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Attorneys & Government Relations Professionals

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March 2, 2011

VIA UPS

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

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MAR 2 2011
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Terry McDanel v. Pennsylvania Power Company
Docket No. C-2011-2224783

Dear Secretary Chiavetta:

Enclosed please find the original and three (3) copies of the Answer and New Matter, Preliminary Objections, and Notices to Plead on behalf of Pennsylvania Power Company in the above-captioned proceeding. Copies have been served in accordance with the attached Certificate of Service.

Very truly yours,

Bridgid M. Good/IDS

Bridgid M. Good

BMG/lds
0078979-000016
Enclosure

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MAR 2 2011

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

TERRY MCDANEL

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:
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:
:

v.

Docket No. C-2011-2224783

PENNSYLVANIA POWER COMPANY

1. **PRELIMINARY OBJECTIONS TO THE COMPLAINT OF TERRY
MCDANEL**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pennsylvania Power Company ("Penn Power" or the "Company") by and through its counsel Bridgid M. Good, Jeffrey A. Franklin, and Buchanan Ingersoll & Rooney PC, pursuant to Section 5.101 of this Commission's regulations, 52 Pa. Code § 5.101, requests that the Commission dismiss the Complaint of Terry McDanel, and in support of its Preliminary Objections ("Motion") states as follows:

2. **I. Introduction**

1. This Motion requests the dismissal of the Complaint of Terry McDanel ("Complainant") because his Formal Complaint is legally insufficient, as a matter of law, because he does not claim -- as required by Section 701 of the Public Utility Code, 66 Pa. C. S. § 701 -- that the Company has taken any action or failed to take an action in violation of any law or regulation that it is required to follow.

3. **II. Factual Background**

2. The Complainant is a residential customer receiving electric service from the Company at 293 Douglass Road, Beaver Falls, Pennsylvania 15010 at Account No. 110005303984 ("Service Location").

3. The Complainant filed a formal complaint with the Commission at Docket No. C-2011-2224783 alleging that he does not want the Company to eliminate his discounted rates for his conversion to all electric heat in 1992 ("Formal Complaint"). Formal Complaint, ¶ 4. The Complainant states that he wants Penn Power to "...honor his agreement for discounted rates...". Formal Complaint, ¶ 5.

4. In an Answer and New Matter being served contemporaneously with this Motion, Penn Power has denied the material allegations in the Formal Complaint and requested that it be dismissed.

III. The Complaint is Insufficient as a Matter of Law

6. In accordance with Section 5.101 of the Pennsylvania Public Utility Commission's ("Commission") regulations, preliminary objections may be filed where the complaint is legally insufficient. 52 Pa. Code §5.101 (4).

7. The Public Utility Code requires that "...any person...may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or any regulation or order of the Commission." 66 Pa. C.S. §701.

8. The Electricity Generation Customer Choice and Competition Act ("Competition Act") required the Commission to institute regulations defining electric distribution companies ("EDC") obligations to serve its retail electric customers at the conclusion of the transition periods. 66 Pa. C.S. §§ 2801-2812. This EDC obligation is referred to as the Provider of Last Resort obligation ("POLR"). *Id.*

9. In accordance with the Competition Act, the Commission promulgated rulemaking orders to define and implement POLR obligations by EDCs. *Rule making Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period* Pursuant to 66 Pa. C.S. §2807(e)(2), Docket No. L-00040169, entered May 10, 2007 ("Rulemaking Order"). *Default Service and Retail Electric Markets*, Docket No. M-00072009, entered May 10, 2007, resulting in 52 Pa. Code §§69.1801, et seq.

10. Central to the Rulemaking Order was the directive to simplify rate design "...to provide normal incentives for energy conservation and to facilitate customer choice...through the elimination of declining block rates..." Rulemaking Order at p. 5. Furthermore, in accordance with the Commission's regulations, the Company may no longer use declining block rates and shall design rates to encourage energy conservation. 52 Pa. Code §69.1810 and 52 Pa. Code §54.187(c).

12. Penn Power filed its second Default Supply Plan on May 2, 2007 discussing its plan to obtain POLR service for its remaining generation customers. *Petition of Pennsylvania Power Company for Approval of Interim Default Supply Plan*, Docket No. P-00072305, filed on May 2, 2007. The Default Supply Plan was approved by the Commission. *Id.*, Order approving entered January 2, 2008 and Corrected Opinion and Order, entered March 13, 2008 ("Default Supply Plan").

13. The Company complied with the Commission's regulations and directives by eliminating any declining block rates, like those contained in Rate Schedule RH, in its Default Supply Plan, to reflect the actual cost of energy and promote energy conservation.

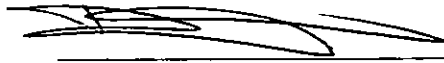
14. Because the Complainant fails to claim that the Company has committed or omitted an act in violation of any Commission statutes, regulations, orders or its tariff, as required by Section 701 of the Public Utility Code, 66 Pa. C. S § 701, he has not stated a claim upon which relief can be granted, and his Formal Complaint should be dismissed as legally insufficient. 52 Pa. Code §5.101 (4).

IV. Conclusion

WHEREFORE, Pennsylvania Power Company requests that the Commission dismiss the Formal Complaint of Terry McDanel with prejudice because his Formal Complaint is legally insufficient as a matter of law.

Respectfully submitted,

Dated: March 2, 2011



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Attorneys for
Pennsylvania Power Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TERRY MCDANEL

v.

PENNSYLVANIA POWER COMPANY

TO: Terry McDanel
293 Douglass Road
Beaver Falls, PA 15010

Docket No. C-2011-2224783

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

NOTICE TO PLEAD

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 facts set forth by Pennsylvania Power Company in the Preliminary Objections may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Response to the enclosed Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with copies served on all other parties to this proceeding. Failure to respond to the Preliminary Objections could result in the dismissal of your case.

Dated: March 2, 2011



Bridgid M. Good

Jeffrey A. Franklin

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1150 Berkshire Boulevard, Suite 210

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Counsel for Pennsylvania Power Company

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CERTIFICATE OF SERVICE

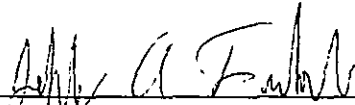
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

I hereby certify that I have this day served a true copy of the Answer and New Matter, Preliminary Objections, and Notices to Plead on behalf of Pennsylvania Power Company upon the individuals 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:

Terry McDanel
293 Douglass Road
Beaver Falls, PA 15010

Dated: March 2, 2011



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