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November 9, 2009

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

Re: Guy and Virginia Mauro v. Pennsylvania Electric Company
Docket No. C-2009-2114087

Dear Secretary McNulty:

Enclosed for filing are the Reply Exception of Pennsylvania Electric Company in the above-referenced matter. The Reply Exceptions were electronically filed today. Copies have been served in accordance with the attached Certificate of Service.

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

Very truly yours,

STEVENS & LEE


Michael A. Gruin

cc: Certificate of Service

Cheryl Walker Davis, Director, Office of Special Assistants

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GUY and VIRGINIA MAURO
Complainant

v.

PENNSYLVANIA ELECTRIC COMPANY:
Respondent

:
:
:
:
:

Docket No. C-2009-2114087

**REPLY EXCEPTIONS OF
OF PENNSYLVANIA ELECTRIC COMPANY**

Pursuant to 52 Pa Code § 5.535, Pennsylvania Electric Company (“Penelec”) hereby replies to the Exceptions filed by the Complainants Guy and Virginia Mauro, as follows:

The Mauro Complaint relates solely to issues regarding the validity and scope of a written right-of-way document. In their Complaint, the Complainants state that they “want the PUC to conduct a formal hearing on the Right of Way Agreement of 1924 and 1951 which is so broad in scope, arbitrary and limitless in definition.” The Complainants assert that Penelec has conducted vegetation maintenance that is outside its lawful Right-Of-Way (“ROW”).

It is well-established that the Pennsylvania Public Utility Commission (“Commission”) is without subject matter jurisdiction to rule upon the validity or scope of an easement or right-of-way, as such jurisdiction is exclusively within the Courts of Common Pleas. Accordingly, Penelec filed Preliminary Objections to the Complaint, seeking dismissal for lack of subject matter jurisdiction. Penelec produced a copy of a one-hundred-sixty-five (165) foot transmission right of way over the Complainants’ property which gives Penelec the authority to perform vegetation maintenance on that right of way. The Complainants did not deny the existence of PENELEC’s 165 foot ROW document, and in fact such document is specifically mentioned in

the Complaint. Rather, the Complainant's seek to challenge the scope and validity of the 165 foot ROW document.

By Initial Decision dated October 9, 2009, Chief Administrative Law Judge Veronica A. Smith granted Penelec's Preliminary Objections and dismissed the Mauros' Complaint. ALJ Smith correctly concluded that the Commission has only asserted jurisdiction in cases disputing the existence of an easement rather than the scope and validity of one.¹ The ALJ noted that there is no factual dispute that a right-of-way exists as both parties have attached copies of documents to their pleadings showing different right-of ways.² Since the Commission's jurisdiction does not extend to determining the scope or validity of an easement, the Commission cannot grant the relief requested by Complainants in this case, i.e. to conduct a formal hearing to review, interpret and/or modify the scope of the of "1924 and 1951" right-of-way agreement. Such jurisdiction is exclusively within the Courts of Common Pleas. With respect to other allegations made in the Complaint, the ALJ correctly concluded that the Mauros' Complaint does not set forth any act or thing done or omitted to be done by Respondent in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission, and therefore, under 66 Pa. C.S. §701 and 52 Pa. Code §5.22(a)(4), dismissal is appropriate.

The Mauros filed Exceptions to the Initial Decision on October 30, 2009. The Exceptions allege violation of due process, bias by the Commission, and general public interest concerns.

The Exceptions of Mr. and Mrs. Mauro should be denied, and the Initial Decision should be upheld by the Commission. ALJ Smith's Initial Decision correctly applied the standard for

¹ See Initial Decision, at p.p. 6-7 (citing Messina v Bell Atlantic-Pennsylvania, Docket No. C-00968225 (Order entered September 23, 1998); Robert S.J. Nigro v. PPL Electric Utilities Corp., Docket No. C-00003242 (Order entered October 26, 2004), and Stavnicky v PPL Electric Utilities Corp., Docket No. C-20043368 (Order entered July 13, 2005))

resolving preliminary objections, and assumed for decisional purposes that the factual allegations of the Complaint are true. As the ALJ concluded, the Commission's jurisdiction does not extend to determining the scope or validity of an easement, and the Commission cannot grant the relief requested by Complainants in this case, i.e. to conduct a formal hearing to review, interpret and/or modify the scope of the of "1924 and 1951" right-of-way agreement.

The Mauros' Exceptions do not present any grounds for overturning the Initial Decision. The Mauros were not denied due process. The Commission's Rules of Administrative Practice and Procedure permit the filing of Preliminary Objections. 52 Pa. Code Section 5.101. Pursuant to 52 Pa. Code §5.101(a)(1), a formal complaint may be dismissed without a hearing where there is a lack of Commission jurisdiction. The Mauros were served with a copy of Penelec's Preliminary Objections and were given the opportunity to respond. Where a question presented to the Commission is one of law, there is no necessity to hold a hearing. White Oak Borough Authority v. Pennsylvania Public Utility Commission, 183 A.2d 502, 175 Pa.Super. 114. The Commission is granted discretion to dismiss a complaint without a hearing if a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d). A hearing is necessary only to resolve disputed questions of fact, and is not required to resolve questions of law, policy or discretion. Dee-Dee Cab, Inc. v. Pa. Public Utility Comm., 817 A.2d 593, petition for allowance of appeal denied, 836 A.2d 123 (Pa. Commw. 2003); Lehigh Valley Power Committee v. Pa. Public Utility Comm., 563 A.2d 548 (Pa. Commw. 1989); Edan Transportation Corp. v. Pa. Public Utility Comm., 623 A.2d 6 (Pa. Commw. 1993). Here, as noted by the ALJ in the Initial Decision, it is clear from the pleadings that the Commission does not have subject matter jurisdiction, because there is no factual dispute that a right-of-way exists as both parties have attached copies of documents to their pleadings showing different right-of ways. As such,

² Initial Decision, at p. 6

it was proper and appropriate to dismiss the Complaint for lack of subject matter jurisdiction based on Penelec's preliminary objections without holding a hearing. As ALJ Smith noted, jurisdiction over the scope of an easement lies exclusively within the Courts of Common Pleas.

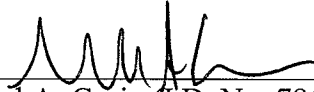
While the Complainant's Complaint contains other averments, they relate solely to the past actions of the Court of Common Pleas of Blair County, the Blair County Sheriff's Department, and the Pennsylvania State Police in connection with criminal proceedings involving Mr. Mauro for violating a permanent injunction issued by the Blair County Court of Common Pleas. As the ALJ Smith noted, these allegations by the Mauros do not set forth any act or thing done or omitted to be done by Penelec "in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission." 66 Pa. C.S. §701; 52 Pa. Code §5.22(a)(4). Therefore, these allegations do not form the basis for Commission subject matter jurisdiction, and dismissal is proper.

The Mauros' allegations of bias by the Commission are also unfounded, and provide no legitimate grounds for reversing the decision of Chief ALJ Smith. The Mauros can point to no evidence whatsoever to support their allegations of bias by ALJ Smith or the Commission. ALJ Smith carefully and thoroughly reviewed the pleadings in the case, and correctly applied the well-established law regarding Commission subject matter jurisdiction.

The Mauros remaining Exceptions also provide no legitimate basis for reversing the Initial Decision. Their third Exception amounts to a question about what issues are within the Commission's jurisdiction, rather than a valid argument against the finding that their Complaint is not within the Commission's jurisdiction. Their fourth Exception merely criticizes the Commission and its staff for indifference. Neither of these Exceptions justify reversal of the ALJ's Initial Decision.

Therefore, for the reasons set forth above, Penelec requests that the Commission deny the Mauros' Exceptions and issue an Order upholding the Initial Decision in its entirety.

Respectfully submitted,



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Counsel for Pennsylvania Electric Company

Dated: November 9, 2009

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Docket No. C-2009-2114087

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Reply Exceptions 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
Guy and Virginia Mauro
587 Showalter Road
East Freedom, PA 16637.



Michael A. Gruin

DATED: November 9, 2009