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April 15, 2010

VIA ELECTRONIC FILING

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

Re: Roger McCall v. Pennsylvania Electric Company
Docket No. C-2009-2105240

Dear Secretary McNulty:

Enclosed for filing on behalf of Pennsylvania Electric Company is the Reply to Complainant's Exceptions in the above captioned proceeding. Copies have been served in accordance with the enclosed Certificate of Service.

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

Sincerely,



Judith D. Cassel

Enclosures

cc: Reply to Exceptions
Certificate of Service

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A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROGER MCCALL

Complainant

v.

PENNSYLVANIA ELECTRIC COMPANY

Respondent

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:
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Docket No. C-2009-2105240

**REPLY EXCEPTIONS OF
PENNSYLVANIA ELECTRIC COMPANY**

Pursuant to 52 Pa. Code § 5.535, Pennsylvania Electric Company (“Penelec” or “Respondent”) hereby replies to the exceptions of Roger McCall (“Complainant”) to the Initial Decision (“I.D.”) of Administrative Law Judge (“ALJ”) John H. Corbett, Jr. issued on March 15, 2010 denying the Complaint.

I. INTRODUCTION

Mr. McCall filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) on May 1, 2009. Mr. McCall alleged that Penelec excessively trimmed a tree on his property in January 2008. Mr. McCall’s Complaint requested relief in the form of an Order requiring Penelec to replace the tree. On May 26, 2009, Respondent answered the complaint and filed new matter. Complainant replied to Penelec’s new matter on June 8, 2009, which Respondent treated as an amended complaint and answered on June 11, 2009.

The parties reached a tentative settlement before commencement of the hearing on October 1, 2009. That tentative settlement, however, was never consummated and a further hearing was held on December 3, 2009. Complainant appeared *pro se*. Michael A. Gruin, Esq. represented Respondent. Complainant offered two exhibits into

evidence, and testified as the only witness on his behalf. Penelec submitted four exhibits (Respondent's Exhs. 2-5) into the record, and offered the testimony of two witnesses.

On March 15, 2010, the Commission served the Initial Decision of ALJ Corbett in this matter. On or about March 31, 2010, Complainant filed his Exceptions to the Initial Decision. Pursuant to 52 Pa. Code 5.535, Penelec hereby files its Reply Exceptions.

II. REPLY EXCEPTIONS

A. ALJ Corbett, correctly outlined the procedural history and the facts as the parties relayed them during the hearing of this Complaint.

The ALJ correctly outlined the facts and the procedural history of the subject Complaint. The Complainant's Exceptions contain both affirmations and disagreements with the ALJ's statement of facts and procedural history. Not all of Complainant's exceptions require a response from Respondent. However, Respondent, will provide responses to Complainant's Exceptions as listed below.

1. Complainant affirms that ALJ Corbett rendered a decision, and as such the statements in paragraph 1 do not include an Exception.
2. The Commission's timeframe for filing exceptions, found in 52 Pa. Code §5.5333, is 20 days for all parties and as such is fair and reasonable. As such, Complainant has not stated a valid Exception to the Initial Decision.
3. Complainant affirms that ALJ Corbett rendered a decision, and notes that he concurs in the result, and as such the statements in paragraph 3 do not include an Exception.
4. Complainant's broad disagreement with the ALJ's decision does not state a sufficient fact or application of law for which an exception can be gleaned.
5. Complainant's characterization of the procedural history in this matter is incorrect, and not supported by the record. ALJ Corbett correctly outlined the procedural history as supported by the record.

6. Complainant's characterization of the procedural history in this matter is incorrect, and not supported by the record. ALJ Corbett correctly outlined the procedural history as supported by the record.
7. The Complainant's Exception related to the availability of the transcript is not supported by the record. Furthermore, the Complainant admits that he was aware that the hearing was being transcribed, and Commission's regulations at 52 Pa. Code 5.251 set forth the protocol for the recording of proceedings. Complainant's Exception on this point has no merit.
8. Complaint's Exception relating to the admissibility of Respondent's testimony has no merit. The record reflects that the Respondent's witnesses had visited the Complainant's property, and further testified that they had examined photographs of the property. Penelec's witnesses also testified that they were very familiar with the Treasure Lake community and the Company's procedures for vegetation maintenance in Treasure Lake. As such, Penelec's testimony was not "theoretical and stated policy", but was based in direct, first-hand knowledge of vegetation maintenance in Treasure Lake in the past, and the vegetation maintenance that actually occurred on the Complainant's property. As such, Penelec's testimony was properly admitted and relied upon by the ALJ.
 - a. Finding of Fact 22 was supported by the record and based on Penelec's witnesses' visit to the Complainant's property and review of the photographs of the property, and therefore, this Finding was based on proper record evidence.
 - b. Finding of Fact 31 is not based on statements by an employee that did not testify, as Complainant alleges. Rather, Finding of Fact 31 was based on the first-hand knowledge of Penelec's witness based on his review of the Company's records.
 - c. Finding of Fact 32 is a recitation of Penelec's standard practice regarding relocation of facilities, as testified to by a Penelec witness with first hand knowledge of such practice. As such, the Finding of Fact was supported by proper record evidence that was not rebutted.

d. Finding of Fact 35 is based on the testimony of Penelec's witnesses, and recites the Company's position with respect to the replacement of a 40 foot high maple tree. The Finding of Fact is appropriate and supported by the record evidence.

B. The ALJ relied on Penelec's properly admitted exhibits and testimony.

9. Complainant's Exception in paragraph 9 relates to the finding that the Complainant's assertion that he never received notice of the trimming was rejected on the grounds that Complainant lacked credibility. This Finding was based on the accurate review of the record regarding Complainant's false report of an emergency on his property, as verified by Company records placed into evidence. Based on Complainant's proven misrepresentation, the ALJ properly disregarded Complainant's accusation of "no notice" as being not credible. Furthermore, under the Pennsylvania Rules of Evidence, Rule 803, records of regularly conducted activity are admissible. Therefore, Penelec's testimony as to its normal business practice of issuing door hangers for tree trimming notice is admissible.
10. According to the record, Complainant is not an engineer nor does he have any training in forestry (N.T. 17-19, 44-45). However, the record makes clear that Penelec contractors must be OSHA-qualified and must adhere to ANSI 300 standards as well as Penelec's own vegetation maintenance specifications (N.T. 58-60; Respondent's Exh. 2). Penelec's witnesses were highly experienced field personnel who stated their professional opinions regarding the need for tree trimming. Furthermore, the Penelec Contractors who were experienced professional tree trimmers are qualified to make determinations about vegetation maintenance for safety and reliability reasons. As such, the ALJ's determination that the Respondent's explanation for not removing the apples trees as being "logical, reasonable, and consistent with the evidence" was proper (ALJ I.D. page 9).

11. The Exception in Paragraph 11 appears to take issue with the ALJ's decision not to impose a civil penalty on Penelec. This Exception is without merit. The ALJ found that Penelec's tree trimming did not warrant a penalty under the circumstances. I.D., at p. 11. In fact, the record demonstrates that the trimming was performed properly in order to address any imminent hazard (N.T. p. 80 line 19-24).
12. According to Pennsylvania Rules of Evidence Rule 408, settlement discussions are not admissible. Therefore, the ALJ properly did not admit confidential settlement discussions into the record.
13. Paragraph 13 refers to a different complaint entirely (C-2010-2150862), and requests a different ALJ for that separate Complaint. The Paragraph does not constitute an Exception to any Finding of Fact or Law in the present case, and therefore is moot.
14. The ALJ found Penelec's actions to be "non-intentional" and "under the circumstances, no civil penalty appears warranted." (ALJ's I.D. page 11.) Penelec only trims trees that pose a danger or potential danger to its facilities (N.T. 57, 69-70, ALJ I.D. page 3 No. 17). Penelec's core goal in trimming Complainant's tree was to provide safe and reliable service by removing branches that could have arched over into its power lines (N.T. 65, 88). As such Penelec was not focused on insuring that the remaining tree was absolutely aesthetically pleasing but rather that the citizens within the Treasure Lake development were safe and had access to reliable electric service (Respondent's Exh. 4, N.T. 64-68, 84-88, 93-94). Accordingly, there is no valid reason to grant the Complainant's Exceptions.

C. There is no Legal or Factual Basis to Grant the Complainant's Exceptions

The Complainant is unable to point to any provision of the Public Utility Code or the Commission's regulations that justifies modifying the

ALJ's Initial Decision. The record reflects that the Respondent's contractor performed vegetation maintenance on the Complainant's property as part of the company's standard four-year maintenance cycles for the Dubois substation circuit that serves the Complainant's neighborhood (N.T. page 57 line 4-9). The record reflects that the contractor that performed the maintenance was OSHA qualified and adhered to the ANSI 300 standards. Penelec's witnesses explained the notice procedures that were followed for vegetation maintenance in the Treasure Lake neighborhood, and explained why a permit is not needed for vegetation maintenance pursuant to the agreement with the Treasure Lake Homeowner's Association. Pursuant to all of the facts listed in the record, no civil penalty was warranted under the circumstances (ALJ's I.D. page 12 No. 3).

The Complainant's tree was rotting from the inside for many years prior to Respondent's tree trimming in this matter (N.T. p. 88 No. 16-25). Penelec offered to replace the trimmed tree, with a 15-18 foot tree, as part of its vegetation practice. Penelec also offered to remove the rotted tree and other trees that Complainant expressed a desire to have removed but Complainant refused (N.T. p. 111, line 1-7). Instead Complainant demanded a 60 year old maple replacement tree (I.D. p. 10) This relief requested by the Complainant (replacement of a 60 year old maple tree) is not reasonable or even feasible, as determined by the ALJ, and therefore

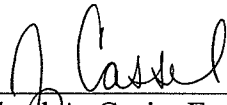
should not be ordered by the Commission. (N.T. p. 115 line 3-13, ALJ I.D.

p. 10).

III. CONCLUSION

For the reasons set forth herein, Pennsylvania Electric Company respectfully requests that the Commission deny Complainant's Exceptions.

Respectfully submitted,



Michael A. Guin, Esquire

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Judith D. Cassel

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Counsel for Pennsylvania Electric Company

Dated: April 15, 2009

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

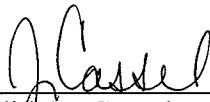
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Complainant	:	
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v.	:	Docket No. C-2009-2105240
	:	
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Respondent	:	

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 First Class U.S. Mail

Roger McCall
P.O. Box 225
Reynoldsville, PA 15851



Judith D. Cassel

DATED: April 15, 2010