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November 1, 2010

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VIA E-FILING and FIRST CLASS MAIL

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17102

Re: Bette O'Connor v. Pennsylvania Electric Company
Docket No. C-2010-2203088

Dear Secretary Chiavetta:

Enclosed for filing please find the Preliminary Objections on behalf of Pennsylvania Electric Company in the above-captioned proceeding. Copies have been served on all parties as indicated in the attached certificate of service.

Very truly yours,



Eranda Vero

EV/ck
Enclosures
Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

BETTE O'CONNOR :
Complainant :
v. : Docket No. C-2010-2203088
PENNSYLVANIA ELECTRIC COMPANY :
Respondent :

NOTICE TO PLEAD

TO: Bette O'Connor
363 Valleyview Drive
P.O. Box 713
Saegertown, Pennsylvania, 16433

Pursuant to 52 Pa. Code §§5.101 et seq. you are hereby notified that Pennsylvania Electric Company ("Penelec") has filed a Preliminary Objection to which you may answer within ten (10) days unless otherwise provided by Chapter 5 of the Title 52 of the Pennsylvania Code. Your failure to answer will allow the presiding officer to rule on the Preliminary Objection without a response from you, thereby requiring no further proof.

All pleadings, such as a reply to this Preliminary Objection, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for Penelec.

Dated: November 1, 2010



Eranda Vero
John F. Povilaitis
RYAN, RUSSELL, OGDEN & SELTZER P.C.
800 North Third Street, Suite 101
Harrisburg, Pennsylvania 17102-2025
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Attorneys for
Pennsylvania Electric Company

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

BETTE O'CONNOR	:	
	:	
v.	:	Docket No. C-2010-2203088
	:	
PENNSYLVANIA ELECTRIC COMPANY	:	
	:	

**PRELIMINARY OBJECTION OF PENNSYLVANIA ELECTRIC COMPANY
TO THE COMPLAINT OF BETTE O'CONNOR**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, Pennsylvania Electric Company (“Penelec” or the “Company”), by and through its counsel, Eranda Vero, John F. Povilaitis and Ryan, Russell, Ogden & Seltzer P.C., and pursuant to 52 Pa. Code § 5.101, hereby asserts the following Preliminary Objection in response to the Formal Complaint filed by Bette O’Connor (“Complainant” or “Ms. O’Connor”) in connection with the above-captioned proceeding. Specifically, Penelec submits that the Formal Complaint filed at Docket No. C-2010-2203088 is legally insufficient because the Commission cannot grant Complainant the sole relief that she requests in her Formal Complaint. In support thereof, Penelec avers and represents as follows:

I. Background

1. On or about October 6, 2010, Bette O’Connor filed a Formal Complaint alleging that the vegetation maintenance performed by Penelec’s contractor on her property had spoiled the appearance of some of her trees, and consequently had lowered the value of her property.
2. The only relief requested by Complainant is “compensation for the unnecessary destruction of her two pines in the form of free electricity for as long as she remains at the residence, tax free.” Complaint Attachment.

3. Concurrently with this Preliminary Objection, Penelec has filed an Answer and New Matter in response to the Formal Complaint filed at Docket No. C-2010-2203088, which Answer and New Matter is incorporated herein by reference.

II. Argument

4. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. Specifically, the Commission's regulation at 52 Pa. Code § 5.101 permits a party to file a preliminary objection when a pleading filed with the Commission is legally insufficient such that the Commission cannot grant any relief in response to the Complaint. 52 Pa. Code § 5.101(a)(4). In addition Section 703 of the Code allows the Commission to dismiss a complaint if a hearing is not needed. 66 Pa. C.S. § 703(b).

5. Preliminary objections allowed by 52 Pa. Code § 5.101 are comparable to a demurrer in a civil case, which is authorized by Rule 107(b) of the Pennsylvania Rules of Civil Procedure. The Commission has adopted this standard. Application of Main Line Transit Service, Inc., Docket No. A-00116172, Final Order entered October 3, 2010.

6. Penelec must charge its customers as defined in its Commission-approved tariff. The Public Utility Code (the Code) requires that "every rate made, demanded or received by any public utility . . . shall be just and reasonable and in conformity with regulations and orders of the Commission." 66 Pa. C.S. § 1301. The Code further mandates that no utility shall demand or receive a rate that is greater or less than that specified in its tariffs. 66 Pa. C.S.A. § 1303. A utility cannot unreasonably discriminate for or against a particular customer by establishing a special rate for them. 66 Pa. C.S. § 1304. In summation, Penelec can only charge the rates specified in its tariff on file with the Commission.

7. Clearly, the Commission cannot grant the relief requested by Ms. O'Connor in her Complaint, i.e., order Penelec to provide Complainant with "free electricity for as long as she remains at the residence, tax free." Complaint Attachment.

8. Inasmuch as the relief requested constitutes a request for monetary damages, the Commission lacks the authority to grant relief to Complainant.

9. It is well-established under Pennsylvania law that the enforcement powers of the Commission do not include the power to award money damages. Elkin v. Bell, 491 Pa. 123, 420 A.2d 371 (1980); Feingold v. Bell of Pennsylvania, 477 Pa. 1, 383 A.2d 791 (1978).

10. Therefore, in accordance with Pennsylvania law, Penelec submits that this Commission does not have the authority to grant the Complainant the relief she requests in her Complaint.

WHEREFORE, Pennsylvania Electric Company hereby requests that the Complaint of Bette O'Connor be dismissed with prejudice as legally insufficient because the Commission cannot grant the relief Ms. O'Connor expressly requests in her Formal Complaint.

Respectfully submitted,

Dated: November 1, 2010



Eranda Vero
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800 North Third Street, Suite 101
Harrisburg, Pennsylvania 17102-2025
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Attorneys for
Pennsylvania Electric Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BETTE O'CONNOR :
 :
 v. : Docket No. C-2010-2203088
 :
 PENNSYLVANIA ELECTRIC COMPANY :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the relevant documents in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

Via First Class
Bette O'Connor
363 Valleyview Drive
P.O. Box 713
Saegertown, Pennsylvania, 16433

Date: November 1, 2010



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