

RYAN, RUSSELL, OGDEN & SELTZER  
A PROFESSIONAL CORPORATION

SUITE 101  
800 NORTH THIRD STREET  
HARRISBURG, PENNSYLVANIA 17102-2025

TELEPHONE: 717-236-7714  
FACSIMILE: 717-236-7816  
WWW.RYANRUSSELL.COM

June 22, 2010

WYOMISSING OFFICE  
SUITE 210  
1150 BERKSHIRE BOULEVARD  
WYOMISSING, PENNSYLVANIA  
19610-1208  
TELEPHONE: 610-372-4761  
FACSIMILE: 610-372-4177

VIA E-FILE AND FIRST CLASS MAIL

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

Re: Roger McCall

v.

Pennsylvania Electric Company, Docket No. C-2009-2105240

Dear Secretary Chiavetta:

Attached is a Petition for Reconsideration on behalf of Pennsylvania Electric Company in the above-captioned proceeding. Copies have been served in accordance with the attached Certificate of Service.

Very truly yours,



Matthew A. Totino

Enclosures  
MAT:ck

c: Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PETITION FOR RECONSIDERATION**

Pursuant to Section 703(g) of the Public Utility Code, 66 Pa. C.S. § 703(g), and 52 Pa. Code § 5.572, Pennsylvania Electric Company ("Penelec" or "the Company") petitions the Pennsylvania Public Utility Commission ("Commission") for reconsideration and amendment of the Opinion and Order entered by the Commission at the above-captioned docket on June 7, 2010 ("Opinion and Order"). In support of its Petition, Penelec represents as follows:

**I. Introduction**

1. On May 1, 2009, Complainant Roger McCall filed a Complaint against Penelec alleging that the Company excessively trimmed a maple tree on his property. Penelec timely filed an Answer and New Matter denying the material allegations in the Complaint. A hearing was subsequently held, and the Presiding Officer issued an Initial Decision sustaining, in part, and denying, in part, the Complaint. Specifically, the Complaint was sustained with respect to the allegations regarding the excessive trimming of Complainant's maple tree. In all other respects, the Complaint was denied.

2. On or about June 7, 2010, the Commission entered its Opinion and Order denying the Exceptions of Complainant and adopting the Initial Decision. In ordering paragraph no. 3., the Commission directed that within 45 days of the entry of the Opinion

and Order, Penelec, "at its sole cost and expense, remove the subject maple tree on Roger McCall's property and replace it with a fifteen to eighteen foot high deciduous tree."

3. Through this Petition, Penelec requests that the Commission reconsider and amend Ordering Paragraph No. 3 to provide the parties with the option to leave the subject maple tree in place and to allow the Company to plant another deciduous tree fifteen to eighteen feet high at a mutually agreeable location on Mr. McCall's property.

## **II. Discussion**

4. In determining whether to grant or deny reconsideration, the Commission applies the standard articulated in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553 (1982):

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part.

In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that:

Parties ... cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them ... what we expect to see raised in petitions for reconsideration are new and novel arguments, not previously heard or considerations which appear to have been overlooked by the Commission.

*Duick*, 53 Pa. P.U.C. at 559.

5. Under the *Duick* standard, the Commission considers whether there is newly discovered evidence, errors of law or changes in circumstances that warrant another Commission review or whether the petition raises "new and novel arguments" not previously heard or not addressed by the Commission. *Advocates for True and Open*

*Competition v. Equitable Gas Company, a division of Equitable Resources*, 1997 Pa. PUC LEXIS 3.

6. Here, reconsideration is warranted because there is a change in circumstances that impacts the relief directed by the Commission in the Opinion and Order. Specifically, the preferred remedy of both parties includes leaving the subject maple tree in its current location. This form of relief, which was not previously raised before the Commission, appears to be precluded by Ordering Paragraph No. 3 of the Opinion and Order. Therefore, reconsideration is necessary to modify Ordering Paragraph No. 3 to allow for the parties' preferred remedy.

7. During the parties' recent discussions, Mr. McCall indicated a desire to keep the maple tree in its current location and to have Penelec plant 2 ½ caliper maple tree (approximately height of 15 feet) at another, mutually agreeable location on his property. Penelec is willing to agree to this course of action. However, upon review of the Opinion and Order, the parties' preferred remedy does not appear to comply with Ordering Paragraph No. 3, which currently requires that the subject maple tree be removed. Because both parties agree with a preferred remedy that keeps the maple tree in its current location and because the maple tree does not represent a dangerous or unsafe condition,<sup>1</sup> Penelec requests that Ordering Paragraph No. 3 be amended, as follows, so that the maple tree that is the subject of the Complaint can remain in place:

That Pennsylvania Electric Company, having agreed to do so, shall, within forty-five days after the entry of this Opinion and Order, at its sole cost and expense, remove the subject maple tree on Roger McCall's property and replace it with a fifteen to eighteen foot high deciduous tree or, if the parties agree that the subject maple tree is not to be removed, plant a fifteen to eighteen foot high deciduous tree at another mutually agreeable location on Complainant's property.

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<sup>1</sup> Tr., pp. 72-75

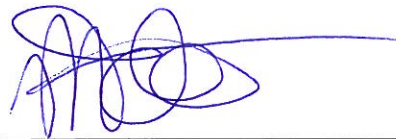
8. Penelec notes that the 45-day window to remove and replace the subject maple tree ends on or around July 22, 2010. Even with a Commission decision on the merits of this reconsideration request at the July 15, 2010 public meeting, Penelec would not have sufficient time to complete the work. Therefore, to avoid any potential non-compliance with the time period prescribed in Ordering Paragraph No. 3, Penelec requests a stay of Ordering Paragraph No. 3, pending the outcome of this Petition.

9. Penelec is authorized to represent that Mr. McCall supports this Petition.

### **III. Conclusion**

WHEREFORE, based on the foregoing, Pennsylvania Electric Company requests that the Commission grant this Petition for Reconsideration and amend Ordering Paragraph No. 3 of the Opinion and Order entered on June 7, 2010 at the above-captioned docket, in accordance with the recommendation in this Petition and grant any other relief that is just and reasonable under the circumstances.

Respectfully submitted,



Dated: June 22, 2010

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Matthew A. Totino, Esquire  
RYAN, RUSSELL, OGDEN AND 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

ROGER MCCALL

v.

PENNSYLVANIA ELECTRIC COMPANY

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Docket No. C-2009-2105240

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the documents 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:

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

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

Dated: June 22, 2010



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