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May 12, 2010

VIA E- FILING

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

Re: Richard Stafford v. Pennsylvania Electric Company  
Docket No. C-2010-2171443

Dear Secretary Chiavetta:

Attached please find the Preliminary Objections on behalf of Pennsylvania Electric Company to the Complaint of Richard Stafford in the above-captioned docket number. Copies have been served in accordance with the attached Certificate of Service.

Very truly yours,

RYAN, RUSSELL, OGDEN & SELTZER P.C.



Matthew A. Totino

Enclosures  
MAT:ck

c: Certificate of Service

BEFORE THE  
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RICHARD A. STAFFORD	:	
	:	
v.	:	Docket No. C-2010-2171443
	:	
PENNSYLVANIA ELECTRIC COMPANY	:	

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**NOTICE TO PLEAD**

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**TO:** Richard A. Stafford  
343 Spring Street  
Cambridge Springs, Pennsylvania 16403

You are hereby notified that Pennsylvania Electric Company has filed Preliminary Objections to the above-captioned Complaint. Pursuant to 52 Pa. Code §§ 5.61 and 5.101, you are hereby notified that if you do not file a written response to the enclosed Preliminary Objections within ten (10) days from service of this notice, the objections may be granted, thereby dismissing your Complaint, in whole or in part.

All pleadings such as an Answer to Preliminary Objections must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel.

Dated: May 12, 2010



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Matthew A. Totino  
RYAN, RUSSELL, OGDEN & SELTZER P.C.  
800 North Third Street, Suite 101  
Harrisburg, Pennsylvania 17102-2025  
(717) 236-7714

Attorneys for Pennsylvania Electric Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RICHARD A. STAFFORD	:	
	:	
v.	:	Docket No. C-2010-2171443
	:	
PENNSYLVANIA ELECTRIC COMPANY	:	

**PRELIMINARY OBJECTIONS OF PENNSYLVANIA ELECTRIC COMPANY  
TO DISMISS THE COMPLAINT OF RICHARD A. STAFFORD**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pennsylvania Electric Company (“Penelec” or the “Company”), by and through its counsel, Matthew A. Totino, John F. Povilaitis and Ryan, Russell, Ogden & Seltzer P.C., files these Preliminary Objections requesting that the Commission dismiss the Complaint filed by Richard A. Stafford ("Mr. Stafford" or "Complainant") in the above-captioned matter. Penelec files these Preliminary Objections pursuant to Section 5.101(a) of this Commission’s regulations, 52 Pa. Code § 5.101(a). In support of its Preliminary Objections, Penelec avers as follows:

**I. Introduction**

1. These Preliminary Objections request that the Commission dismiss the above-captioned Complaint. The Complaint should be dismissed because it is legally insufficient in that the claims raised therein are barred by the statute of limitations in the Public Utility Code. Therefore, the Complaint lacks the requisite legal sufficiency as a matter of law and should be dismissed.

**II. Factual Background**

2. Penelec is an Electric Distribution Company that is certificated as a public utility in Pennsylvania.

3. On or about April 19, 2010, Mr. Stafford filed a Formal Complaint against Penelec at the above-captioned docket. In his Complaint, Mr. Stafford makes one primary allegation; that Penelec did not timely disconnect his electric service in 2001-2002.

4. On or about April 22, 2010, the Complaint was served on Penelec.

5. Penelec has filed its Answer and New Matter simultaneously with this pleading.

### **III. Discussion**

#### **A. The Complaint should be dismissed as time-barred under the Public Utility Code.**

6. Complainant received residential retail electric service from Penelec at 931 E 8<sup>th</sup> Street, Erie, Pennsylvania, 16503 ("Service Location") from on or about June 15, 2001 to on or about March 10, 2004.

7. According to the above Formal Complaint, Complainant contacted Penelec on numerous occasions in 2001 and 2002 to disconnect electric service at the Service Location. Complainant further alleges that the final bill received at the Service Location is around "10 years old."

8. On or about March 10, 2004, Penelec disconnected electric service to the Service Location at Complainant's request made the day before (March 9, 2004), and Complainant was subsequently issued a final bill.

9. On or about August 30, 2004, Complainant called the Company about the final bill amount (\$526.23) and was transferred to the Company's collections department. Penelec had no further contact with Complainant about the alleged failure to timely

disconnect electric service to the Service Location and about the final bill until the filing of the above-captioned Formal Complaint.

10. Section 3314(a) of the Public Utility Code, 66 Pa. C.S. § 3314(a), ("Code") states that "no action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose."

11. Moreover, Section 1312 of the Code, 66 Pa. C.S. § 1312, limits ratepayer refunds to a 4-year past period measured from the date that the improper billing was discovered.

12. Even assuming the factual allegations as set forth in the Complaint are true,<sup>1</sup> Penelec's failure to timely disconnect service occurred in 2001-2002, with the final bill that is the subject of the dispute being "10 years old."

13. Complainant filed the above Formal Complaint with the Commission on or about April 19, 2010, which is 8-9 years after the alleged failure to timely disconnect and issuance of the final bill occurred and thus, is well beyond the 3-year statute of limitations on actions and the 4-year refund period. In addition, Complainant has provided no facts establishing that the statute of limitations should be tolled.

14. Therefore, the Formal Complaint filed at the above-captioned docket should be dismissed as time-barred under the Public Utility Code.

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<sup>1</sup> For purposes of these preliminary objections, Penelec must accept the facts, as plead in the Complaint. See, e.g., *County of Allegheny v. Cmwlth. of Pa.*, 490 A.2d 402 (1985).

**IV. Conclusion**

WHEREFORE, for the foregoing reasons, the Pennsylvania Electric Company respectfully requests that the Commission grant its Preliminary Objections dismissing the Complaint of Richard A. Stafford filed at the above-captioned docket and grant any other relief as may be lawful, just and reasonable under the circumstances.

Respectfully Submitted,



Dated: May 12, 2010

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Matthew A. Totino  
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Attorneys for Pennsylvania Electric Company

**IV. Conclusion**

WHEREFORE, for the foregoing reasons, the Pennsylvania Electric Company respectfully requests that the Commission grant its Preliminary Objections dismissing the Complaint of Richard A. Stafford filed at the above-captioned docket and grant any other relief as may be lawful, just and reasonable under the circumstances.

Respectfully Submitted,



Dated: May 12, 2010

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RICHARD STAFFORD

v.

PENNSYLVANIA ELECTRIC COMPANY

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Docket No. C-2010-2171443

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the documents on behalf of Pennsylvania Electric Company upon the individual listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by First Class Mail, postage prepaid, addressed as follows:

Richard Stafford  
343 Spring Street  
Cambridge Springs, Pennsylvania 16403

Bradley A. Bingaman, Esquire  
Pennsylvania Electric Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, Pennsylvania 19612-6001

Dated: May 12, 2010



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