

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

ROGER MCCALL
Complainant

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APR 01 2010

v.

PENNSYLVANIA ELECTRIC COMPANY
Respondent

Complaint Docket PA PUBLIC UTILITY COMMISSION
No: C-2009-2105240 SECRETARY'S BUREAU

EXCEPTIONS OF ROGER MCCALL - COMPLAINANT

1. On February 25, 2010 Administrative Law Judge John H. Corbett Jr issued his decision on the above complaint. His decision was issued via US Mail by the PUC on March 15, 2010.
2. We agree in part and find exception in part to the decision of the PUC. The Complainant presented his case pro se and has not been afforded sufficient time to review this ruling with legal counsel and would ask the opportunity to do so. The PUC ruling specifically requires immediate response so a response is provided pro se on this date March 31, 2010.
3. We agree with the decision that finds " excessive trimming of Complainant's maple tree.
4. We find exception to the findings of fact and the remedy included in the decision.
5. Exception is noted to comment included in "INTIAL DECISION:HISTORY OF THE PROCEEDING" with respect to the hearing scheduled for

August 13, 2009 and the postponement request of the "Complainant's counsel". The Complainant(McCall) did not request a continuance. The Respondent(Penelec) did request a continuance. The Complainant contested the Motion for Continuance and that Motion was denied. The Motion filed by the Respondent was received three days prior to the scheduled hearing. The Respondent was not willing to state any specific individual that was not available for the hearing. The Motion filed by the Respondent was filed naming the Respondent as Metropolitan Edison Company (MET-ED). (Copy is attached). The Respondent in the case is Pennsylvania Electric Company. Since MET-ED is not a party in the Complaint the Motion should have been denied. If the Respondent failed to appear at the scheduled hearing, a judgment entered in favor of the Complainant as stated in the PUC Hearing Notice and documents would have been appropriate.

6. Exception is noted to comment included in "INITIAL DECISION:HISTORY OF THE PROCEEDING" with respect to "The parties reached a tentative settlement before commencement of the hearing on October 1, 2009." The Respondent and Respondent's counsel failed to appear at the Hearing in Pittsburgh in the offices of the PUC on October 1,2009. The Complainant did drive eight hours for the Hearing. The Administrative Law Judge made telephonic contact with the Respondent and delayed the Hearing for a period while the parties reached a tentative settlement.

After reaching a tentative settlement the Judge went back on the record with specific instructions for the Respondent and Respondent's Counsel to complete in the next week with the PUC. The Respondent did not complete the settlement agreement or follow the requirements of the Administrative Law Judge in the following week with subsequent filings for the PUC. The Complainant contacted the PUC and PUC staff directed the pro se Respondent to file a fax requesting with the PUC. The

fax was submitted and not acted on by the PUC until the Hearing on December 3, 2009. The Motion was dismissed as not properly filed by the Respondent as a motion with proper service. We find exception as the pro se Complainant is held to meet all legal requirements of the PUC even when other direction was received from PUC staff. At the same time the Respondent is not held to comply with the directive of the Administrative Law Judge.

7. Exception is noted to comment included in "INITIAL DECISION:HISTORY OF THE PROCEEDING" with respect to the statement that Hearing generated 131 pages of notes and testimony. We agree notes and testimony was taken at the Hearing and a transcript was offered by the PUC at the conclusion of the Hearing to the Respondent. No offer was made to the pro se Complainant of the hearing transcript. We find exception to the unequal treatment even though it is much more comfortable for the PUC to work with the Respondent and counsel with similar professional training. The PUC directions specifically note that legal counsel is not required and that the PUC intends to work with all parties in a more consumer oriented environment.
8. Exception is noted to comment included in "FINDINGS OF FACT" with respect to testimony provided by the Respondent. The Respondent witnesses made statements about the tree that was trimmed and conditions for which they were not able to testify as they never indicated they had been to the property or witnessed the tree in question prior to the trimming. Virtually all of the Respondent's witness testimony was theoretical and stated policy but not facts about the case and situation in question.

To be specific the Respondent provided no direct evidence and the Finding 22 is not supported by any evidence submitted during the hearing that demonstrated the tree were arching over the power lines.

Finding 31 comments about another employee by respondent should not be admissible as it is not direct testimony.

Finding 32 was not presented into evidence with any form used by the Utility or means where a formal request is made. A review of the record will find that the Respondent stated that the request can be made informally (verbally) or formally and the Utility can respond in like manner.

Finding 35 was not supported by any documentation showing the actual cost to replace such a tree and no evidence was entered by the Respondent other than an opinion. The Complainant offered a differing opinion. A finding of Fact should be based on actual evidence and not opinion.

9. Exception is noted to "DISCUSSION" page 8 last paragraph. Respondent did not provide any direct testimony that any door hangers were provided to any homeowners. The Respondent witnesses were not on the location at the time of tree trimming and they stated that this was our policy. No evidence or direct testimony was offered by individuals that distributed door flyers. The question on the Complainant's creditability is biased.
10. Exception is noted to "DISCUSSION" page 9 last paragraph. The testimony offered in N.T. 64-68, 84-88, 93-94 was made by an individual that was not present during or before the tree trimming and therefore the testimony is speculative. The testimony is beyond reason as a 40 foot tree does not have a trunk 28 foot high that would threaten the Utilities lines. The remaining tree at 28 foot has small branches which are evidenced in the exhibits presented. The only branches that could possibly threaten a 28 foot

power line from a tree 15 feet away would be those that are at least 32 feet in height according to Pythagorean Theorem. The only logical portion of a tree that required cutting would be areas above 32 feet. Therefore, the Administrative Judges conclusions are not "logical, reasonable and consistent with the evidence".

11. Exception is noted to "DISCUSSION" page 10 the findings are that the evidence clearly supports the Complainant's claim. In spite of the findings, the Administrative Judge is unwilling to direct the Respondent to correct or be responsible for their actions and make a reasonable replacement for the excessive trimming.

12. Exception is noted to "DISCUSSION" page 10-11 the Administrative Judges states that "Penelec is willing to remove the existing maple tree and replace it with a 15- 18 foot high deciduous tree (N.T. 115-16, 118). The Judge believes this offer is reasonable. This offer was never made to the Complainant by Penelec or their counsel. Secondly, the Judge was not willing to allow testimony of the offer made on October 1, 2009 by Penelec's counsel and accepted by Complainant as this was confidential attorney-client discussion. This would seem to be interesting as Penelec's counsel does not represent Complainant. Secondly, discussions between, pro se, Complainant and Penelec's counsel were admitted and not given this same attorney – client shield. Whatever rules set by the PUC should apply to all conversations and settlement discussions in a consistent manner.

The offer included in the Judge's decision was never made to the Complainant. This offer is within some reason of the offer proposed by Penelec's counsel on October 1, 2009 and accepted by Complainant. Penelec stated to the Respondent post-hearing that there is no offer to settle with any replacement tree.

The Complainant has never made any request of monetary compensation in any complaint or hearing from the Respondent. The PUC has only been asked to provide corrective action to Penelec's mistakes.

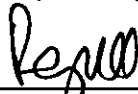
13. Exception is noted to "DISCUSSION" page 11 the Administrative Judges comments on the separate complaint of retaliation that was a result of actions by Penelec after the filing of this case. In order to prevent any facts of this case to influence a separate complaint filed with the PUC for subsequent actions undertaken by the Utility. Complainant requests that the Administrative Law Judge be replaced on Complainant Docket No: **C-2010-2150862**.

14. Exception is noted to "CONCLUSIONS OF LAW" . The Commission finds that the Respondent violated the Public Utility Code and directs the Respondent to cease and desist. A 60 year old tree was destroyed by *careless acts of the Respondent and they are found to be unaccountable for their and their contractor's actions.* If the Commission has no interest in holding the Utility responsible to correct their poor actions or to protect consumer interest then the Commission has no need to hold hearing as they are a waste of all the parties' time and effort.

A civil penalty does not even approach reasonable compense or punishment for the damage caused. Spread over 60 years a civil penalty of \$1,000 is less than \$17 per year.

Wherefore, for all the reasons stated herein, Roger McCall respectfully requests that the Pennsylvania Public Utility Commission direct corrective action to replace the maple tree damaged by excessive trimming and impose civil penalty for the Utility's acts .

Respectfully submitted,



Roger McCall
PO Box 225
Reynoldsville, PA 15851

Dated: March 31, 2010

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ROGER MCCALL

Complainant

v.

PENNSYLVANIA ELECTRIC COMPANY

Respondent

Complaint Docket

No: C-2010-2150862

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 SS 1.54 (relating to service by a party).

VIA First Class U.S. Mail

Michael A Guin

Stevens & Lee

17 North Second Street

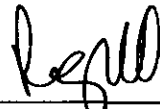
16th Floor

Harrisburg, PA 17101

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



Roger McCall

Dated: March 31, 2010

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Complainant

v.

METROPOLITAN EDISON COMPANY
Respondent

Case No. C-2009-2105240

MOTION FOR CONTINUANCE

1. On May, 5, 2009, Metropolitan Edison Company ("MET-ED") was served with a formal Complaint from Roger McCall ("Complainant"), in the above captioned Docket Number.

2. The Initial Hearing in this matter has been scheduled for August 13, 2009.

3. Pursuant to 52 Pa Code § 1.15, MET-ED hereby respectfully requests a Continuance of the scheduled hearing.

4. Met-Ed's chief witness in this matter has recently become unavailable for the hearing on August 13, 2009. This witness is crucial to Met-Ed's defense of the Complaint.

5. Met-Ed contacted the Complainant to advise that Met-Ed would need a continuance. The Complainant did not agree to a continuance.

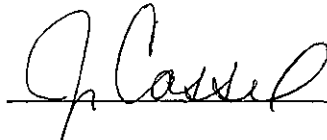
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SECRETARY'S BUREAU

WHEREFORE, for all of the reasons stated herein, MET-ED respectfully requests that the Hearing in this matter be continued.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "J. Cassel", is written over a horizontal line.

Judith D. Cassel (I.D. No. 209393)
17 North Second Street, 16th Floor
Harrisburg, PA 17101
Telephone: 717-255-7382
Facsimile: 610-371-1238
jdc@stevenslee.com

Counsel for Metropolitan Edison Company

Dated: August 6, 2009

United States Postal Service®

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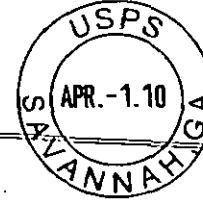
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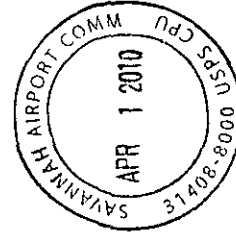
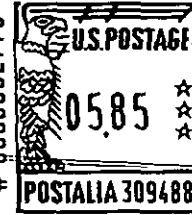


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COMMONWEALTH OF PENNSYLVANIA
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