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James McNulty, Secretary
Public Utility Commission
2nd Floor North
Commonwealth Keystone Building
Harrisburg, PA 17110

Re: DCNR v. PECO
Docket No: C-2008-2051267

Dear Secretary McNulty:

The attached document is the Department's Post Hearing Brief, sent also this day by electronic mail to counsel for PECO and Administrative Law Judge Fordham.

Thank you for your attention to this matter.

Sincerely yours,

Virginia J. Davison
Assistant Counsel

COMMONWEALTH OF PENNSYLVANIA
IN THE
PUBLIC UTILITY COMMISSION

C-2008-2051267

JOHN NORBECK, DIRECTOR OF THE BUREAU OF STATE PARKS
OF THE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES,
COMMONWEALTH OF PENNSYLVANIA

v.

PECO ENERGY COMPANY

POST HEARING BRIEF

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

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STATEMENT OF THE CASE

The instant case, originally filed in the Commission on or about July 11, 2008, alleges that the Philadelphia Electric Company (PECO) failed to provide reasonable service to the Department of Conservation and Natural Resources (DCNR) of the Commonwealth when the company refused to repair or replace a buried primary electric cable in Ridley Creek State Park, claiming the line is a customer facility.

PECO filed its answer, New Matter, and Preliminary Objections on or about August 7, 2008. The Commission sustained several of PECO's Preliminary Objections and overruled others.

DCNR amended its Complaint on or about October 24, 2009 to include a request that the company be charged a penalty for failure to provide reasonable service. Discovery proceeded; an evidentiary hearing was requested and finally scheduled for October 14, 2009.

Administrative Law Judge Cynthia Fordham presided at the hearing.

STATEMENT OF QUESTIONS

1. What was the classification of the 3-phase, 5,000-volt line which ran underground from Gradyville Road to the transformer at the park office from 1972 to 2007?

2. Should PECO have installed that line?

3. Was PECO responsible for maintaining and repairing that line?

4. Was PECO responsible for installing and maintaining the single-phase lines which ran from the junction box to transformers east and west of the 3-phase line?

5. Should PECO have installed the new line in 2007?

6. Is PECO's failure to install the new line in 2007 a failure to provide reasonable service?

7. Was PECO responsible for the cost of the 2007 installation up to the cost for an aerial line, with the additional cost for an underground installation to be borne by DCNR?

8. Is PECO's failure to pay for the new line in 2007, up to the cost of an aerial line, a failure to provide reasonable service?

PROPOSED FINDING OF FACT

1. A 4,160-volt underground electric line ran from Gradyville Road to the park office in Ridley Creek State Park, installed by the Park's contractor because PECO's predecessor refused to install a buried line which the park preferred for aesthetic reasons. (Forrey)

2. The company did not refuse to install an aerial line. (Forrey)

3. There is no testimony about whether the company gave the park any reason for its refusal to install an underground line. (Forrey)

4. The company did not offer to pay for an underground line. (Forrey)

5. The company did not offer to share the cost for an underground line. (Forrey)

6. The present underground line serves four separate accounts after the electricity which it carries is transformed to lower voltage:
   a. Two accounts serve park purposes: (DCNR Ex. 8)
      - General service commercial account 18726-00602.
      - General service commercial account 80214-01405.

   b. A third account serves a residence which is part of a leasehold owned by Stacey Bamash:
      - Residential account 83306-00301. (DCNR Ex. 12)

   c. A fourth account serves a leasehold owned by the Hidden Valley farm:
      - General service commercial account 43477-00601. (DCNR Ex. 13)

   d. Each account holder is an independent customer which pays its own bill for the power it uses.

7. In 1972, when the facility was installed, the installation included four transformers and five meters. (DCNR Ex. 1, p.2)

8. The facility now includes two active transformers and four meters. (McChesney)

9. In 1940 the company entered in to a right-of-way agreement with DCNR's predecessors, the Jeffords. The right-of-way allowed the company to install, among other things, all facilities necessary for distributing electricity in the area later used for the 5,000 volt line. (DCNR Ex. 2)

10. The right-of-way is still active. (Pierce)

11. The right-of-way includes the right of the company to install lines which radiate from the pole in Gradyville Road. (Pierce and DCNR Ex. 2)

12. The 5,000 volt line radiates from the pole in Gradyville Road. (DCNR Ex. 1, p.2)

13. The company's supply line runs aerially along Gradyville Road in a utility right-of-way. (Complaint Para. J)

14. The aerial supply line was extended by a general distribution line extension which ran through a transformer on the pole, then under Gradyville Road. (DCNR Ex. 1)

15. The underground line described in paragraph 14 is transformed on the pole to 4,160 volts in the 5,000-volt class. (DCNR Ex. 1)

16. The company owned and still owns all the transformers and meters in the installation. (DCNR Ex. 1, p.2 and tariff sec.)

17. There was no transformer or meter at the spot marked "splice box" next to the Road on DCNR Ex. 1. (DCNR Ex. 1, p. 3)

18. The 5,000-volt line was a 3-phase line to which two single-phase lines were attached at the junction box (DCNR Ex. 1.)

19. The single-phase lines, also primary, distributed electricity to the transformers shown on DCNR Ex. 1; the 3-phase line continued to the park office where power was stepped down at another transformer. (DCNR Ex. 1)

20. The voltage in the primary lines was stepped down to 120 volts by the transformers shown in DCNR Ex. 1, p. 2; the secondary lines downstream of the transformers carried the lower voltage power to the meters. (DCNR Ex. 1)

21. The meters marked, and still mark, the spots where the separate account holders, the independent customers, receive their electricity in secondary lines. (King)

22. Bamash and Hidden Valley own leaseholds which include real estate which they maintain and control. (Bamash and Chidester, DCNR Ex. 6 and 7)

23. Each customer could shut off power at its own building but could not shut off power farther upstream. (McChesney)

24. Park personnel throughout the years saw the company making repairs in the underground line under Gradyville Road; none had the 5,000 volt line repaired during his tenure at the park. (Graham Haas McGhean and Morton)

25. A break in the line as it ran under the road affected power in the park. (Neumann)

The Outage

26. On August 3, 2007, the customers served by the 5,000-volt line suffered a power outage. (McChesney)

27. Other customers on Gradyville Road also lost power. (H.T. p. 6)

28. A company crew came to the park after park personnel reported the outage. (Werner)

29. Park personnel saw the crew at the pole. (McChesney and Bonner)

30. The crew attempted to locate a splice box at the side of Gradyville Road. (Bonner)

31. The splice box was to have been made of concrete (DCNR ex. 1); it was not located. Later in the evening the crew looked for an above ground box in "boxes" in the area of the greenhouse shown on DCNR Ex. 1; no boxes were found. (Bonner and DCNR Cross Ex.)

32. While the crew searched for the box in boxes, the DCNR ranger helped in the search. (Bonner)

33. The crew referred to a paper which showed a schematic during the search but did not share the information on the paper with the ranger. (Bonner) The crew had on the scene a map and schematic of the facility (DCNR Cross, Ex. 12)

34. DCNR personnel saw the crew later the night of August 3, 2007, at a spot near the Mansion (Bonner and McChesney p. 4, DCNR Ex. 1)

35. The PECO crew exposed the primary line near the park office to invasive techniques including excavation and an electronic thumper. (McChesney, p. 5)

36. A thumper has destructive capability. (King, p. 6)

37. Without using the invasive tactics anywhere other than near the park office, PECO decided that the outage was the result of a break in the underground primary line near the park office. The PECO crew called the 5000-volt line "the supply line." (H.T., p. 28)

38. PECO refused to repair the line after exposing it to the thumper and excavating. (McChesney, p. 5)

39. DCNR and its contractor decided to replace the 1972 5000-volt line entirely rather than try to repair it. The new line runs from the customer connections which existed

in August 2007 at the customer's receiving facilities directly to and up the pole on Gradyville Road. (DCNR Ex. 11)

40. PECO would not negotiate with DCNR regarding the cost of the replacement line. (Complaint, para. V and Answer para. V)

SUGGESTED FINDINGS OF LAW

1. The aerial line on Gradyville Road was (and is) a PECO supply line (52 pa. Code 57.1).

2. The 5,000-volt line installed in 1972 is a line extension including a trunk line (52 pa. Code 57.1 and tariff sec. 7.1)

3. The trunk line was built on a right-of-way which was acquired for part of the company's distribution facility (DCNR Ex. 2 and tariff section 7.1).

4. The 5,000-volt line was part of PECO's general distribution system servicing separate, independent customers (DCNR Exs. 8, 12 and 13 and DCNR Ex.1).

5. The trunk line which began at the point marked "splice box" in DCNR Ex. 1, ran in three phases to the transformer for the park office meter which was (and is) the customer's receiving equipment, the "point of delivery." (DCNR Ex. 1 and H.T. 52)

6. The three-phase line was also joined at the junction box by single-phase lines which carried current to the transformers for the greenhouse and the stable, workshop, frame dwelling, and blacksmith shop. DCNR Ex. 1 pp 2 and 3. The lines to the transformers were primary service lines; the line to the east served a number of customers in 1972 and was part of the company's general distribution system, connecting the trunk line to the customers' installations. (PECO tariff, definition section, "service supply line").

7. A tariff and regulation should be read together to give effect to both if possible. (Statutory construction Act, 1 Pa C.S. §§ 1932 and 1502)

8. The point of delivery at the end of the company's service line is the point at which Ownership changes from PECO's to the customer's. (tariff)

9. The point of delivery is at the end of the company's service line. (tariff)

10. The customer may have an extension from the 18-inch point to his receiving equipment. (tariff)

11. The customer's receiving equipment is his meter. (King)

12. The two leasehold customers occupy properties separate from the Park. (Complaint)

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SUMMARY OF THE ARGUMENT

In 1972, DCNR's predecessor was in the process of developing Ridley Creek State Park. The monopoly electric utility was PECO's predecessor Philadelphia Electric.

The Park needed to have multiple meters to receive service for multiple accounts, and it needed to have the primary line run underground. The company refused to install an underground line. Having a Park to operate, the Bureau of State Parks hired a contractor and had the underground line installed. The Bureau did not seek reimbursement from the utility, even though the tariff required the utility to pay for an underground line up to the amount an aerial line would have cost.

The line installed was in the 5000-volt class. It carried 4160 volts in 3 phases from Gradyville Road to the Mansion, which served (and serves) as the Park office. About half way down its length, two single-phase lines of 2400 volts each were spliced to the 3-phase line, carrying 2400 volts each to transformers on the east and west of the 3-phase line. The installation served multiple customers who had their own utility accounts.

The Park, two other customers who own residential and commercial leaseholds within the Park, and more customers outside the Park on Gradyville Road lost power on August 3, 2007. The company investigated the outage using invasive techniques that can damage lines. The company refused to repair the line, claiming it belonged to DCNR. DCNR had the entire line replaced by a contractor. PECO refused to repair, replace, or share the costs involved in repairing or replacing the line. The tariff requires that the company install residential lines and that it pay a share of other underground lines.

The 1972 installation was a company facility under the Commission's regulations. PECO's refusal to be involved in the 2007 problems was a failure to provide the reasonable serviced required by the Utility Code.

PROPOSED ORDER

1. PECO failed to provide to DCNR and the leasehold customers the reasonable service required by The Public Utility Code, Section 1501, when it refused to repair the 5000-volt line in 2007.

2. PECO owns and shall maintain the 5,000 volt primary line and all associated primary lines at the facility installed in Ridley Creek State Park in 2007.

3. PECO owned the line installed in 1972 and, pursuant to that ownership had the duty to repair the line when it failed in 2007 producing a power outage that affected the Park and leasehold customers.

4. PECO tested a small portion of the line it claims belonged to the Park, in violation of its tariff, using destructive methods that at least exacerbated any damage that might have been present when the company arrived at the Park.

5. PECO shall pay to the commission a penalty of $_____ in keeping with the offense created by the company's failure to provide reasonable service to DCNR. Payment shall be completed by _____.

ARGUMENT

Introduction

The issue presented to the Commission in this case is whether the Department of Conservation and Natural Resources Bureau of State Parks or PECO owned a primary, 5000-volt electric line that ran under the ground from Gradyville Road to points where it served not only Commonwealth customers but also independent customers who owned leaseholds within Ridley Creek State Park from 1972 to 2007. Ownership brings with it responsibility for maintaining a line and, when called for, repairing it. PECO denies that it owned the line and the attendant responsibility; DCNR insists that the company did own the line and the responsibility.

Background

DCNR's predecessor, DEP, began to develop Ridley Creek State Park in about 1970. (Forrey)[1] When it was time to install electric service, PECO's predecessor, Philadelphia Electric, refused Parks' request for an underground line in contravention of its legal requirements. As a result, the Bureau of State Parks hired a contractor to install the line and related facilities. (Forrey) On August 3, 2007, a number of buildings in and near the Park lost power. PECO representatives came to the Park and, after some time, announced to the Park manager that the cause of the outage was a fault in the 5000-volt line. The PECO crew declined to repair the line, claiming the line belonged to the Park.

[1] The direct testimony of the witnesses was presented in writing. DCNR presented evidence by eleven fact witnesses and one expert. Their written testimony is referred to by witnesses' names. The direct testimony presented by Steven King, the DCNR's expert, is noted by his name; cross examination ands redirect are noted by transcript reference. The company's expert's direct testimony, by Scott Neuman, is noted by reference to his written testimony and, where applicable, to the transcript.

(McChesney) The Bureau of State Parks hired a contractor who replaced the 1972 line. (Forrey) The present dispute over responsibility for the replacement costs ensued.

The 1972 Electric Line

The principal issue, again, is the ownership of the 1972 installation. A finding of company ownership will lead to a determination that the company had responsibility for the costs DCNR incurred in 2007.[2]

In his written testimony and his presentation of the as-built drawings of the project, the director of the Bureau of State Parks in 1972, William Forrey, provided all the available facts surrounding the work involved in the project. Mr. Forrey recalled the events that led to the Commonwealth's installing the line. The utility, of course, enjoyed a monopoly over the provision of electric power to the area of eastern Pennsylvania which included, and still includes, Ridley Creek State Park. When PECO refused to install an underground line, which the Bureau of State Parks preferred for aesthetic reasons, the Bureau hired a contractor and had the line installed. There is no testimony about whether the company offered an aerial line or to pay costs of installation up to the cost of an aerial line. Mr. Forrey testified only that the company did not refuse to install an aerial line and did refuse to install the underground line. (Forrey) According to the as-built drawing, the 1972 line ran from the south edge of Gradyville Road (DCNR Ex. 1, p 2) but it is unclear whether the line actually began there. The transformer on the pole stepped down voltage

[2] DCNR is not making any claim for the money it spent in 1972. The case is about responsibility for the 2007 expenditures.

on the north side of Gradyville Road; the 5000-volt line may have been continuous from the pole transformer. [3]

The 5000-volt line serves four PECO accounts. The Park itself has two PECO accounts remaining from the several it had in 1972. Service for the Park was provided through three meters, now two. (The greenhouse, shown on DCNR Ex.2, p 2, has been taken off line). One of the remaining meters measures usage at the Mansion, the Park headquarters, under account number 18726-00602 (DCNR Ex. 8) and the other one measures, at the carpenter shop, under account number 80214-02405. (DCNR Ex.8) The locations for both meters can be seen on DCNR Ex. 1 p 2. Each account holder is a single customer, pursuant to both the PECO tariff and the Commission's regulation's definitions sections. (Tariff and 52 Pa. Code 57.1) Both receive General Service, Commercial, and both have been receiving service since 1972 on secondary service lines which are immediately downstream of the transformers. (DCNR Ex. 1, pp. 2 and 3, DCNR Ex.8, and McChesney) Their service is received at 120/208 and 120/240 volts after transforming. (DCNR Ex.1, p.3)

There are also two other customers whose electricity was and is delivered by the 5000-volt line. (Forrey) One is Stacey Bamash, who owns a leasehold for a residence noted in DCNR Ex .1 as one end of the "twin frame dwelling." (DCNR Ex.1, p 2) Her general service residential account is account number 83306-00301 (DCNR Ex. 12). The other customer, Hidden Valley Farm, has a general service commercial account, number 43477-00601 (DCNR Ex. 13). In 1972, both the residence and the farm received service

[3] The concrete box expected at the spot marked for a splice box (DCNR Ex.1, p.8) was not found . The boxes the crew looked for on August 3 near the greenhouse also were not found. (Bonner and DCNR Cross Ex. 11)

at 120 volts, stepped down by a transformer owned by the company and installed by DCNR's contractor from the single-phase 2400-volt lines that are spliced into the 5000-volt line at the junction box, about 1400 feet from Gradyville Road. (DCNR Ex. 1, p.2 and p.3) Mr. Forrey, who was actually involved in the installation, testified that the customers' separate facilities were installed as part of the original work in 1972. The two present customers' premises were leaseholds in 1972. (Forrey)

The 1972 3-phase line continued on from the junction box to the Park office, the "Mansion", where a transformer stepped the voltage down to 120/208. (DCNR Ex. 1, p 3). DCNR never thought the line belonged to the Bureau of State Parks. It was a primary line that carried high voltage. None of the four customers could control the delivery of electricity for purposes of repairing or otherwise changing their service; they could only shut off the service they actually received at their own facilities, using the breakers. (Forrey, McChesney, McGhean, Graham, Haas and DCNR Ex. 1, p 3)

The present dispute arose because, when DCNR and the other customers on the line lost power on August 3, 2007, PECO disclaimed ownership of any of the facilities involved in the 1972 installation except meters and transformers. After coming into the Park late in the evening and using invasive and perhaps damaging techniques to investigate the cause of the outage, the company decided it would have nothing to do with the problem. DCNR replaced the 1972 installation at considerable expense, in order to fulfill its duty to have a park available to the public, just as it did in 1972. This time, DCNR is presenting its dispute to the Commission for an objective view of ownership and responsibility.

DCNR has the burden of proving, by a preponderance of evidence, its position that the company owned the line installed in 1972, Kanowicz v. PPL Electric Utilities Corp., 2005 Pa. PUC Lexis 43, and that the company owes DCNR the costs for the replacement line installed in 2007. Failure to share or pay for the costs DCNR incurred is a failure to provide reasonable service. 66 Pa. C.S. Section 1501.

It is fortunate for DCNR and the Commission that DCNR's case provides a healthy amount of legally-based proof that the company owned the 5000-volt line and owed DCNR the costs which the Park incurred in August, 2007. DCNR's having hired a contractor and paid for the line is not dispositive of whether the Park owned the 1972 line, nor is the company's belief that it had no ownership.[4] Rather, careful application of the Commission's regulations and PECO's own tariffs will afford the Commission the information it needs for its determination. DCNR is confident that the law demands the conclusion that PECO owned the installation and that the Company failed to provide reasonable service when it refused to repair or replace the line in 2007. DCNR's case is set forth in Section A. The section traces the regulatory and tariff sections which lead inexorably to the company's ownership of the 5000-volt 3-phase line and the two single-phase additions which led from the junction box to two transformers and the customers whose meters they served.

[4] A finding that PECO owned the 1972 installation would be sufficient but is not necessary to the company's having responsibility for a replacement. See Part C of the brief.

A. DCNR's claim that PECO always owned the 1972 primary line.

The 1972 line was a trunk line or a line extension .[5] It could not be anything but a trunk (or extension) line under the regulations and the tariff. This section examines the relevant law to explain this statement.

The line was a component of the Philadelphia Electric Company's distribution system, built on land for which the Company had acquired a right -of-way for the purpose. (DCNR Ex.2) The 5000-volt line began on the Gradyville Road pole shown on DCNR Ex.1, p.2. A transformer on that pole marked the beginning of a 3-phase line extension from the Company's supply line. (King) The Commission's regulations define "line extension" this way:

> An addition to the public utility electric supply line necessary to serve the premises of a customer which addition is so located that it cannot be supplied by means of a service line from the existing supply line.[6]

52 Pa. Code, Section 57.1.

The definition describes not only the utility's line which ran from the pole, under Gradyville Road, and to the point marked "splice box." (DCNR Ex.1, p.2) It also describes the same line as it continues into the Park. The next paragraphs explain why.

The best way to understand the application of the term "line extension" is by carefully applying the two elements of the Commission's definition.

1) The first necessary element of the definition is that the addition to the supply line must be necessary to serve the "premises of [a] customer." This element first requires that "customer" be defined.

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[5] "Trunk line" is merely a subset of line extensions. (tariff, sec. 7)

[6] "Line extension" was in the regulations in at least 1965. DCNR has presented the current definition for that term, but the definition in effect in 1972 is attached. The 1965 definitions in place in 1972 do not make any consequential difference to the case.

a. The tariff definition of customer states, in relevant part: [7]

customer - Any person, partnership, or corporation, lawfully receiving service at a single meter location from the company.
(PECO Tariff, October 2004)

There are four customers (accounts) whose premises are served by the 5000-volt line. Two of the accounts perform Park functions: the Mansion and the maintenance building. (DCNR Ex.8 and McChesney) Two others are independent of Park functions, a residence and a stable business serving their leaseholders' purposes. (DCNR Exs. 6 and 7) There was no dispute about the customers' presentation of their bills for separately metered service. (DCNR Exs. 8, 12, 13 and McChesney, Bamash, and Chidester) The customers not only pay their own bills for their separate metered and independent accounts,[8] they also occupy properties that they control, pay for, and maintain. (DCNR Exs. 6, 7, and 9, McChesney, Bamash, and Chidester). The facilities for delivery of power to the independent customers were part of the 1972 installation (DCNR Ex. 1 and Forrey).

The leasehold arrangements with the Bureau of State Parks implicate the tariff's definition of a "property line." The tariff states that a property line is:

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[7] The regulatory definition is this: "A party supplied with electrical service by a public utility." The regulatory and tariff definitions of customer are congenial, but the case law does provide the correct procedure for reading the law in the event there is conflict or confusion " A tariff must be applied consistent with its language and not according to any private understanding". US Steel v. PUC, 850 A. 2d 783, (Pa. Cmwlth.2004) "Notwithstanding [a] presumption of reasonableness, ambiguities in a tariff must be resolved against its author . . . ." (Kanowicz, supra) "In case of a conflict in terms, the public utility law and P.U.C. regulations shall take precedence over [an] authorized tariff " Captex Piece Dye, Inc. v. UGI Corp. 1983 Pa. PUC LEXIS 40; 57 Pa. PUC 200. [A]ny findings of fact . . . must be based on "substantial evidence." Kanowicz, supra

[8] Stacey Bamash lives in the residence. See DCNR Ex. 7. Her agreement includes the responsibility for maintaining the grounds around the house, shown in DCNR Ex.9 Hidden Valley Farms own the leasehold for the stables. See DCNR Ex. 7. The lease includes a drawing of the grounds the leaseholder maintains and controls. (DCNR Ex. 6 and Chidester testimony.)

"The division line between land held in or for private use, and land in which the public or the company has a right of use, or, the division line between separately owned or occupied land."

(Tariff, 2004)

The two leaseholds are (and were) occupied separately from the Park.

PECO attempts to make the Park boundary alongside Gradyville Road the "customer's property line." The fact is, however, each of the two private leaseholders had (and has) a property line dividing the Park from the leaseholder's separately-occupied estate. The definitions of "customer" and "property line" cannot simply be ignored for the company's convenience. The regulatory definition of line extension, an addition that is necessary for those customers at their premises, satisfies the first element of the definition of "line extension."

b. The second necessary element of the line-extension definition is that the "addition be so located that it cannot be supplied by means of a service line from the existing supply", the aerial supply line that runs in the Company's utility right-of-way along Gradyville Road. (H.T.) Applying this element of the definition requires defining the term "service line." A service line is defined by the regulations:

> **Service line** - The wires or cables and appurtenances which connect the electric supply line of the public utility with the customer's installation and which comply with either of the following:
> (i) If overhead - open-wire or cable construction, the span normally 100 feet, extending to a suitable support by the customer.
> (ii) If the electric supply line is of underground construction, the underground facilities extending but not exceeding 18 inches inside the property line of the customer.

52 Pa. Code Section 57.1.

The line under Gradyville Road could not be a service line under either i or ii: (i)The 1972 connecting line ran underground and (ii) the supply line was not of underground construction. The short underground addition to the supply line was therefore located such that it could not be supplied by a service line.

In fact, the entire 5000-volt line and its single-phase additions were necessary for reaching the customers' premises. Those lines also could not be supplied by means of a service line from the supply line on Gradyville Road.

Both the short extension that runs under the road and the long extension from the point marked "splice box" to the customers' premises are line extensions, distribution facilities which serve multiple customers whose uses of electricity are independent of each other.

PECO's tariff further explains service lines and can be read with the regulatory definition to give effect to both. (Required by the Statutory Construction Act, §§ 1932 and 1502) Section 6.1 of the tariff says this:

> 6.1 Company service lines. Where the Company has supply facilities of adequate capacity in the highway or *in other trunk line locations* adjacent to the premises to be served, it will provide, own and maintain standard service supply lines as follows (emphasis added):
>
> (a) Underground
> Underground cable construction to a point approximately 18 inches inside the property line of the customer .

The tariff service line section is actually about service supply lines, which requires examining that definition. A service supply line is defined in the tariff as

> "The facilities (conductors, cables, conduits, etc) extending from the Company's facilities in the highway *or other trunk line location* to the facilities owned and maintained by the customer." (emphasis added.)

Parsing the tariff's reference to "Company service lines" is the best way to be certain of applying it correctly. There are three necessary elements in the reference:

First, under the tariff, the supply facilities concerned can be either a highway line or another trunk line. An analysis will determine that the trunk line is the supply facility in question here.

Second, the supply facility which applies must be adequate.

Third, "adjacent" needs factual defining if the legal analysis does not convince the Commission that the 5000-volt line is the "supply facility."

(a) Carefully applying the elements to the facts in this situation begins with reading the regulatory definition and the tariff provision together. A service line or service supply line in this case could not be connected to the Gradyville Road aerial supply line, as explained above. An aerial line such as the line on Gradyville Road had to have an aerial addition if the addition was to be a service line. 52 Pa. Code Section 57.1. The 5000-volt line is the "other trunk line" which can be connected by service line to the customer's installations, as required by the regulatory definition of service line.

Even though the supply line cannot be the line referred to in 6.11. the definition of "trunk line" should be examined for a thorough analysis. Part 7 of the tariff concerns Extensions. Section 7.1 makes trunk lines a subset of extensions. It states:

> 7.1 TRUNK line construction. The company will construct, own and maintain overhead or underground distribution facilities, either secondary, primary or high tension, located on the highway or the right-of-way acquired by the Company, and used or usable as part of the company's general distribution system.[9]

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[9] DCNR has found no cases discussing precisely the meaning of the term "general distribution system". DCNR urges the Commission to find in this case that the 5000-volt primary line is part of the general distribution system. "Distribution line" is specified in Section 3.3 of the tariff as the spot where the customer's facilities meet the point of delivery. Considering the distribution line to be the same as the service supply line is in line with tariff references. This reference strengthens Mr. King's position that the point of delivery for the Park accounts is at their meters. The 18 inch point is applicable to a situation in which a customer's extension takes the current to the meter from the edge of the property , not the situation here, where the meter is served immediately from the company's line.

PECO's predecessor, Philadelphia Electric Company, acquired two rights-of-way. (DCNR Exs. 2 and 3) Both rights-of-way, found in the county's files by DCNR's real estate specialist, give the company enormous latitude to install, maintain, and remove essentially all facilities it might find necessary for providing electrical service. One, entered into in 1939, gives the company access to what is now Ridley Creek State Park from Sycamore Mills Road. The other, entered into in 1940, gives essentially unlimited access from Gradyville Road. Neither right-of-way has been terminated. The 5000-volt line is located on the property covered by a right-of-way acquired by the company. (DCNR Exs. 2, 3, and Pierce)

(b) Continuing to examine the elements of "Company service lines," the second element is the adequacy of the trunk line, which is built on a right-of-way acquired by the company. There is no trouble seeing that the trunk line is adequate.
All the customers served have Company-owned transformers upstream of their facilities to step down all the voltage they receive from the 3-phase and single-phase lines. The second element is satisfied.

In light of the limitation on Service lines provided by the regulations, it should not be necessary to analyze the third element of the definition, that the trunk line is the supply facility referred to in 6.1. It may be instructive, however, should the Commission have any remaining doubts about whether only the 5000-volt line fulfills all the requirements imposed by the combination of the tariff and regulations.

(c) The third element in the analysis is the factual issue of the descriptive term "adjacent." The Statutory Construction Act requires that a non-technical term be construed according to [its] common and approved usage. 1 Pa. C.S. § 1903(a).

"Adjacent" has several closely similar meanings; principal among the common meanings is "not distant," "nearby." Merriam Webster OnLine Dictionary, www.MerriamWebster.com, copyright @ 2009 by Merriam Webster, Inc.

The premises to be served, which is to say the locations of the four customers' facilities, are several hundred feet from the 5000-volt line. Three of the customers' meters are immediately downstream on the single-phase primary lines spliced to the 5000-volt line at the junction box. (DCNR Ex.1, p 2) On the other hand, the customers' facilities are about a half-mile from the aerial supply line on Gradyville Road.

Both the Gradyville Road line and the 5000-volt primary line are supply facilities. Both are adequate for their purposes, if voltage alone defines adequate. But only the 5000-volt line, which fits perfectly the description of Section 7.1 of the tariff's description of the trunk line, and is adjacent to the premises to be served can connect to a regulation service line and, hence, a tariff service supply line.

The Commission could find that the 5000-volt line is a service line if it determines that the short line extension that runs under Gradyville Road changes the supply line to an underground line.[10] With that short segment being a part of the supply line rather than a line extension, the long underground segment could be classified as a Section 6.1 service line, a service supply line in tariff parlance. In that case, the long segment would be subject to the 18-inch regulatory and tariff limitation, but the limitation would not go into effect at Gradyville Road. Rather, the regulatory definition would limit the 5000-volt line as service line to the 18 inch mark at the customers' premises. While the Company would be responsible for extending the power from its 5000-volt service line to each 18-inch

[10] An analysis which includes calling the short line a part of the supply line brings up a conundrum: where does the supply line end and the service line begin?

mark. It would have to own the facilities that enabled that transfer because the customer installations required, customer service extensions, would only be on customer property. The tariff says this about customer installations:

> The customer shall provide, own and maintain the service extension from the company's service supply lines to the receiving equipment.

Combining section 6.3 with section 6.1, which provides the 18-inch limitation on the reach of the Company's service supply line (and the regulation's service line) into the customers' property, results in the conclusion that the customer could begin to transport the electricity only at the 18-inch spot and that the customer extension would then take the electricity to the transformer and meter, the receiving equipment, just as Mr. King said in his expert testimony. (King p.3 and H.T.) See Hineline v. Metropolitan Edison Corp., et al. 1990 Pa. PUC Lexis 156: "Traditionally, utilities, the Commission, and the Courts have recognized that the ownership and maintenance responsibility of an electric utility ends at the point of delivery to the customer. The point of delivery is the customer's meter."

In order to know whether a particular line is a service line (or a service-supply line), the Commission would have to begin with ownership already established or determine that the line segment that runs under Gradyville Road changes the nature of the supply line to an underground line. Designating the 5000-volt line as a service supply line (or service line) does not put the company in any better position to deny ownership. In either case, the company owns the line.

Without saying as much, PECO implies that DCNR receives service for all the facilities served by the 5000-volt line at the point marked "splice box" on DCNR Ex. 1, p. 2.

The theory is flawed. DCNR assuredly does not receive 5000-volt service at the splice box (or anywhere else) and there is no transformer there to reduce primary voltage to the voltage usable by the Park. (DCNR Ex.1)

The company's theory also requires that DCNR be the only customer on the 5000-volt line. That is not the case here. There are four customers served by the 5000-volt line. Section 2.3 of the tariff sets forth conditions necessary for any customer, including DCNR, to be responsible for service to multiple service receivers. The tariff says this:

2.3 **SINGLE-POINT AVAILABILITY.** Service delivered at a single point is available to one or more buildings or units devoted essentially to a single purpose, provided and so long as:

(a) Such buildings or units are:
(1) held, possessed, and either utilized or operated as a single establishment by a single responsible entity, and
(2) unified on the basis of family, business, industry, enterprise, or governmental agency or through conveniences or services, such as heat, elevator, janitor, care of halls, walks, and lawns, etc., furnished by such entity, and
(3) situated on a single or on contiguous land parcels except where such buildings or units constitute interdependent parts of a single industrial enterprise. In determining "contiguity" hereunder or parcels abutting opposite sides of public or private ways, the boundaries of such parcels shall be considered as extending to the center of such ways.

(b) There is granted and maintained to the Company easement or other rights, adequate in the Company's reasonable judgment to supply service direct to any such buildings or units if, as and when a cessation of any one or more of the conditions state in paragraph lettered "a" above should occur, or there should arise in any manner a Company duty of such direct supply.

(c) The transforming, receiving and distribution facilities on the customer's side of the delivery point are:
(1) furnished, installed and maintained at the expense of the customer, and
(2) owned or leased by the customer, and
(3) operated and controlled by or at the expense of the customer

(d) The Company is under no legal obligation of direct supply to any portion of said building or units or their appurtenances.

(e) A guarantee by deposit or otherwise is given and maintained to the Company sufficient in its reasonable judgment to insure it against loss in primary, secondary, and/or distribution investment in the event of change in the nature of holding and possession of such buildings or units, or in the occupancy thereof, or in the type of service delivered thereto.

(f) All utilization equipment on the customer's side of the Company delivery point is furnished, installed, operated and maintained by the operator of the building or units supplied or by the tenants of such operator whose use of electricity is dependent upon the single-point delivery and metering of service.

(g) Any use of public highways by such operator for the latter's distribution facilities does not conflict or interfere with the franchise rights of the company.

Service is not delivered at the spot marked "splice box" under the conditions required by at least subsections a and c and possibly others. There is no single-point application here. DCNR has amply proved its case that the company owned the 5000-volt line shown on the 1972 drawings, along with the two single-phase lines that lead to transformers at the multiple receivers. There is no analysis that respects both the tariff and the regulations that can reach any other conclusion

All the parties' positions depend upon the status of the 5000-volt line as it runs under Gradyville Road. The DCNR position, that that line is a line extension or part of the supply line is the only position which satisfies the definitions in the regulations as well as the tariff

B. PECO's Defense

PECO's sole sworn testimony was presented by its expert, Scott Neumann. He presented his direct testimony in writing.

Mr. Neumann stated no fewer than 14 times in his direct testimony that the company's ownership ends and the customer's begins 18 inches inside the Park's property line. Mr. Neumann counts on the 18-inch limitation to uphold PECO's position that PECO has no responsibility for the 5000-volt line. The 18-inch figure came from the regulation definition of a service line or from an extra-legal definition of "point of delivery." Those positions are discussed now.

Mr. Neumann seldom names "the PECO cable that runs under Gradyville Road" but his testimony implies that the line is a service line. (Neumann) In order to support its entire theory, PECO depends on that cable meeting the threshold regulatory definition of "service line." Much to their disadvantage, it does not.

The tariff definition of "Company's service line" begs the question of which facilities comprehend the company's service supply line and which are the customer's facilities. The regulation, however, is not so logically flawed and is actually useful in its analysis. The regulation and the tariff reference must be read together in order to give effect to both. The Statutory Construction Act, §§ 1932 and 1502

The regulatory definition contains the crucial specifics which narrow the tariff reference and make it useful. The regulatory definition eliminates the line which runs down the pole and under the road from the definition of service line because the supply line is aerial, not underground, thus rendering "service line" useless to describe it.

The company hopes to pull a further defense from the 1972 tariff's explanation of the term "Company's service line". According to the witness, that section of the tariff stated:

> 6.1 Company's service lines. Where the company has supply facilities of adequate capacity in the highway or in other trunk line location adjacent to the premises to be served, it will provide, own and maintain standard service-supply lines for a new connection or a change in connection or for a change in contract as follows: (a) a single span of open wire construction to the first suitable support of the customer, normally 100 feet inside the property line of the Customer. The Customer's support shall be so located that the service will be free of obstruction, and adequately supported as required by the size and weight of the conductors; (b) overhead or underground cable construction to a point approximately 18 inches inside the property line of the Customer.
> (Neumann testimony, pp. 8, 9)

There is no difference of any consequence between the 1972 rendering and the modern tariff provision. The same questions that were presented in part A still have to be answered before 6.1, old or new, can be useful: What is the classification of each facility involved and who owns it?

"Point of delivery" is another term PECO hopes to use to justify disclaiming ownership. There are three lawful references to "point of delivery."[11] They can be reconciled with each other, but, either separately or together, they are unhelpful in determining whether PECO or DCNR owns and has responsibility for facilities. Before the term can be useful, the ownership question has to have been answered.

The tariff defines point of delivery as:

> Point of delivery- the single point at which the service-supply lines of the Company terminate and the customer's facilities or receiving the service begin.

The term is also mentioned in Sec. 3.1 and 3.3 but there is, again, no clarification of the ownership-of-the-property issue:

> 3.1 Service entrance equipment. All equipment beyond the point of delivery, except the meter, shall be installed by the customer. Installation shall be in conformity with the National Electrical Code and the Company's published "Electric Service Requirement', and shall include, where necessary, an approved sealable device for mounting a meter. The meter will be supplied, owned and sealed by the Company or another AMSP.
>
> 3.3 **POINT OF DELIVERY**. The Company will designate in writing, upon request, a satisfactory point of delivery where the customer shall terminate the wiring and facilities for connection to the distribution lines of the Company. (emphasis added)

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[11] The term is also referred to in the Design Practices, but that definition does not have the force of law enjoyed by the tariff. The design practices given to Mr. McChesney the night of the outages date from 1999 and are not part of the tariff (DCNR Ex.10 and H.T. 177, 178) Giving the practices to Roger McChesney as support for the refusal to repair the line was deliberate obfuscation, perhaps not by the crew, but by PECO. The provision of information to customers falls within the definition of "service" pursuant to 66 Pa.C.S. §§ 1501, 1505. Kanowicz, supra Similarly, the Electrical Service Requirements entered into evidence by PECO as Redirect Ex. 1 and discussed on pp. 188, 189 are not a part of the tariff. They have no legal status.

The tariff references do not clash, but they are not helpful. "Point of delivery" is useful for identifying where ownership changes, but not until the classification of the facilities involved has been established. Only after classification is in place can ownership be put in place, and only after the ownership determination is made can the term be useful. Like the other terms this brief has parsed and examined, the definition of "Point of Service" pulls the Commission into a circle.

The "Company's service line" and point-of-delivery bases for its 18-inch theory throw the company's reasoning into arguments which have no end. The Commission needs to escape the hopeless circularity of PECO's defense by applying facts: the customers served, their property lines, the rights-of-way acquired for general distribution, the roles of the service line and the customers' receiving equipment and extensions, along with the clear language of the regulations. These elements lead to the conclusion that the 5000-volt line and the single-phase primary lines are components of the distribution system. PECO's defenses do not match, much less overcome, DCNR's case of failure to comply with 66 Pa. C.S.A. §1501.

C. The Replacement Cable

When PECO refused either to repair or replace the 1972 cable, DCNR, with a popular park to manage, was forced to hire a contractor to repair the cable. For reasons unknown now, DCNR's predecessor did not pursue a claim for the original costs, but the Commonwealth's citizens should not be forced to underwrite the monopoly an additional time because of that decision.

Because no one really knew where the 1972 line ran[12], the contractor recommended that an entirely new line be installed. Its path is shown as DCNR Ex. 11. DCNR paid for the new line, which runs from the ends of the primary line as shown in DCNR Ex. 1 continuously across the Park, under Gradyville Road, and up the PECO pole to the same transformer that stepped the voltage down in 1972.

PECO's tariff requires that the company take part in installing primary cable. Section 3.6 says this:

> **3.6 Underground service.** Customers desiring an underground service from overhead wires must bear the *excess* cost thereto. Specifications and terms for such construction will be furnished by the Company on request. (emphasis added)

There was no offer by PECO of payment or partial payment for the new line in 2007 (Complaint and Answer, paragraph V) There is no reason to suspect that the company would be immune from the application of this section simply because there was a previous installation that broke. This is especially true in light of the fact that the same Company obligation to pay for the line up to the extent of the cost of an aerial installation is set forth in the Electrical Service Requirements for 1970, submitted into evidence by the Company as PECO Redirect Ex. 1. Section 3.05c of the Requirements says this:

> Customers desiring an underground service from overhead wires must bear the excess cost over equivalent overhead service. Specifications and terms for such construction will be furnished by the Company on request. The Company will furnish and install underground service facilities for residential developments or garden type apartments under the conditions set forth in the electric tariff.

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12 There was some interesting PECO testimony on this point. Michael Bonner, the park ranger who was on duty the evening of August 3, testified without dispute that he helped the crew look for "a box" near the greenhouse, one of the facilities set up to receive electricity when the system was installed in 1972. During the search, the crew chief had a paper to which he referred but which he did not share with Mr. Bonner. No box of any kind was ever found that night. The crew's notes state that the crew was looking for splice boxes. (Emphasis supplied) (DCNR cross Ex.11). Mr. Neumann testified in his direct that PECO had no records concerning the facility (Neumann) while, in an answer to an interrogatory, he admitted that the crew was using maps and schematics (DCNR Cross Ex. 10) Ex. 10)

Section 6.1 restated the requirement. And sections 7.2 B and C are even more demanding of the company.

> B. **SINGLE-PHASE LINE EXTENSIONS FOR STANDARD SERVICE.** For a customer whose use of the Line Extension is not speculative, the Company will construct a single-phase Line Extension as follows. The company will construct a Line Extension up to 2,500 feet without a charge to the Customer.
> C. **POLYPHASE LINE ESTENSION FOR STANDARD SERVICE.** For a customer whose use of the Line Extension is not speculative, the Company will construct a polyphase Line Extension, as follows. A customer must pay the Company a CIAC equal to the amount by which the Capacity Adjusted Cost of the Line Extension exceeds the Customer's Revenue Guarantee Contribution for the first five (5) year period after the Line Extension is completed. A Customer who is not a developer must pay the CIAC in full prior to the construction of the polyphase Line Extension.

If the commission finds that the 5000- volt line is a line extension, the Company failed to provide proper service unless it paid the entire cost of the single phase lines as instructed in Section B and the 3-phase line as instructed in Section C. The 2007 installation is, plainly and simply, an underground trunk line service straight from the supply line. PECO should at least have discussed sharing the cost of the 2007 line when DCNR asked about it. Their refusal to do so is a failure to provide reasonable service.

D. Testimony Observations

This case will be decided on the law. That said, there were some interesting disagreements at the hearing which this section of the brief will examine quickly.

1. Steven King

Steven King, DCNR's expert, submitted written testimony well in advance of the hearing. His cross-examination by PECO was not of much note. He answered every question without hesitation and made no changes to his written testimony.

Sections A and B of the brief presented adequate detail about the tariff provisions disputed by Mr. King and Scott Neumann. Those disputes do not need to be repeated.

The Company does repeat one allegation a number of times in reference to a few tariff terms. That allegation is that Mr. King has confused several of PECO's tariff provisions with provisions from other tariffs. The "allegation" is in both the Company's direct and Mr. King's cross. Parts A and B explain by careful application of each term so disputed that Mr. King's positions always stemmed from the law, the regulations, and PECO's tariff. In no case could any disputed term be finally found to have been confused or mistaken in the analysis.

As it turns out, Mr. King's view of each provision was supported by a careful application of the applicable law. He was credible because he was correct.

The cross-examination did not induce Mr. King to abandon any of his positions. That the company did not mean simply to inspect the cable is borne out by Mr. McChesney's testimony that the PECO crew chief asked if his crew could excavate the line in order to repair it.[13] (McChesney)

2. Scott Neumann

This case will be decided by the careful application of the Commission's regulations and PECO's tariff. The Commission entertained testimony, however, and issued rulings that merit examination about some of the testimony.

Mr. Neumann's cross-examination began with a series of cases in which he claimed to have testified as an expert witness on issues of ownership and maintenance

[13] In response to interrogatories, Mr.Neuman admitted that PECO made no comprehensive evaluation of the underground cable. Their assumption that the cause of the problem was the underground cable was based on the fact that when the cable was replaced, the problem was solved. He totally ignores the fact that the cable was replaced from the transformers all the way under Gradyville Road and up the pole to the transformer, including that portion which the Company espouses as its own. (DCNR Cross Ex. 12)

responsibility. (DCNR Cross Ex. 1-4a) When it became painfully obvious that he had not testified in any capacity in most of the cases, he first pleaded an inability to remember. (H.T. 142-146) With help from his counsel, Mr. Neumann decided that he did not actually testify, but rather, prepared testimony and generally helped the legal department. (H.T. 147-168) His credibility was put into question

In another exchange, Mr. Neumann was presented with documents he claimed supported testimony about PECO's practices in 1972. (DCNR Cross Exs. 5 and 6) The documents are dated 1975 and 1979, and were changed from their 1970 issue date in ways that Mr. Neumann could not describe. The two instructional letters prove nothing about 1972 practice. They also reflect poorly on Mr. Neumann's credibility. (DCNR Cross Exs. 5 and 6)

The Commission also allowed testimony which ran afoul of the rules of evidence. DCNR submitted the documents for impeachment purposes. Limiting documents to purposes of impeachment is acceptable. See Commonwealth v. Floyd, 508 Pa. 393, 498 A.2d 816 (1985) The Commission overruled DCNR's request for limitation, insisting that the documents be considered as substantive evidence. They have no relevance.

There is another final disorder in Mr. Neumann's evidence. An administrative forum cannot use hearsay evidence, even hearsay evidence admitted without objection, to support a necessary finding, unless the hearsay has been corroborated. Anderson v. Dept. of Public Welfare,79 Pa. Cmwlth. 182, 468 A. 2d 1167 (1983) and Burk v. Dept. of Public Welfare, 48 Cmwlth. 6, 408 A.2d 912 (1979)

Review of Mr. Neumann's direct and cross testimony turns up a number of instances in which Mr. Neumann offered hearsay which was never corroborated. The

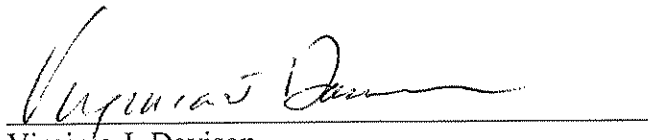
hearsay consisted of Mr. Neumann's descriptions of PECO practices which he had only heard of, having joined the company 13 years after the 1972 installation.

The failure to corroborate hearsay, reliance on logically inadequate authority and questionable witness credibility combine to undermine a legally- indefensible position.

Conclusion

The Commission can select from a number of designations for the long 5000-volt line: trunk line, line extension, or service line, but none gives ownership to DCNR. PECO owned the 5000-volt line in 1972 and owned responsibility for repairing and replacing it in 2007.

Respectfully submitted,



Virginia J. Davison

PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Amendments to the Commission's Electric Regulations, Telephone Regulations, Street Railway Regulations, and Railroad Regulations to include therein wire crossing rules.

ORDER

BY THE COMMISSION, MAY 17, 1965:

The Commission is of the opinion that it is necessary or proper for the safety, accommodation, and convenience of the public that every public utility subject to its jurisdiction fulfill certain requirements at crossings of its wires or cables over or under the facilities of other public utilities; THEREFORE,

IT IS ORDERED:

1. That crossings of the wires or cables of every public utility over or under the facilities of other public utilities hereafter shall be constructed and maintained in accordance with safe and reasonable standards, as set forth in Sections 20 to 29, inclusive, of Part 2 of the National Electrical Safety Code, Sixth Edition, including the Definitions in Section 1, and the Grounding Rules in Section 9, thereof.

2. That the Commission's Electric Regulations, Telephone Regulations, Street Railway Regulations, and Railroad Regulations, be and are hereby amended for the express purpose of incorporating therein respectively a uniform rule applicable to the construction and maintenance of all wire crossings of public utilities in conformity with the provisions of the rule attached hereto and made a part hereof.

3. That the rule entitled Wire Crossings adopted nisi on October 13, 1964, for inclusion respectively in the Commission's Electric Regulations, Telephone Regulations, Street Railway Regulations, and Railroad Regulations, be and is hereby superseded by the revised writing of said wire crossing rule adopted herein.

4. That the Commission's order of March 18, 1946, adopting "Wire Crossing Regulations and Specifications" (Formerly designated as General Order No. 13), be and is hereby rescinded.

5. That the Commission's order nisi of March 10, 1952, adopted to amend its Electric Regulations, Telephone Regulations, Street Railway Regulations, and Railroad Regulations to include therein respectively wire crossing rules, be and are hereby rescinded.

6. That a copy of this order be served upon al public utilities subject to the provisions thereof.

PENNSYLVANIA PUBLIC UTILITY COMMISSION
(signed) George I. Bloom
Chairman

ATTEST:

Secretary

PA. P.U.C. - ELECTRIC REGULATIONS

TABLE OF CONTENTS

SECTION 401. DEFINITIONS

1. "COMMISSION" means Pennsylvania Public Utility Commission, or, as appropriate, its predecessor The Public Service Commission of the Commonwealth of Pennsylvania.

2. "PUBLIC UTILITY" means persons, or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for generating, transmitting, distributing or furnishing electricity for the production of light, heat or power to or for the public for compensation. The term "Public Utility" shall not include (a) any person or corporation not otherwise a public utility who or which furnishes service only to himself or itself; or (b) any bona fide cooperative association which furnishes service only to its stockholders or members on a nonprofit basis.

3. "CUSTOMER" means any party supplied with electric service by a public utility.

4. "ELECTRIC SUPPLY LINE" means those wires or cables with the necessary supporting or containing structures and appurtenances used in connection therewith of any public utility overhead or underground system located on a public highway or utility right of way and used to transmit or distribute electric energy.

5. "SERVICE LINE" means the public utility wires or cables and appurtenances which connect the electric supply line with the customer's installation; (a) in the case of overhead (open-wire or cable) construction, one span (nominally 100 feet) extending to a suitable support provided by customer; (b) in the case where the electric supply line is of underground construction, the underground facilities extending not to exceed 18 inches inside the property line of the customer.

6. "CUSTOMER'S INSTALLATION" means the wiring and equipment on a customer's premises; also all poles, wires or cables and other facilities necessary to bring the terminus of the customer's wiring to a location where it can be connected to the service line.

7. "LINE EXTENSION" means those additions to the public utility electric supply line necessary to serve customers whose premises are so located that they cannot be supplied by means of a service line from the existing electric supply line.

SECTION 402. SERVICE AND FACILITIES

Rule 1-ACCIDENTS

Each public utility shall submit, as hereinafter provided, a report of each reportable accident involving the facilities or operations of the public utility in the Commonwealth of Pennsylvania. Such reports shall be addressed to the Secretary of the Pennsylvania Public Utility Commission, Harrisburg, Pennsylvania.

A. REPORTABLE ACCIDENTS-A reportable accident is one involving utility facilities or operations which results in one or more of the following circumstances:

(1) Death of a person.

(2) Injury to an employee on duty sufficient to incapacitate him from performing his ordinary duties for a period longer than three days.

(3) Injury to other than an employee on duty sufficient to incapacitate the injured person from following his customary vocation, or mode of life for a period of more than one day.

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PA. P. U. C.-ELEC

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A. INVESTIGATIONS-Eac
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B. RECORDS OF COMP
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date of final disposition.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served an electronic mail copy of the Post Hearing Brief by John Norbeck and the Department of Conservation and Natural Resources upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54.

Cynthia Fordham, Administrative Law Judge
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An electronic copy was also served upon the Secretary's Bureau of the PUC via e-file.

Dated this 3rd day of December, _____.

Virginia J. Davison

Counsel for:

Pennsylvania Department of Conservation and Natural Resources