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October 26, 2009

James J. McNulty, Secretary
Commonwealth of Pennsylvania
Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: *Betty Lou Shoup, Janet E. Fochtman, John Sirko, Jr., Dorothy A. Ford, Janice Smith, David M. Hirko, St. John Vianney Catholic Church, Jackson Township Water Authority, Devon Saintz, Jackson Township, Douglas and Tamara Simmons, Harry Baker, Stephen E. Barr, Ronald R. Vargo, Warren W. Miller, Rodney Hagerich, Thomas G. Baker, John M. Ocipa, Mary Ann Johns, Robert and Anita Donahue, Harvey Holsopple, and Carl and Cindy Rummel*
v.
Pennsylvania Electric Company

Docket Nos.: C-2008-2031300; C-2008-2035103; C-2008-2032340; C-2008-2032359; C-2008-2032375; C-2008-2032402; C-2008-2032786; C-2008-2034113; C-2008-2034348; C-2008-2035086; C-2008-2035213; C-2008-2035264; C-2008-2040524; C-2008-2040534; C-2008-2040565; C-2008-2040594; C-2008-2040905; C-2008-2044886; C-2008-2047240; C-2008-2043935; C-2008-2045451; and C-2008-2051394.

Dear Secretary McNulty:


Enclosed for filing on behalf of Pennsylvania Electric Company ("Penelec") please find Petition for Clarification and Stay of the Commission Order entered on October 9, 2009 in the above-captioned proceedings. This Petition was filed electronically today.

Because the deadline for complying with the compliance requirements of the October 9, 2009 Order is November 9, 2009, Penelec respectfully requests consideration of this Petition at the Commission's November 5, 2009 Public Meeting.

A copy of this Petition has been served on all parties in accordance with the enclosed certificate of service. If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

STEVENS & LEE



Michael A. Gruin

Enclosure

cc: Chairman James H. Cawley
Vice Chairman Tyrone Christy
Commissioner Wayne E. Garner
Commissioner Kim Pizzingrilli
Commissioner Robert F. Powelson
Bohdan R. Pankiw, Esq., Law Bureau
Cheryl Walker Davis, Office of Special Assistants
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|----------------------------------|---|----------------|
| Betty Lou Shoup | : | C-2008-2031300 |
| John Sirko, Jr. | : | C-2008-2032340 |
| Dorothy A. Ford | : | C-2008-2032359 |
| Janice Smith | : | C-2008-2032375 |
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| Ronald R. Vargo | : | C-2008-2040534 |
| Warren W. Miller | : | C-2008-2040565 |
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| Harvey Holsopple | : | C-2008-2047240 |
| Carl and Cindy Rummel | : | C-2008-2051394 |
| | : | |
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| v. | : | |
| | : | |
| Pennsylvania Electric Company | : | |

**PETITION OF PENNSYLVANIA ELECTRIC COMPANY FOR
CLARIFICATION AND STAY**

AND NOW, comes Pennsylvania Electric Company (“Penelec” or “the Company”), pursuant to 66 Pa. C.S. § 703(g) and 52 Pa. Code § 5.572, and respectfully requests Clarification of the Pennsylvania Public Utility Commission’s (“Commission”) October 9, 2009 Opinion and Order (“the Reconsideration Order”) regarding the Complaints in the above-captioned matter, and requests that the Commission stay the

effect of the Ordering Paragraphs of the Reconsideration Order pending disposition of the merits of this Petition.

INTRODUCTION

Penelec is submitting this Petition to obtain clarification of the obligations that were imposed on the Company by the Commission's October 9, 2009 Reconsideration Order in this matter. The Reconsideration Order appears to adopt and incorporate certain sections of the Commission's original May 8, 2009 Order in this matter ("the May 8th Order"), as well as certain aspects of the November 19, 2008 Initial Decision in this matter ("the Initial Decision"). However, the Reconsideration Order also appears to include findings and directives that differ from both the May 8th Order and the Initial Decision. The Reconsideration Order appears to clarify that Penelec is not being ordered to halt the phase-out of its Outdoor Area Lighting Service, yet the Reconsideration Order does not rescind the prior finding that the public interest will be served by Penelec continuing to provide Outdoor Area Lighting Service to all customers now receiving it. Because the May 8th Order, and by incorporation the Reconsideration Order, require Penelec to "serve a notice on all customers affected or potentially affected by this Opinion and Order explaining the Order, its effect, and Penelec's proposed course of action", Penelec is seeking clarification of the exact meaning of the Commission's Reconsideration Order and Penelec's obligations under that Order so that affected customers can be properly informed of the effect of the Order. Furthermore, because the Reconsideration Order requires Penelec to take several actions within 30 days of the issuance of the Reconsideration Order, Penelec is requesting a Stay of the Ordering

Paragraphs of the Reconsideration Order until such time as the Commission rules on the present Petition for Clarification.

DISCUSSION

1. Outdoor Area Lighting service (“OAL service”) is a tariffed service that Penelec offers for the lighting of outdoor areas and private roadways from dusk to dawn. The service is provided from the Company’s existing distribution system.
2. Penelec began offering OAL service in 1962. Currently, there are approximately 23,806 locations receiving the service.
3. In 2006, Penelec made the decision to restrict and phase-out its OAL service consistent with its 2006 Rate Transition Plan that was filed with the Commission. This plan included the restriction of OAL service to existing customers at existing locations as of January 11, 2007, and provided that OAL would be eliminated for all customers by the earlier of (1) the termination date of a customer’s existing outdoor lighting contract or (2) June 10, 2012.
4. After a series of hearings and Public Input Sessions, the Commission approved the components of Penelec’s Rate Transition Plan that included the OAL tariff changes. No party objected to the OAL tariff changes. On January 11, 2007, in Docket No. R-00061367, the Commission issued its decision on Penelec’s Rate Transition Plan, and approved the tariff change related to the phase-out of OAL service.
5. Subsequently, Penelec filed tariff revisions to reflect the phase-out of OAL service. On April 13, 2007, the Commission entered an Order approving those revised

tariffs.¹ Penelec has relied on the Order approving its tariff revisions and implemented the revised tariff provisions.

6. The present case stems from 22 Formal Complaints that were filed to protest the phase-out of Penelec's residential OAL service, approximately eighteen months after the Commission approved the phase-out of that service.

7. Because the Complaints raised identical issues, they were consolidated and scheduled for an initial hearing on September 15, 2008. The hearing was held as scheduled, before ALJ Meehan.

8. Only 2 of the 22 Complainants - Betty Lou Shoup and Janet E. Fochtman- appeared at the evidentiary hearing. Both Complainants appeared via telephone.

9. Penelec moved for the dismissal of the Complaints of those who did not appear at the hearing. That motion was granted on the record.

10. The evidence submitted by the Complainants consisted solely of the testimony of Mrs. Shoup and Mrs. Fochtman. The Complainants did not submit any exhibits into the record.

11. At the hearing, Penelec presented the testimony of one witness and entered two exhibits into the record. Penelec did not attempt to contradict the testimony of Mrs. Shoup or Mrs. Fochtman, as their testimony consisted mainly of their own personal safety concerns and some anecdotal descriptions of local nighttime crimes and woodland animal activity.

12. Penelec, through its witness, defended against the Complaints by demonstrating that the relief sought by the Complainants was precluded by Penelec's tariff and by two

¹ See Opinion and Order entered January 11, 2007 at Docket Nos. R-00061366, R-00061366C0001, R-00061366C0002, R-00061366C0003, R-00061366C0005 and R-00061366C0013, and Order dated April

recent Commission Orders. Penelec's witness explained the 2006 Rate Transition Plan proceeding that included Penelec's request for approval to eliminate OAL service, the various forms of notices that informed the public of the right to intervene in the Rate Transition Plan proceeding, and the final Order issued by the Commission which approved Penelec's plan. Penelec's witness also testified that the Commission had recently decided a separate Formal Complaint case involving a protest to the elimination of Penelec's OAL service, the matter of *Thomas Jarzab v. Penelec*, and the witness explained that the Commission had denied the Complaint in its entirety. Penelec's witness also explained the ramifications of the Federal Energy Policy Act of 2005, which prohibits the manufacture or import of mercury vapor bulbs, effective as of January 1, 2008, and she also clarified that the municipal street lighting service offered by the Company was entirely different than its OAL service offering, and that the Company was not eliminating its municipal street lighting service.

13. The total record in this proceeding consisted of the 42-page transcript from the September 15, 2008 hearing and the two Penelec exhibits.

14. On November 19, 2008, ALJ Meehan issued an Initial Decision that sustained the Complaints of Mrs. Shoup and Mrs. Fochtman.² The Initial Decision noted that the Complaints were filed against Penelec's existing, approved tariff, and therefore the burden is on the complaining parties to present evidence to prove that the Penelec tariff pertaining to the elimination of the outdoor lighting service is unlawful, unjust, and unreasonable. The Initial Decision acknowledged that the Commission had approved

13, 2007 approving Penelec's Tariff Compliance filings related to restriction of OAL service.

² The ALJ also confirmed his ruling made at the conclusion of the hearing granting Penelec's motion to dismiss the Complaints of those Complainants who did not appear at the hearing to prosecute their respective Complaints and dismissed those Complaints with prejudice. I.D. at 1-2.

Penelec's elimination of OAL service, and acknowledged that the Commission had recently dismissed a similar Complaint related to the elimination of Penelec's OAL service. But the ALJ found that based on the evidence submitted, the Complainants had overcome the strong presumption that tariffs approved by the Commission are just and reasonable, and had carried their burden of proving that Penelec's tariff was unreasonable.

15. Penelec filed three timely Exceptions to the Initial Decision. Penelec's Exceptions were:

- 1) the Initial Decision should be reversed because it fails to follow and directly conflicts with two binding commission orders authorizing the elimination of Penelec's outdoor area lighting service
- (2) the Shoup and Fochtman complaints are nearly identical to the *Jarzab* complaint and do not raise different issues than those raised in *Jarzab*
- (3) the Complainants did not establish a prima facie case that Penelec's elimination of outdoor area lighting service is unjust or unreasonable

16. The Complainants did not file Replies to the Exceptions.

17. By Opinion and Order dated May 8, 2009, the Commission denied Penelec's Exceptions and affirmed the Initial Decision sustaining the Complaints, as modified by the Motion of Commissioner Kim Pizzigrilli. The Order found "that the public interest will be served by Penelec continuing to provide Outdoor Area Lighting Service to all customers now receiving it."³ The May 8th Order included the following Ordering Paragraphs:

" IT IS ORDERED:

1. That the Exceptions of Pennsylvania Electric Company to the Initial Decision of Administrative Law Judge Robert P. Meehan are denied.

³ May 8th Order, at p. 9

2. That the Complaints of Betty Lou Shoup and Janet E. Fochtman against Penelec are sustained.

3. That the November 19, 2008 Initial Decision of Administrative Law Judge Meehan is adopted, consistent with this Opinion and Order.

4. That a copy of this Opinion and Order be served on the Metropolitan Edison Company.

5. That within thirty (30) days of the entry date of this Opinion and Order that Pennsylvania Electric Company is to submit to the Commission's Bureau of Conservation, Economics and Energy Planning a plan for replacing outdoor mercury vapor lighting with outdoor lighting that is in compliance with existing Federal and state laws and regulations.

6. That after reviewing this decision, Pennsylvania Electric Company and Metropolitan Edison Company are encouraged to advise the Commission's Bureau of Conservation, Economics and Energy Planning in writing, within thirty (30) days of the entry date of this Opinion and Order whether, upon further consideration, they still plan to phase-out Outdoor Area Lighting Service to Penelec's former Elkland Service Area customers served under this tariff or to Met-Ed's customers receiving Outdoor Area Lighting Service.

7. That within thirty (30) days of the entry date of this Opinion and Order, Penelec is to serve a notice on all customers affected or potentially affected by this Opinion and Order explaining the Order, its effect, and Penelec's proposed course of action. The text of that draft is to be prepared in conjunction with the Commission's Bureau of Consumer Services with a copy of the issued notice filed with the Commission at this docket."

18. On May 22, 2009, Penelec filed its Petition for Reconsideration, Rehearing, and Stay.

19. By Order entered May 28, 2009, the Commission acted on the Petition for Reconsideration so as to retain jurisdiction to further address the Petition on the merits, and granted reconsideration within the meaning of Pa. R.A.P. 1701(b)(3), pending review of and further consideration on the merits of the Petition.

20. By Secretarial Letter dated June 3, 2009, without reaching the merits of Penelec's Petition for Stay, the Commission granted Penelec an extension of time in which to

comply with the requirements of Ordering Paragraph Nos. 5, 6 and 7 of the May 8th Order until the entry of a Final Order disposing of Penelec's Petition for Reconsideration.

21. On October 9, 2009, the Commission entered the Reconsideration Order. In the Reconsideration Order, the Commission held that Penelec met the *Duick* standard for reconsideration by raising an argument not previously heard alleging error of law, and the Commission proceeded to address the merits of Penelec's Petition. In response to Penelec's argument that Met-Ed had been denied due process, the Commission clarified that it was not ordering Met-Ed to state whether it intended to eliminate Outdoor Area Lighting service, but rather that it was making a "request" of Met-Ed. The Commission stated that "we hoped to elicit a statement from both Penelec and Met-Ed as to whether they still plan to phase-out Outdoor Area Lighting Service."

22. The Reconsideration Order denied Penelec's request for Rehearing. However, in doing so, the Reconsideration Order set forth language that seemed to clarify that the May 8th Order did not require Penelec to halt the phase-out of its Outdoor Area Lighting Service. Specifically, the Reconsideration Order stated the following:

"With respect to the appropriateness of rehearing, we find that no rehearing in this matter is warranted. In its Petition, Penelec seems to view our Opinion and Order of May 8, 2009, as a *de facto* rescission of our Opinion and Order of January 11, 2007, at Docket No. R-00061367. That Opinion and Order accepted the recommendation of the ALJs assigned to that case that Outdoor Lighting Service be restricted to existing customers and phased out.⁴ Nothing in our Opinion and Order of May 8, 2009, alters that decision. A considered reading of the ordering paragraphs of our Opinion and Order of May 8, 2009, shows that we are asking Penelec to provide information with respect to that phase out procedure in light of the safety concerns raised by the Complainants in this matter, and that Penelec conduct the phase out in compliance with existing Federal and state laws and regulations." (Emphasis added).....⁵

⁴ *Pa. PUC, et al. v. Pennsylvania Electric Company*, Docket No. R-00061367 (Order entered January 11, 2007) at pp. 245-246.

⁵ Reconsideration Order, at p. 6

“Further, it was not the Commission’s intent to amend or to rescind its January 11, 2007 Opinion and Order in this proceeding. Our May 8, 2009 Opinion and Order is limited in effect and is focused on addressing issues of public safety raised by the original Complainants in this matter. This is well within the discretion of the Commission.” (Emphasis added).....⁶

23. The above two paragraphs from the Discussion section of the Reconsideration Order clearly state that the Commission was not altering, amending, or rescinding its January 11, 2007 Order in Docket No. R-00061367 that approved the phase-out of Penelec’s OAL service. However, the Reconsideration Order did not reverse the portions of the May 8th Order which sustained the Complaints and which held that the public interest will be served by Penelec continuing to provide Outdoor Area Lighting Service to all customers now receiving it. This is an internal conflict in the Reconsideration Order.

24. The Reconsideration Order concluded with the following Ordering Paragraphs:

“IT IS ORDERED:

1. That the Petition for Reconsideration/Rehearing filed on May 22, 2009, by Pennsylvania Electric Company, is hereby denied, consistent with the foregoing Opinion and Order.

2. That the requirements of the Opinion and Order of May 8, 2009, are reinstated effective upon the date of entry of this Opinion and Order.

3. That upon completion of the requirements set forth in the Opinion and Order entered May 8, 2009, this matter be marked closed.”

25. The Reconsideration Order reinstates the requirements of the May 8th Order. Therefore, no later than November 9, 2009, Penelec is required to submit a plan for replacing outdoor mercury vapor lighting with outdoor lighting, advise CEEP whether the Company still plans to phase-out Outdoor Area Lighting Service to Penelec’s former

⁶ Reconsideration Order, at p. 8

Elkland Service Area customers served under this tariff or to Met-Ed's customers receiving Outdoor Area Lighting Service, and serve a notice on all customers affected or potentially affected by this Opinion and Order explaining the Order, its effect, and Penelec's proposed course of action.

26. Based on the Reconsideration Order's statements that the Commission was not amending, altering, or rescinding its January 11, 2007 Order in Docket No. R-00061367 that approved the phase-out of Penelec's OAL service, it is Penelec's understanding that the phase-out of OAL service pursuant to Penelec's tariff is permitted to continue. As stated in the Reconsideration Order "the May 8, 2009 Opinion and Order is limited in effect and is focused on addressing issues of public safety raised by the original Complainants in this matter." Therefore, Penelec intends to prepare a notice to all customers who are affected by the May 8th Order which addresses the public safety issues raised by the Complainants. Based on the language of the Reconsideration Order, Penelec understands that it has not been instructed to halt the phase-out of OAL service, and therefore, the notice will inform the OAL customer as such.

27. However, a source of confusion is the fact that the Reconsideration Order does not modify the Commission's sustaining of the Complaints, or of the finding that that the public interest will be served by Penelec continuing to provide Outdoor Area Lighting Service to all customers now receiving it.

28. Therefore, in light of the apparent differences in findings between the May 8th Order and the Reconsideration Order, and the apparent differences between the Discussion section and the Ordering Paragraphs of the Reconsideration Order, Penelec believes it is necessary to obtain clarification from the Commission on the precise

meaning of its Reconsideration Order prior to serving the required notices on all potentially affected OAL customers. Penelec also believes obtaining clarification now will avoid potential disputes or misunderstandings with the Commission and staff, if Penelec's understanding of the Reconsideration Order differs from the Commission's intended meaning.

29. Penelec also respectfully requests that the requirements set forth in the Ordering Paragraphs of the May 8th Order be further stayed until such time as the Commission rules on the instant Petition for Clarification. As set forth above, the May 8th Order would require Penelec to undertake several actions within 30 days of entry of the Order, including notifying affected customers of the meaning and effect of the Commission's Order, and Penelec's proposed course of action. Until clarification of the Order and its effect are obtained, Penelec will be unable to properly inform its customers of the meaning and effect of the Order.

30. In reviewing Motions for Stay, this Commission applies the criteria set forth in *Pa. Public Utility Commission v. Process Gas Consumers Group*, 467 A.2d 805 (1983) and *Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Pittsburgh Limousine, Inc.*, A-00107834C9801, 2000 PA PUC LEXIS 3 (Jan. 13, 2000). Under *Process Gas*, the Commission evaluates the following standards when deciding a request for a Stay:

1. whether the petitioner has made a strong showing that he is likely to prevail on the merits;
2. whether the petitioner has shown that without the requested relief, he will suffer irreparable injury;
3. that the issuance of a stay will not substantially harm other interested parties in the proceedings;
4. that the issuance of a stay will not adversely affect the public interest.

Process Gas, 467 A.2d at 808-809.

31. Penelec's request for a Stay satisfies all four of the *Process Gas* criteria.

32. Penelec has made a strong showing that Clarification is required, due to the inconsistencies in the Discussion section and the Ordering Paragraphs of the Reconsideration Order.

33. Penelec will be irreparably harmed if a Stay is not granted. If the Commission does not Stay the entry of its Order, Penelec will be required to prepare a notice to customers to inform them of the effect of the Commission's Order and Penelec's proposed course of action. Due to the uncertainty of the effect of the Order, requiring Penelec to mail notices to customers before obtaining clarification of the meaning of the Order could create widespread confusion among Penelec's customers, and could result in new informal and formal complaints being filed against Penelec, as well as potentially put Penelec in violation of the Commission's Orders.

34. A Stay will not adversely harm any parties to this case. To the contrary, a Stay will benefit Penelec, its customers, and the Commission. A stay will allow for clarification of the Commission's Order prior to the mailing of notices to customers, thereby preventing confusion and misunderstanding. Furthermore, a stay will have no impact on the service being provided to customers. Customers who are receiving OAL service will continue to receive that service, because Penelec's tariff calls for OAL service to be provided through 2012.

35. A Stay will not adversely affect the public interest. To the contrary, a Stay will Penelec receive clarification as to the precise meaning and effect of the Commission's

Order and will prevent a notice mailing to customers that may incorrectly state the effect of the Commission's Order.

36. Because the deadline for complying with the Commission's directives to Penelec expires on November 9, 2009, Penelec respectfully requests that the Commission take preliminary action on this Petition for Clarification at its November 5, 2009 public meeting to preserve jurisdiction so as to permit further consideration of the Petition on its merits. Penelec requests that the Commission grant an extension of time to comply with the directives of the May 8th Order until thirty (30) days from the entry of a Final Order disposing of Penelec's Petition for Clarification.

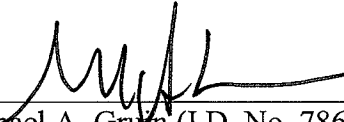
37. In the alternative, Penelec requests that pursuant to 52 Pa. Code § 1.15 the Commission grant a further extension of time in which to comply with the requirements of Ordering Paragraph Nos. 5, 6 and 7 of the May 8th Order until thirty (30) days from the entry of a Final Order disposing of Penelec's Petition for Clarification.

WHEREFORE, for the reasons set forth above, Penelec respectfully requests that the Commission

- issue a new Order clarifying its October 9, 2009 Reconsideration Order in this matter, specifically addressing whether the Commission has ordered Penelec to halt the phase-out of its OAL service, and
- issue a further Stay of the implementation of the Commission's May 8th Order until thirty days after the entry of a final Commission Order addressing the merits of this Petition for Clarification, or in the alternative

pursuant to 52 Pa. Code § 1.15 grant a further extension of time for Penelec to comply with the May 8th Order until thirty (30) days from the entry of a Final Order disposing of Penelec's Petition for Clarification.

Respectfully submitted,



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Counsel for Pennsylvania Electric Company

DATED: October 26, 2009

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| Harvey Holsopple | : | C-2008-2047240 |
| Carl and Cindy Rummel | : | C-2008-2051394 |

v.

Pennsylvania Electric Company

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 REGULAR FIRST-CLASS MAIL

Betty Lou Shoup
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Mineral Point, PA 15942

Janet E. Fochtman
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Johnstown, PA 15909-4414

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Davon Saintz
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Douglas & Tamara Simmons
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Johnstown, PA 15909

Jackson Township Water Authority
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Johnstown, PA 15909

Jackson Township
C/O David M. Hirko
2949 William Penn Avenue
Johnstown, PA 15909

Harry Baker
324 Courer Avenue
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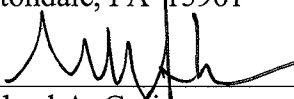
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Johnstown, PA 15909

Mary Ann Johns
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Johnstown, PA 15909

Harvey Holsopple
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Vintondale, PA 15961

Carl and Cindy Rummel
381 Lynx Lane
Vintondale, PA 15961


Michael A. Gruin

DATED: October 26, 2009