

Lauren M. Lepkoski
717.237.4841
lauren.lepkoski@bipc.com

17 North Second Street, 15th Floor
Harrisburg, PA 17101-1503
T 717 237 4800
F 717 233 0852
www.buchananingersoll.com

May 8, 2012

VIA E-FILING

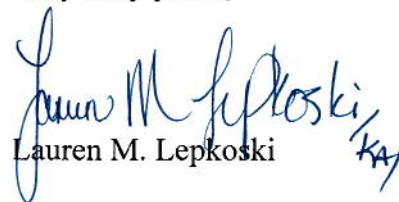
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Jeffrey Weiser v. Pennsylvania Electric Company
Docket No. C-2012-2288375

Dear Secretary Chiavetta:

On behalf of Pennsylvania Electric Company, I have enclosed for electronic filing the Motion for Summary Judgment in the above-captioned matter. Copies have been served on all parties as indicated in the attached certificate of service.

Very truly yours,


Lauren M. Lepkoski *Kay*

LML/kra
Enclosure
cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JEFFREY WEISER :
 :
 v. : **Docket No. C-2012-2288375**
 :
PENNSYLVANIA ELECTRIC COMPANY :

NOTICE TO PLEAD

TO: Jeffrey Weiser
30661 Route 66
Lucinda, PA 16235

Pursuant to 52 Pa. Code § 5.62(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion for Summary Judgment of Pennsylvania Electric Company within **twenty (20) days** from service of this Notice, the facts set forth by Pennsylvania Electric Company in the Motion for Summary Judgment may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Pennsylvania Electric Company, and where applicable, the Administrative Law Judge presiding over the case.


File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Lauren M. Lepkoski, Esq.
Buchanan Ingersoll & Rooney PC
17 North Second Street, 15th Floor
Harrisburg, PA 17101-1503

Dated: May 8, 2012



Lauren M. Lepkoski, Esq. 1/14/12

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JEFFREY WEISER	:	
	:	
v.	:	Docket No. C-2012-2288375
	:	
PENNSYLVANIA ELECTRIC COMPANY	:	

**MOTION FOR SUMMARY JUDGMENT OF PENNSYLVANIA ELECTRIC
COMPANY**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pennsylvania Electric Company (“Penelec” or the “Company”), by and through its counsel, Bridgid M. Good, Alan Michael Seltzer, and Buchanan Ingersoll & Rooney PC, files this Motion for Summary Judgment (“Motion”) in the above-referenced matter pursuant to Section 5.102 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code §5.102. and in support thereof avers as follows:

I. Introduction

1. Penelec seeks the dismissal of the above-captioned Formal Complaint (“Formal Complaint”) filed by Jeffrey Weiser (“Complainant”) because, as matter of law, he does not have standing to bring this action against the Company. The Complainant lacks a substantial, direct and immediate interest in this matter -- as required by applicable Pennsylvania law -- and therefore cannot lawfully file or prosecute the Formal Complaint.

2. Because the Complainant does not have a substantial, direct and immediate interest in the matters alleged in the Formal Complaint, it must be dismissed with prejudice.

II. Procedural Background

3. Penelec is an electric distribution company that is certificated as a public utility within the Commonwealth of Pennsylvania.

4. On or about February 8, 2012, the Complainant filed the Formal Complaint with the Commission against the Company alleging that Penelec improperly charged him for the costs of a service line extension to 30661 Route 66, Lucinda, Pennsylvania ("Proposed Service Location"). The Complainant requested to be reimbursed for the charges paid for the service line extension to the Proposed Service Location. Formal Complaint, ¶¶ 4 and 5.

5. On or about February 15, 2012, the Formal Complaint was served on Penelec via First Class Mail.

6. The Company timely filed its Answer and New Matter to the Formal Complaint denying the material allegations therein and arguing that the Complainant has no standing to bring this Formal Complaint. Answer New Matter, ¶¶ 1-21.

III. Factual Background

7. On September 2, 2011, the Complainant contacted the Company to request temporary electric service to the Proposed Service Location. Logan Affidavit, ¶ 4; New Matter, ¶ 12 .

8. On September 22, 2011, a Company Distribution Specialist ("Distribution Specialist") met with the Complainant at the Proposed Service Location, a stand-alone garage under construction, and discussed the options and related costs of providing temporary and permanent electric service to the Proposed Service Location. Logan Affidavit, ¶ 5; New Matter, ¶ 13 .

9. On that same day, Duston Weiser ("Mr. Weiser") contacted the Company and initiated Account No. 100088086820 ("Account") for commercial service as the ratepayer of record and also requested that permanent electric service be extended to the Proposed Service Location. The request for temporary electric service by the Complainant was cancelled. Logan Affidavit, ¶ 6; New Matter, ¶ 14 .

10. Upon receiving Mr. Weiser's request for a service line extension, the Distribution Specialist engineered the service line extension design for the Proposed Service Location and calculated the costs associated therewith that would be billed to Mr. Weiser. Logan Affidavit, ¶ 8; New Matter, ¶ 15.

11. On September 28, 2011, the Company provided an invoice to Mr. Weiser in the amount of \$2,025.03 for the costs of the requested service line extension to the Proposed Service Location. The invoice was paid by Mr. Weiser on October 10, 2011. The invoice is attached hereto as Exhibit A. Logan Affidavit, ¶ 9; New Matter, ¶ 16 . .

12. Construction of the service line extension to the Proposed Service Location will begin when Mr. Weiser provides the Company with written confirmation of an electrical inspection of the service panel, meter socket, and interior wiring by a licensed electrical inspector. The electric service account associated with the Proposed Service Location is in the name of Mr. Weiser. Logan Affidavit, ¶ 10; New Matter, ¶ 17 .

IV. Argument

A. Summary Judgment Motion Requirements

12. In accordance with the Commission's regulations at 52 Pa. Code § 5.102 (b), after the pleadings are closed but within such time as to not delay a hearing, a party may move for summary judgment based upon the pleadings, and depositions, answers to interrogatories, admissions and supporting affidavits. 52 Pa. Code § 5.102 (b).

13. A presiding officer should grant a motion for summary judgment "...if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving participant is entitled to judgment as a matter of law." 52 Pa. Code § 5.102 (b).

14. When deciding whether a motion for summary judgment should be granted, the court must examine the record in the light most favorable to the non-moving party and all doubts as to the existence of a genuine issue of material fact must be resolved in favor of the non-moving party. *Sanchez v. Philadelphia Housing Authority*, 611 A.2d 346 (Pa. Cmwlth. 1992); *South River Power Partners, L.P. v. West Penn Power Company*, 1996 Pa. PUC LEXIS 175.

15. However, the Complainant may not simply rely upon the allegations made in his Formal Complaint, but rather must demonstrate that there are specific facts which present a genuine issue for trial. *Fiffick v. GAF Corporation*, 603 A.2d 208 (Pa. Super. 1991). In this instance and as will be discussed further below, there is no genuine issue of fact for trial because the Complainant has no standing to bring this Formal Complaint and, as a matter law, the Company is entitled to relief and this Motion should be granted.

B. The Complainant Lacks Standing to Bring the Formal Complaint

16. Section 703 of the Public Utility Code allows the Commission to dismiss a Complaint if a hearing is not needed. 66 Pa.C.S. § 703(b).

17. In order to bring a complaint before a tribunal, a complainant must first demonstrate that she/he has standing to maintain the action. *Nye v. Erie Insurance Exchange*, 470 A.2d 98, 100 (Pa. 1983). Standing requires that a party have an interest in the matter that is substantial, direct and immediate. *William Penn Parking Garage, Inc.*,

et al. v. City of Pittsburgh, 346 A.2d 269 (Pa. 1975). These criteria are defined as follows:

A 'substantial' interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. A 'direct' interest requires a showing that the matter complained of caused harm to the party's interest. An 'immediate' interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or the constitutional guarantee in question.

George v. Pa. P.U.C., 735 A.2d 1282, 1286 (Pa. Cmwlth. 1999). The standard set by *William Penn Parking Garage* for standing is applicable to the Commission cases. *See, Courier Express, Inc. v. F.L. Shaffer Co., Inc.*, Order entered August 30, 1990 at Docket No. C-892462, petition for reconsideration denied December 3, 1990.

18. Here, the Complainant (i) did not request the service line extension to the Proposed Service Location, (ii) was not invoiced by the Company for payment of the service line extension; (iii) did not pay for the service line extension; and (iv) will not be the customer of record for the Proposed Service Location once electric service is provided. The Complainant has not demonstrated an interest in this matter that justifies standing to initiate or prosecute this Formal Complaint, let alone an interest that is substantial, direct and immediate.

19. Therefore, as a matter of law, this Motion should be granted and the Complaint should be dismissed because the Complainant lacks standing to bring the claims stated in the Formal Complaint before the Commission.

C. **The Company is permitted to charge an Applicant for the costs of extending its facilities to provide electric service**

20. Under Rule 6 of Penelec's Retail Electric Tariff, *Electric Pa. P.U.C. No. 80, Original Page 27-Original Page 38, Effective: January 1, 2011*, the Company is permitted to charge an applicant for the costs of extending its facilities to provide electric service. Logan Affidavit, ¶ 11.

21. A public utility is required to adhere to its Commission-approved tariff. Such tariff has the force and effect of law in Pennsylvania, and is legally binding upon the utility, its customers and the public. 66 Pa.C.S. § 1303; *DiSanto v. Dauphin County Water Supply Co.*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981). In construing Code Section 1303, 66 Pa.C.S. § 1303 (Adherence to tariffs), the Commonwealth Court of Pennsylvania has stated that "[t]here can be no lawful rate *except* the last tariff published as provided by law.... Further, it is well established that in the absence of an exception by the Commission, a public utility may not charge any rate for services other than that lawfully tariffed. . . ." *Bell Telephone Co. v. Pa Pub. Util. Comm'n*, 417 A.2d 827 (Pa. Cmwlth 1980), citing *Duquesne Light Co. v. Public Service Commission*, 117 A. 2d 63 (Pa. 1922); *Leiper v. Baltimore and Philadelphia R.R. Co.*, 105 A. 551 (Pa. 1918); *Byer v. Peoples Natural Gas Co.*, 380 A.2d 383 (Pa. Super. 1977). *Blythe Township Municipal Authority v. Pennsylvania Public Utility Commission*, 185 A.2d 628 (Pa. Super. 1962).

22. As stated above, the Company is permitted to charge an applicant for the costs of extending its facilities to provide electric service by the clear and unequivocal terms of the Company's duly approved and effective tariff. The Company provided an invoice to Mr. Weiser (the Applicant) in the amount of \$2,025.03 for the costs of the

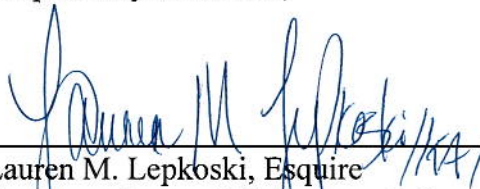
requested service line extension to the Proposed Service Location. Logan Affidavit, ¶ 9. The invoice was paid by Mr. Weiser on October 10, 2011. Logan Affidavit, ¶ 9. Therefore, the Complainant is not entitled to relief in the Formal Complaint as a matter of law.

23. In accordance with Section 5.102(d)(1) of the Commission's regulations, 52 Pa. Code § 5.102(d)(1), there are no genuine issues of material fact in the above-captioned proceeding, and Penelec is entitled to a judgment as matter of law.

V. Conclusion

WHEREFORE, for the foregoing reasons, Pennsylvania Electric Company respectfully requests that the Pennsylvania Public Utility Commission grant this Motion for Summary Judgment, dismiss the Formal Complaint of Jeffrey Weiser, and grant Penelec such other relief as is just and reasonable under the circumstances.

Respectfully submitted,



Lauren M. Lepkoski, Esquire
Buchanan Ingersoll & Rooney P.C.
17 North Second Street, 15th Floor
Harrisburg, PA 17101-1503
(717) 237-4841

Dated: May 8, 2012

Alan Michael Seltzer, Esquire
Buchanan Ingersoll & Rooney PC
1150 Berkshire Boulevard, Suite 210
Wyomissing, Pennsylvania 19610-1208
(610) 372-4761

Attorneys for
Pennsylvania Electric Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JEFFREY WEISER :
 :
 v. : **Docket No. C-2012-2288375**
 :
PENNSYLVANIA ELECTRIC COMPANY :
 :

**AFFIDAVIT OF PATRICK M. LOGAN, SR., IN SUPPORT OF
PENNSYLVANIA ELECTRIC COMPANY'S MOTION FOR SUMMARY
JUDGMENT**

Patrick M. Logan, Sr., being duly sworn according to law, deposes and says the following:

1. My name is Patrick M. Logan, Sr., and my business address is 1600 West First Street, Oil City, Pennsylvania 16301.
2. I am employed by Pennsylvania Electric Company ("Penelec" or the "Company") as a Distribution Specialist.
3. As a Distribution Specialist, I am responsible for making customer contact, site visits, preparing designs for requested projects, preparing mapping updates and compiling work packages.
4. On September 2, 2011, the Complainant contacted the Company to request temporary electric service to 30661 Route 66, Lucinda, Pennsylvania ("Proposed Service Location").
5. On September 22, 2011, a Company Distribution Specialist ("Distribution Specialist") met with the Complainant at the Proposed Service Location, a stand-alone garage under construction, and discussed the options, and costs associated therewith, of temporary and permanent electric service to the Proposed Service Location.

6. On that same day, Duston Weiser ("Mr. Weiser") contacted the Company and initiated Account No. 100088086820 ("Account") for commercial service as the ratepayer of record and also requested that permanent electric service be extended to the Proposed Service Location. The request for temporary electric service by the Complainant was cancelled.


7. Upon receiving Mr. Weiser's request for a service line extension to the Proposed Service Location, the Distribution Specialist engineered the service line extension design and calculated the costs associated therewith that would be billed to Mr. Weiser.

8. On September 28, 2011, the Company provided to Mr. Weiser an invoice in the amount of \$2,025.03 for the costs of the requested service line extension to the Proposed Service Location. The invoice was paid by Mr. Weiser on October 10, 2011.

9. Construction of the service line extension to the Proposed Service Location will begin when Mr. Weiser provides the Company with written confirmation of an electrical inspection of the service panel, meter socket, and interior wiring by a licensed electrical inspect. The electric service account associated with the Proposed Service Location is in the name of Mr. Weiser.

10. Under Rule 6 of Penelec's Retail Electric Tariff, *Electric Pa. P.U.C. No. 80, Original Page 27-Original Page 38, Effective: January 1, 2011*, the Company is permitted to charge an applicant for the costs of extending its facilities to provide electric service.

I am authorized to submit this affidavit for and on behalf of Pennsylvania Electric Company and represent that the facts set forth herein are true and correct to the best of my knowledge, information and belief.

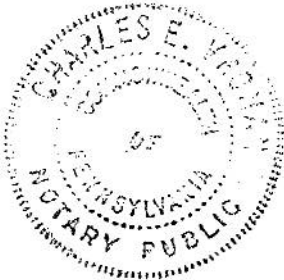

Patrick M. Logan, Sr

Sworn and subscribed before me this 8th
day of May, 2012.


Notary Public

My Commission expires on:

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Charles E. Vroman, Notary Public
City of Oil City, Venango County
My Commission Expires May 16, 2014
Member, Pennsylvania Association of Notaries



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JEFFREY WEISER	:	
	:	
v.	:	Docket No. C-2012-2288375
	:	
PENNSYLVANIA ELECTRIC COMPANY	:	

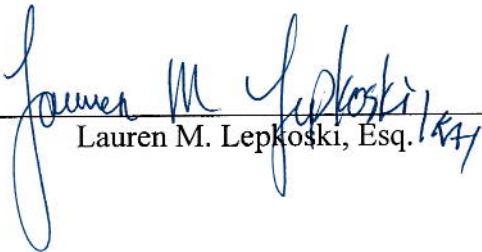
CERTIFICATE OF SERVICE

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 § 1.54 (relating to service by a party).

Via First Class Mail

Jeffrey Weiser
30661 Route 66
Lucinda, Pennsylvania 16235

Dated this 8th day of May, 2012.



Lauren M. Lepkoski, Esq. 1/27