

BEFORE THE PENNSYLVANIA  
PUBLIC UTILITIES COMMISSION

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

**MOTION TO DEEM INTERROGATORIES NOT WITHDRAWN**

AND NOW, comes the Complainant, Evan Acres Farmco, LTD., by and through its counsel, The McDonald Group, LLP, and files this Motion for Leave to Deem Interrogatories Not Withdrawn, averring in support thereof the following:

1. Evan Acres Farmco, LTD. served Interrogatories and Requests for Production addressed to Pennsylvania Electric Company.
2. The response was a series of objections with virtually no effort to provide any requested information.
3. A Motion to Compel was then filed on behalf of the Complainant on April 2, 2009.
4. On April 7, 2009, Pennsylvania Electric Company filed an Answer to the Motion to Compel.
5. Penelec argues that the entire Motion to Compel is a late-filed motion and should not even be considered. This is erroneous.
6. In support of this argument, Penelec states: *"52 Pa. Code 5.349(g) plainly states that 'Within ten days of service of an objection to Interrogatories, the party submitting the Interrogatories may file a motion requesting the presiding office to dismiss an objection and compel that the Interrogatory be answered. If a motion to compel is not filed within ten days of*

*service of the objection, the objected to interrogatory will be deemed withdrawn.*” Penelec Answer to Motion to Compel, pp. 5-6. (Emphasis in Penelec’s Answer.)

7. Penelec then makes a very significant shift in its argument by stating in the immediately following paragraph: *“Therefore, under the plain terms of the Commission’s Regulations, Farmco’s objected-to discovery requests are deemed to be withdrawn.”* Penelec Answer to Motion to Compel, p. 6.

8. Penelec is in error on several points. Initially, the language quoted by Penelec is not from 52 Pa. Code §5.349(g) as there is no such subparagraph of the Commission’s Rules. Instead, Penelec is attempting to quote from 52 Pa. Code §5.342(g). The difference is of significance. Section 5.342 deals with answers or objections to written interrogatories. It does not deal with responses to requests for production. The provisions of §5.349 dealing with requests for production do not contain such a narrow timeframe.

9. Therefore, the assertion by Penelec on page 6 of its Answer to the Motion to Compel that *all* discovery requests are deemed to be withdrawn is quite simply overbroad and unsupported by the Commission’s Rules. This is of significance because the vast majority of the discovery requests are for production of documents and not interrogatories. In fact, of the 11 numbered discovery requests, only numbers 1 and 2 are interrogatories, all the rest are requests for production.

10. Further, undersigned counsel acknowledges that he was unaware of the ten-day limitation period. The filing of the Motion to Compel was only one week late. No prejudice has been or can be asserted as a result of a one-week delay. In this regard, the Judge is asked to bear in mind that just recently the parties jointly requested and were granted a 60-day extension of the hearing date. The Answer raising this 10-day period as a bar to answering interrogatories was

raised after the Judge granted this request. It cannot be argued that any prejudice whatsoever would be suffered. Indeed, on page 6 of the Penelec's Answer is a statement that Penelec's counsel suggests requests for admissions would be a compromise, implying that the same information would be obtained if we simply reformulated the inquiries.

11. The P.U.C.'s Rules of Procedure are to be liberally construed to secure the just, speedy and inexpensive determination of every action and the presiding officer has the authority to disregard any error or defect which does not affect substantive rights. 52 Pa. Code §1.2 *Liberal Construction*. Further, the policy of liberal construction is reinforced by the authority to extend deadlines where reasonable ground is shown for the failure to act. 52 Pa. Code §1.15. As stated above, counsel was unaware of the very short period of ten days within which to file a Motion to Compel, the period of delay was only seven days, and there has been no prejudice, particularly in light of the extension of sixty days which has been granted for the hearing in this matter.

12. The Complainant's Interrogatories, as with the Requests for Production, are specifically formulated to address a specific issue in this case, i.e., the pattern of Penelec of previously billing for these units in the name of the tenants. This is relevant to establish Penelec's past practice and is not an attempt to interject Penelec into a landlord-tenant dispute. As made clear in paragraph 17 of the Complainant's Reply to New Matter, and as will be discussed in Complainant's Response to Motion for Judgment on the Pleadings, the electric bill at issue is not governed by 66 Pa.C.S.A. §1529.1 as it does not involve just a residential unit but also a barn. That being the case, prior practice is of relevance and answers to the interrogatories will go a great way toward narrowing the factual issues before the Administrative Law Judge.

WHEREFORE, the Honorable Administrative Law Judge is respectfully requested to treat the Interrogatories as not having been withdrawn and proceed to a determination of the Motion to Compel on its merits.

Respectfully submitted,

THE McDONALD GROUP, L.L.P.

A handwritten signature in black ink, appearing to read "Gary Eiben", is written over a horizontal line.

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**ORDER**

AND NOW, to-wit, upon consideration of the preceding Motion to Deem Interrogatories Not Withdrawn, it is ORDERED that the two Interrogatories are not deemed to be withdrawn and the Motion to Compel will be considered by the undersigned on its merits, with respect to the Interrogatories as well with respect to the Requests for Production.

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John H. Corbett, Jr., ALJ

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing motion was duly served this 9<sup>th</sup> day of April, 2009 to

the following in the manner indicated:

By electronic filing and first class mail:

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Respectfully submitted,

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