2006, the Complainant filed an informal complaint with the Bureau of Consumer Services, docketed at BCS# 2044507. At that time, the Complainant requested that the account served by Meter 1 be placed in the name of a tenant.

17. PENELEC denied Complainant's request to place the account served by Meter 1 in the tenant's name, in accordance with the provisions of 66 Pa.C.S.A. §§ 1521, et seq. Because Meter 1 served, in part, two separate residential units (i.e. the first floor residence and a portion of second floor apartment), PENELEC is required to list the account for the premises in the name of the owner of the property, and the owner shall be responsible for payment of the utility services rendered thereunto. See 66 Pa.C.S.A. § 1529.1 Furthermore, because the tenant did not have sole possession and usage of the barn served by Meter 1, the

account served by Meter 1 must remain in the name of the owner of the property, in this case, the Complainant.

18. On April 20, 2006, BCS denied the informal complaint and a closing report was issued.

19. On October 9, 2008, Complainant filed a second informal complaint, docketed at BCS # 2456530 again requesting that the account served by Meter 1 be transferred to the name of the tenant.

20. On October 14, 2008, PENELEC's Erie Meter Services department visited the Property to investigate the metering situation. The Complainant was present during the investigation. The investigation revealed that Meter 1 served the first floor of the farmhouse, the barn and at least one light in the second floor apartment. PENELEC informed the Complainant that due to the foreign load situation, the account served by Meter 1 could not be placed in the tenant's name unless the Complainant rewired the second floor to remove all second floor service from Meter 1.

21. Based on the above, Penelec again denied the request to place the account served by Meter 1 in the name of a tenant, and the BCS again denied the informal complaint.

22. The Commission has clearly established that the presence of "foreign load" prevents a dwelling unit from being deemed "individually metered" as that term is used in 66 Pa. C. S. § 1529.1. *David P. Boyce v. Duquesne Light Company*, Docket Number Z-00223698, Opinion and Order adopted June 30, 1994, entered September 1, 1994, *Elizabeth Santos v. Metropolitan Edison Company*, Docket Number C-00967757, Opinion and Order adopted July 10, 1997, entered August 7, 1997. Foreign load exists where tenants have a meter and are direct utility customers and utility service for other tenants or for the landlord is being billed through their meter. *Boyce* at 4-5. In other words, foreign load is utility service which

is not related to serving a tenant, but for which the tenant is being billed. *Santos* at 4. Section 1529.1 of the Public Utility Code, requires that an affected public utility "shall forthwith list the account for the premises in question in the name of the owner" when a residential building contains one or more dwelling units not individually metered. 66 Pa. C. S. § 1529.1(b).

23. It has recently come to PENELEC's attention that the Complainant has performed the electrical work necessary to completely separate the 2nd floor service from Meter 1.

Therefore, Meter 1 no longer is reflecting foreign load from the 2nd floor.

24. However, Meter 1 is still reflecting electricity being provided to the barn, which is being used in part by the Complainant.

25. To the extent that the Complainant seeks to attribute past usage on the Meter 1 account to one or more of its tenants, PENELEC notes that the Commission has previously ruled that apportionment of past billings in foreign load situations is a landlord/tenant issue that need not involve the utility. According to the Commission's decision in *Santos v. Metropolitan Edison Co.*, Docket No. C-00967757 (Ordered entered August 7, 1997), unpaid bills in foreign load situations must be collected only from the landlord; and in this case, the owner has been the ratepayer since April 10, 2003. The Commission in *Santos* made it clear that "the utility...is not the arbiter of such [billing] disputes between a landlord and tenant. Furthermore, in *Afshari v. PPL Electric Utilities Corp. and Kim and Mike Fanazier*, Docket No. C-20055547 (Order and Opinion entered April 9, 2008) the Commission stated that "PPL is correct that foreign load is a landlord/tenant matter and that the utility should not be interjected into those disputes. We thank PPL for quantifying the foreign load amount in this case and **will not require it to do so in future cases.**" (Emphasis added).¹

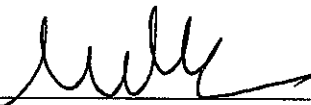
¹ In contrast to the *Afshari* case, where the issue was the transfer of an account balance to a landlord when such balance was incurred while the account was in the name of a tenant, in the present case, the Meter 1 account was in the name of the Complainant during the entire time the balance was incurred.

26. In accordance with the authority set forth above, Complainant is solely responsible for the unpaid balance on the account served by Meter 1, PENELEC is entitled to collect the full unpaid balance due on the Meter 1 account from Complainant, and to the extent that Complainant seeks to attribute a portion of the unpaid balance to his tenant(s), PENELEC should not be interjected in that dispute.

REQUEST FOR RELIEF

WHEREFORE, for all of the reasons stated herein, PENELEC respectfully requests that this matter be referred to the Office of Administrative Law Judge for expedited hearing.

Respectfully submitted,



Michael A. Gruin (I.D. No. 78625)
17 North Second Street, 16th Floor
Harrisburg, PA 17101
Telephone: 717-255-7365
Facsimile: 610-988-0852
mag@stevenslee.com

Counsel for Pennsylvania Electric Company

Dated: February 3, 2009

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

EVAN ACRES FARMCO, LTD
C/O NEIL K. EVANS
Complainant

v.

PENNSYLVANIA ELECTRIC COMPANY:
Respondent

Case No. C-2009-2084030

VERIFICATION

I, Rosalyn E. Strassner, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect Pennsylvania Electric Company to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904.

2-3-09

Date

Rosalyn E. Strassner

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

EVAN ACRES FARMCO, LTD.	:	
Complainant	:	
	:	
v.	:	Docket No. C-2009-2084030
	:	
PENNSYLVANIA ELECTRIC COMPANY:	:	
Respondent	:	


CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA First Class U.S. Mail

Gary Eiben, Esquire
456 West Sixth Street
Erie, PA 16507
geiben@tmgattys.com

Neil K. Evans, Manager
Evans Acres Farmco, LTD
3230 Green Road
Beachwood, OH 44122-4049



Michael A. Gruin

DATED: February 3, 2009

