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August 13, 2009

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

Re: Chet and Michele Duffy v. Pennsylvania Power Company
Docket No. C-2008-2063047

Dear Secretary McNulty:

Attached is the Reply Brief of Pennsylvania Power Company in the above-captioned matter. The Reply Brief 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. Grum

Enclosures

cc: Administrative Law Judge Katrina Dunderdale (via Federal Express and Electronic Mail)
Chet and Michelle Duffy (via Federal Express and Electronic Mail)

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**

| | | |
|----------------------------|---|---------------------------|
| CHET AND MICHELE DUFFY | : | |
| Complainant | : | |
| | : | |
| v. | : | Docket No. C-2008-2063047 |
| | : | |
| PENNSYLVANIA POWER COMPANY | : | |
| Respondent | : | |

**PENNSYLVANIA POWER COMPANY'S
REPLY BRIEF**

And Now, pursuant to 52 Pa. Code § 5.501 and the Briefing Order issued in this proceeding, comes Pennsylvania Power Company (“Penn Power”), by and through its attorneys Stevens & Lee, and files its Reply Brief.

I. INTRODUCTION AND STATEMENT OF THE CASE

Penn Power hereby incorporates the Introduction and Statement of the Case set forth in its Main Brief filed on August 6, 2009 in this matter.

II. SUMMARY OF ARGUMENT

The Duffys’ Main Brief makes reference to several documents that are not in the evidentiary record. Such references should be disregarded for purposes of deciding this case. Furthermore, the Duffys’ Main Brief contains numerous discrepancies and mischaracterizations that will be addressed in this Reply Brief.

The Duffys’ Main Brief illustrates that there is no evidence to support any of the Duffys’ allegations, and reinforces the fact that the Duffys case is based entirely on suspicion and accusation. The Duffys’ Main Brief introduces a theory that an improperly

sized transformer and/or an improperly sized ground wire caused an improper recording of their consumption, beginning in 2007, yet, there is no evidence in the record to support such a theory. The Duffys are asking the Commission to Order Penn Power to completely disregard their meter readings, and re-bill the Duffy's based on "the average monthly bill from January 2001 through 2007". But remarkably, the Duffys' Main Brief does not even attempt to challenge the meter readings that generated their bills, or the accuracy of the meters. As the Complainants, the Duffy bear the burden of proving the allegations of their Complaint by a preponderance of the evidence. The Duffys have clearly not met their burden of proof. Furthermore, even if they had met the burden of proof, the Commission does not have the authority to grant the relief they request.

III. ARGUMENT

A. The Duffys' References To Certain Documents That Are Not In the Evidentiary Record Should Be Disregarded.

Throughout their Main Brief, the Duffys refer to several documents that were not admitted into the evidentiary record, but rather were attached to their Response to the Penn Power Consumption Audit. These documents are as follows:

- August 6, 1993 letter from Golba General Contractor Specifications for Duffy home
- March 9, 1993 letter from Penn Power to the Duffys providing estimate of electric consumption of heating and cooling system
- May 17, 1996 letter from Penn Power to Chet Duffy referencing depth of underground primary cable

- September 22, 1994 letter from Penn Power to Chet Duffy referencing depth of underground primary cable
- Handwritten notes dated February 20, 2004.
- January 31, 2005 letter from Chet Duffy to Penn Power regarding an underground cable
- Undated letter from Penn Power to Chet Duffy enclosing results of voltage tests

None of the above-referenced documents were admitted into the evidentiary record, and therefore, any references to these documents in the Duffys' Main Brief should be disregarded, and the documents themselves should not be considered by the Commission in evaluating the Duffy Complaint. Under 52 Pa. Code §5.402, in order for an exhibit to be received into evidence, a party must move for the admission of the exhibit into the records upon presentation of a sponsoring witness, after the opposing party has had the opportunity to cross-examine the witness. Mr. Duffy never presented the above-referenced documents during the hearing, and therefore Penn Power was never given the opportunity to cross-examine Mr. Duffy about these documents at the hearing. The documents are not in the evidentiary record, and therefore cannot be relied upon by the Commission. As such, the Duffy's references to these documents in their Main Brief should be disregarded.

The presiding officer may call for further admissible evidence upon an issue and require that the evidence be presented by the parties concerned under 52 Pa. Code §5.404 and 52 Pa. Code §5.483. And the ALJ in this case did call for the submission of a power consumption audit and grounds test/foreign load check by Penn Power and a response

thereto by the Duffys. However, the documents at issue go far beyond a response to the Penn Power consumption audit and grounds test/foreign load check. The documents at issue relate to the construction of Mr. Duffy's house in 1993, and correspondence with Penn Power regarding an underground cable in 1994, 1996 and 2005. These documents have nothing to do with a consumption audit or a grounds test/foreign load check. Rather, the Duffys clearly are attempting to rely on these documents as new exhibits to support one or more of their theories of the case. There is no legitimate basis for accepting these documents into the evidentiary record.¹ These documents constitute hearsay, they were not properly admitted into the record, and they have no relevance whatsoever to the issues in the case. Therefore, any references to these documents should be disregarded.

B. The Duffys' Allegations Have No Support In The Evidentiary Record

The Duffys' Main Brief is replete with mischaracterizations and discrepancies, and presents a version of events that have no basis in reality, much less the evidentiary record in this case. The Duffys have essentially gathered up any and all correspondence in their possession that in some way relates to their historical complaints against Penn Power, dumped it into the lap of the Commission and argued that this documentation supports their allegations, even if the documents in question have no relation whatsoever to their allegations. The Duffys merely use these documents as a jumping off point for their unfounded accusations. Penn Power will address the mischaracterizations and discrepancies below, and it is hoped that the ALJ and the Commission will see through

¹ Penn Power has no objection to documents attached to the Duffy's Response to Consumption Audit that are legitimately related to the consumption audit, namely, their most recent electric bill and the various U.S. Appliance Energy Guides.

the Duffys' tactics . Without page numbers or references to the hearing transcript, it is difficult to direct the ALJ's attention to the specific location of any references in the Duffy Main Brief. Penn Power will refer to the page numbers of the Duffy Main Brief, assuming that Page 1 is the page following the cover letter to Secretary McNulty.

Penn Power did not "work closely" with the Duffy's or their contractor in connection with their sizing of their heating and air conditioning installation, as the Duffys state on page 1 of their Brief. There is absolutely no evidence in the record to support this proposition, because it is blatantly false. The document the Duffys refer to in support of this allegation (August 6, 1993 letter from Golba General Contractor Specifications for Duffy home) is not in the evidentiary record. Even if it was in the evidentiary record, it provides no basis whatsoever for the conclusion that Penn Power "worked closely" with the Duffys' contractor in the design, specification, and construction of their home. The Duffy's discussion regarding the design and construction of their home has absolutely nothing to do with the issues in this case, and is another example of the Duffy's frustrating and distracting approach to this case.

Similarly, on page 2 of their Brief, the Duffys make more unsupported allegations about Penn Power "selecting the sizes and location and costs of the heat and air furnaces". Again, this is simply fiction, with absolutely no support in the record. The Duffys refer to a 2 page "Electric Heating Program Analysis" that Penn Power provided to them in 1993 to estimate their heating and cooling costs, and the Duffys' refer to this as "amounting to a consumption audit to size the furnaces and air conditioning units". First, the document in question is not in the record, and therefore this passage should be disregarded for the reasons stated above in Section A of this Reply Brief. And

furthermore, the document in no way demonstrates that Penn Power selected anything for the Duffy house. The document in question merely estimates the consumption level and costs of the Duffys heating and cooling systems based on certain assumptions that were presented at the time. It is not a “consumption audit” and should not be confused for one. The Duffys continually refer to this document throughout their Brief and simply assign whatever meaning they want to it, but the reality is that this document is not in the evidentiary record, it does not reflect any of the meaning that the Duffy’s purport to assign to it, it is irrelevant to the disposition of this case, and all references to it should be disregarded.

On page 3 of their Brief, the Duffys refer to electrical service concerns, but again, they provide no references to facts. They simply provide circular references to previous concerns filed with Penn Power. The Duffys say that they “along with their electrician” wrote a letter to Penn Power of January 31, 2005 regarding “ongoing electrical problems”. First, the document is not properly in the record, and therefore should not be considered. Second, the letter clearly is not from the Duffys’s electrician; it merely references the name of the electrician. The letter does not say what the Duffys argue it says, it is not proof, and it certainly cannot be relied up as the basis for the electrician’s conclusions because the electrician in question did not testify and was not available for cross-examination. Page 3 also contains some vague accusations about a ground service wire being improperly sized, but the record does not contain one shred of evidence to support a conclusion that any ground wire is or was undersized at the Duffy property.

On pages 3 and 4 of their Main Brief, the Duffys run through a list of various appliances that have burned out throughout the years. No dates or other specifics are

given about these incidents, and more importantly, there is no evidence whatsoever that attributes these incidents to Penn Power. These are simply unfounded accusations by the Duffys. The Duffys have worked with at least one electrician and one other energy consultant during the course of this case. Yet neither of these individuals was willing to provide any testimony to support the Duffys' allegations that Penn Power was somehow responsible for the damage to the Duffys appliances. The lack of any testimony by independent third parties is the most telling aspect of the Duffys' Main Brief, and indeed, their case in general.

On Page 4 of their Main Brief, the Duffys begin a discussion about transformer sizes and ask some rhetorical questions about the transformer sizes. Penn Power witness Michael St. Espirit testified about the transformer change at the hearing. Mr. St. Espirit testified that the Duffys home had been served with a 25 KW padmount transformer, and that in 2007 the company upgraded to a 100KW padmount transformer to handle increased loads to the Duffy barn. See hearing transcript, pp 141-142.

On Page 5 of their Main Brief, the Duffys again attempt to discuss documents that are not in the record, namely, two letters from Penn Power responding to Duffy questions about a ground wire. Again, these documents are not in the record and should not be considered. And again, the Duffys mischaracterize the letters. The Duffys characterize the letters as Penn Power "registering concerns" about the depth of certain wires. A review of the letters shows that Penn Power did not "register any concerns", rather, Penn Power was merely responding to yet another complaint by the Duffys that proved to be unfounded.

Pages 5 and 6 also contain more erroneous discussion about Penn Power “specifying” the size of the furnaces and “sizing” the furnaces. Again, as set forth above, Penn Power had nothing to do with sizing the furnaces in the Duffy home.

Page 6 contains the Duffys’ main argument about their consumption history. They note that their consumption increased around the same time that the larger transformer was installed, so therefore, in their minds the increased consumption must be related to the larger transformer and must be erroneous. As set forth in Penn Power’s Main Brief, this faulty logic is not supported by any evidence. Transformer size has absolutely nothing to do with consumption. Consumption depends on the electrical equipment that is drawing power, and it is reflected on the electric company’s meters. The Duffys repeatedly insist that their consumption habits did not change over the years, but this simply is not true. They clearly refurbished a barn, and Andy Segulla of Penn Power got the impression that the barn would be consuming more electricity in 2007 and therefore he recommended a larger transformer. See St. Espirit testimony, hearing transcript pages 140-142. The Duffys continually refer to “nothing changing” from 1993 to 2007. But they admit that they added a fully heated 4000 square foot barn, a Jacuzzi, a pool, and multiple high consumption appliances. For instance, the Duffys have a 65 inch television – *in their barn* – in addition to four other televisions of 40 inches or larger in their house . They have three computers plugged in and running continually. They have multiple refrigerators and multiple freezers. It is highly doubtful that the Duffys consumption in 1993, or even 2001, was anywhere near what it is now. This is why any comparisons to consumption in prior years are meaningless. Habits, appliances and weather all change, and this is the reason why electric companies meter consumption on a continual basis.

The whole point is to capture consumption that is taking place at the current time. The Duffys are asking the Commission to throw out the whole concept of contemporaneous metering of consumption, and instead base their bill on a flat “average” usage from a prior period when their consumption was totally different.

The Duffys continue to challenge their consumption levels on page 8, but notably, they do not provide any evidence or argument regarding the inaccuracy of Penn Power’s meters, or why the consumption level captured by the meter would be inaccurate. They again compare their 2007 consumption to a Penn Power estimate from 1993. Again, the 1993 document supplied by Penn Power was not a consumption audit, and was merely an estimate of the electrical consumption of the Duffy’s heating and cooling system. It was certainly not meant to estimate their total electricity consumption 14 years later, and for purposes of this case, the 1993 document is completely meaningless. The Duffys also make comparisons between similar periods from consecutive years, but they fail to take into account that certain bills contain estimated meter readings while other bills contain actual, which can lead to large swings in consumption depending on the amount of variation between the estimated read and the actual read. While the Duffys note variations in consumption levels between years, they put forth no evidence that Penn Power’s readings were wrong or that the meters were not functioning properly. Essentially, the Duffys are arguing that their bills cannot be right because they say they are not right. Electric companies cannot operate in this manner, and they must rely on meter readings to bills customers on their actual consumption. The meters in place at the Duffy house have been tested, and they have be proven to be accurate.

Page 9 of the Duffy Brief argues that Penn Power was “non-responsive” regarding certain issues raised by Mr. Duffy at hearing. Again, the Duffys are mischaracterizing events. When asked about a test meter jumping, Penn Power did respond. Mr. St. Espirit corrected Mr. Duffy and stated that the meter did not “jump”. Rather, there was a temporary voltage issue. See hearing transcript at pages 178-179. The transcript does not reflect Penn Power’s witness being asked about “test meter lights” and “power swelling” to the Duffy home, as the Duffys state on page 9 of their Brief. The transcript does not reflect Penn Power’s witness being asked about “ a one year test meter” or “dual meters” at the hearing. The transcript does not reflect Penn Power’s witness testifying that there was a voltage problem at the transformer. The transcript does not reflect any discussion of the contracts to install ground wires.

Page 10 contains more discussion about the an underground service wire, and more references to documents that are not in the record, including a word for word recitation of a letter that is meant to improperly state the conclusions of an electrician who did not testify, who did not provide a report, who was not cross-examined, and who previously noted that there was no problem with the voltage at the Duffy house. The Duffys’ Brief repeatedly returns to discussion about an undersized wire, but simply repeating something does not make it true. There is not one piece of evidence in the record to support a conclusion that any underground servicewire is improperly sized.

Page 11 of the Brief contains a string of statements that do not prove any point, followed by a mischaracterization of the Frontier Energy Report submitted by Mr. Duffy. It was made crystal clear at the hearing that Frontier had not conducted a consumption audit, yet the Duffys’ Main Brief attempts to characterize the Frontier Report as disputing

the meters readings of consumption. But Meg Kelly's testimony clearly **did not** address whether the Duffys' consumption was correct and/or whether the Penn Power meters were incorrect. Ms. Kelly clearly indicated that her study only involved an analysis of power quality conditions at the Duffy home. Ms. Kelly found that there were no power quality issues with the Duffy home, and she found that there was nothing unusual about the voltage or amperage.² She also stressed that her company did not test the Penn Power meters and did not perform a consumption audit on the Duffy residence³, and therefore she was not able to say that the Penn Power bills to the Duffys were incorrect.⁴ Ms. Kelly also stated that it was "possible" that the Duffys' consumption could triple or double, based on the appliances that were introduced into the home.⁵ Additionally, Ms. Kelly stated that "increased power consumption is not due to power quality issues or weather conditions over the past three years."⁶

The Duffys' Argument section, beginning on page 12, merely repeats many of the same mischaracterizations, falsehoods, and references to documents that are not in the record. They again attempt to compare their consumption from 2007 to their consumption in 2001, but do not challenge the accuracy of the meters that were in place in their home and which tested accurate within the Commission's guidelines. On page 15 of their Main Brief, the Duffys argue that "only three changes have been made to the Duffy property requiring additional power requirements. This is simply not true. The record reflects that the Duffys refurbished a 4000 square foot barn and installed a floor heating system in the barn. The barn contains multiple electricity consuming devices in

² Hearing Transcript, page 110

³ Hearing Transcript, pages 121-122

⁴ Hearing Transcript, page 123

⁵ Hearing Transcript, page 127

addition to the floor-based heating system, including a water heater, lights, and a 65 inch television. The Duffys added multiple televisions and other appliances to their home. The Duffys also added a pool and a Jacuzzi. The Duffys attempt to compare their 1993 heating and cooling estimates to their actual 2009 consumption, which is totally disingenuous and is really a comparison of apples to oranges.

The Duffys are attempting to flip the burden of proof on its head. The Duffys would have the Commission disregard Penn Power's meter readings, meter tests, socket recorder tests, and consumption audit (all of which are discussed in Penn Power's Main Brief), and instead make the Company justify its bills based on what the Duffys say their consumption was. This approach flies in the face of the entire concept of using meters to record consumption. An electric company cannot be expected to measure consumption based on what a customer says they use. The burden of proof is not on the Company to prove consumption independent of its meter readings. To the contrary, the burden is on the Complainant to prove that the Company's meter readings are not accurate. The Duffys clearly have not met this burden. The Consumption Audit performed by Penn Power is not meant to be an exact re-creation of the Duffys usage. Its purpose was to demonstrate that the consumption reflected by the meter readings and socket recorder is possible based on the electric consuming devices in the Duffy house. The Duffys can quibble about hours of use of various devices, but the Company has established beyond doubt that the equipment and appliances in the Duffy house are clearly capable of consuming the amount of electricity that has been recorded by Penn Power's properly functioning meters.

⁶ Hearing Transcript, page 129

C. The Commission Cannot Grant The Relief Requested By The Duffys

The Duffys have clearly not come close to proving their case. Merely repeating allegations over and over again does not make those allegations true. The Duffys have not submitted any evidence or testimony that would allow the Commission to conclude that they have been improperly billed or that there is any problem with the transformer or ground wire serving their home.

Even if the Commission would somehow conclude that the Duffys have met their burden of proving their claim, the relief requested by the Duffys is simply not authorized by the Public Utility Code. The Duffys ask for reimbursement of costs they expended to investigate their complaint and a “reasonable sum for the effort of the Duffy’s for their time and materials” to pursue their claim. The Commission does not have the authority to grant such relief. It is well settled that the remedial and enforcement powers vested in the Public Utility Commission by the Utility Code were designed to allow the Commission to enforce its orders and regulations, but not to empower the Commission to award damages or to litigate a private action for damages on behalf of a complainant. *Poorbaugh v. Pennsylvania Public Utility Commission*, 666 A.2d 744 (Pa. Cmwlth. 1995); appeal denied 698 A.2d 69 (Pa. 1995).

The Duffys also ask the Commission to Order Penn Power to “reimburse the Duffys’ costs of the electrical bills, being the difference between the average monthly bill from January 2001 through and including July, 2007 and the monthly bills from August 2007 through and including the present month bills.” Alternatively, the Duffys request that the Commission Order that the Duffys’ monthly billing would not exceed the average monthly bill from February 1993 through August 2007”. This relief requested

by the Duffys would be unprecedented in the history of the Commission, and would essentially undermine the entire system of wathour meter-based billing.

The other relief requested by the Duffys – “removal or replacement of the oversized transformer and in ground service wire” is clearly not warranted by evidence in the record. There is no evidence to support the Duffys’ allegations that the transformer is oversized, that the ground wire is undersized, or that any of Penn Power’s facilities are not functioning properly.

IV. CONCLUSION

At bottom, this case is quite simple. It involves Complainants who do not agree with the electricity consumption amounts that are reflected on their bills from Penn Power. Penn Power has proven that that consumption amounts on the bill are based on valid meter readings, and that the meters capturing the consumption have tested as accurate under the Commission’s guidelines. Penn Power has gone a step further and installed socket readers at the Complainants’ residence to corroborate the meter readings. The socket recorder consumption measurements exactly matched the meter readings, providing further proof that the meters were functioning properly. Penn Power then went yet a step further, and conducted a consumption audit at the Complainants’ property to confirm that the equipment and appliances on the property could easily consume the amount of electricity reflected on the bills.

The Complainants have not provided any evidence to rebut the overwhelming evidence that supports the consumption figures on their bills. In fact, they have not even attempted to challenge the accuracy of the meters or the results of the socket recorder

tests. As such, the evaluation of the case should end there. With no proof that the meters were not recording the correct amount of consumption, the Complainants have not established the allegations of their Complaint by a preponderance of the evidence, and their Complaint must be denied.

All of the Complainants discussion about the construction of their home in 1993, and correspondence with the company about depth of ground wires, and their discussions with their electrician about voltage readings are completely irrelevant to the disposition of this case. All of this discussion and accompanying documentation is merely a distraction to cover for the lack of any merit to the Complaint. The Complainants' case is comprised of nothing more than repetition of meaningless and unfounded accusations. The Complainants have failed to carry their burden of proving their case by a preponderance of the evidence, and therefore their Complaint must be dismissed.

V. PROPOSED ORDERING PARAGRAPHS

Wherefore, it is hereby ORDERED, that:

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa. C.S. §701
2. Pursuant to 66 Pa. C.S. §§332(a), the burden of proof in this proceeding is on the Complainants.
3. The Complainants have not met their burden of proving that they are entitled to relief. 66 Pa. C.S. §§332(a)
4. That the complaint of Chet and Michelle Duffy against Pennsylvania Power Company at Docket No. C-2008-2063047 is denied, with prejudice.

5. That the record at Docket No. C-2008-2063047 is marked closed.

WHEREFORE, for all of the reasons stated above, Penn Power Company respectfully requests that this Complaint be dismissed with prejudice.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Gruin', is written over a horizontal line.

Michael A. Gruin (I.D. No. 78625)
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Counsel for Pennsylvania Power Company

Dated: August 13, 2009

**BEFORE THE
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| CHET AND MICHELE DUFFY | : | |
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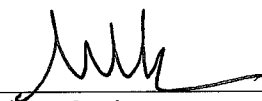
CERTIFICATE OF SERVICE

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 Electronic Mail and Federal Express

Chet and Michele Duffy
135 Liberty Road
P. O. Box 295
Harmony, PA 16037

Hon. Katrina Dunderdale, Administrative Law Judge
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Ave.
Pittsburgh, PA 15222



Michael A. Gruin

DATED: August 13, 2009