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July 5, 2012

VIA E-FILING

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

Re: Darrell R. Pound v. Pennsylvania Electric Company
Docket No. C-2012-2304847

Dear Secretary Chiavetta:

On behalf of Pennsylvania Electric Company, I have enclosed for electronic filing a 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

LML/kra
Enclosure

cc: Administrative Law Judge Mark A. Hoyer (Via Email and First Class Mail)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DARRELL R. POUND

v.

PENNSYLVANIA ELECTRIC COMPANY

:
:
:
:
:

Docket No. C-2012-2304847

NOTICE TO PLEAD

TO: Darrell R. Pound
9875 New Road
North East, Pennsylvania 16428

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 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: July 5, 2012



Lauren M. Lepkoski, Esq. *KL*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DARRELL R. POUND	:	
	:	
v.	:	Docket No. C-2012-2304847
	:	
PENNSYLVANIA ELECTRIC COMPANY	:	

MOTION FOR SUMMARY JUDGMENT

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

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

I. Introduction

1. Through this Motion, Penelec seeks the dismissal of a Complaint filed by Darrell R. Pound (“Complainant”) disputing any obligation to pay \$3,192.26 for the installation of a new transformer necessary for the Company to provide electrical service to a separately metered garage owned by the Complainant located at 9875 New Road, North East, Pennsylvania 16428 (“Proposed Service Location”). Formal Complaint ¶¶ 4(A) and (B).

2. Because the pleadings, as well as the attached Affidavit of Raymond E. Valdes, Advisor for Rates and Regulatory Affairs for the Company (“Valdes Affidavit”),¹ demonstrate there is no genuine issue of fact and the Company properly followed the Pennsylvania Public Utility Code, 66 Pa.C.S. § 101 *et seq.*, (“Code”) and the Commission's regulations, Penelec is

¹ The Raymond E. Valdes Affidavit is attached hereto and expressly incorporated herein.

entitled to relief as a matter of law. Accordingly, Penelec requests that this Motion be granted and the Complaint 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 May 2, 2012, the Complainant filed a Formal Complaint with the Commission against the Company alleging that Penelec improperly charged him for the costs of a transformer in connection with a service line extension to a separately metered garage located at the Proposed Service Location. The Complainant requested that the Company pay the costs of the transformer for the service line extension to the Proposed Service Location. The Complainant also stated that he was unsure why his electric account was classified as a commercial account. Formal Complaint, ¶¶ 4 and 5.

5. On or about May 18, 2012, the Formal Complaint was served on Penelec via First Class Mail.

6. On June 6, 2012, Penelec timely filed an Answer and New Matter (“Answer”) to the Formal Complaint.

7. The Complainant failed to Reply to the Company’s New Matter.

III. Factual Background

8. The Company provides residential retail electric service to 9875 New Road, North East, Pennsylvania 16428 (“Service Location”) under Account No. 100004543284. Valdes Affidavit, ¶ 4.

9. On January 4, 2012, the Complainant applied for electric service to the Proposed Service Location, which is a separately metered garage owned by the Complainant. Valdes Affidavit, ¶ 5.

10. On January 5, 2012, Sue Brown, an Associate Distribution Specialist for the Company, contacted the Complainant to advise him that the Company would need a load data sheet to determine if the transformer serving the Service Location would be able to support the additional electric load of the Proposed Service Location. On that same day, Ms. Brown sent the Complainant a load data sheet via e-mail. Valdes Affidavit, ¶ 6.

11. On January 5, 2012, Rick Gnacinski, a Company employee in its Line Construction and Maintenance Department, visited the Proposed Service Location to suggest the appropriate location for the electric meter to be installed. During this visit, Mr. Gnacinski advised the Complainant of: (i) the appropriate meter location for the Proposed Service Location; and (ii) the Complainant's need to provide wire from the meter point to the Company's facilities. Valdes Affidavit, ¶ 7.

12. On January 18, 2012, the Company received notification that an electric inspection was completed at the Proposed Service Location. Valdes Affidavit, ¶ 8.

13. After being advised by the Complainant that he had not received the original load data sheet sent previously, Ms. Brown re-sent the Complainant a load data sheet via e-mail on January 20, 2012. Valdes Affidavit, ¶ 9.

14. On January 30, 2012, the Company received the completed load data sheet from the Complainant. Based on information from the load data sheet, the Company determined that the existing 10 KVA transformer at the Service Location did not have the capacity to support the

incremental electric load from the Proposed Service Location, and that it should be upgraded to a 50 KVA transformer. Valdes Affidavit, ¶ 10.

15. On February 17, 2012, the Company contacted the Complainant to provide him the estimated cost of the upgraded transformer for the Proposed Service Location. The estimate was \$3,192.26. Valdes Affidavit, ¶ 11.

16. In March 2012, the Complainant called Ms. Brown and asked: (i) whether the Proposed Service Location would be considered residential if an apartment was placed above it; and (ii) whether the Company would require him to pay for the upgrade of the existing 10 KVA transformer if the Proposed Service Location was classified as a residential account. Ms. Brown advised the Complainant that he would not have to pay for the upgrade of the transformer if he could prove to the Company there was a residence at the Proposed Service Location. Valdes Affidavit, ¶ 12.

17. On April 17, 2012, the Complainant filed an Informal Complaint with the Commission's Bureau of Consumer Services ("BCS") at Case No. 2956044 ("Informal Complaint") disputing any obligation to pay \$3,192.26 for the installation of a new transformer necessary for the Company to provide electrical service the Proposed Service Location. Valdes Affidavit, ¶ 13.

18. On April 27, 2012, the BCS closed the case without a decision because it related to a commercial account. Valdes Affidavit, ¶ 14.

IV. Argument

A. Summary Judgment Motion Requirements

19. The Commission's Rules of Administrative Practice and Procedure permit parties to file preliminary motions. 52 Pa. Code §§ 5.101-103. Specifically, the Commission's regulations at 52 Pa. Code § 5.102(a) permit any party to move for summary judgment after the

pleadings are closed, but within such time as not to delay a hearing. A motion for summary judgment must be based on the pleadings, depositions, answers to interrogatories, admissions and supporting affidavits. 52 Pa. Code § 5.102(c). The presiding officer must grant a motion for summary judgment if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1). The Commission's preliminary motion practice is analogous to Pennsylvania's civil practice regarding preliminary objections. *See Equitable Small Transportation Intervenors v. Equitable Gas Co.*, Docket No. C-00935435, 1994 Pa. PUC Lexis 69 (Order entered July 18, 1994).

B. The Proposed Service Location is a Commercial Account

20. The Complainant applied for electric service to the Proposed Service Location, which is a separately metered garage owned by the Complainant. Valdes Affidavit, ¶ 5.

21. Penelec's Electric Retail Tariff, Electric Pa. P.U.C. No. 80 ("Retail Tariff"), states that "Residential Service does not include electric service to any facility not including an occupied dwelling unit, such as a separately metered garage, barn, water pump, etc."² Valdes Affidavit, ¶ 15.

22. Since the Proposed Service Location does not qualify for Residential Service in accordance with the Retail Tariff, the Company classified the Complainant's electric account for the Proposed Service Location as commercial. Valdes Affidavit, ¶ 16.

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

23. Rule 6 of the Retail Tariff defines a Non-Speculative Line Extension as "[a] Line Extension for a Permanent Residential Customer..." and defines a Permanent Residential

² Electric Retail Tariff, Electric Pa. P.U.C. No. 80, Original Page 23, Effective: January 1, 2011

Customer as “[a] Customer occupying a dwelling or mobile home on a permanent foundation which is the Customer’s primary residence occupied year-round for normal living purposes and including...a permanently installed heating system and permanently installed plumbing and sewage systems.”³ Valdes Affidavit, ¶ 17.

24. Rule 6 of the Retail Tariff describes when and under what circumstances a Speculative Line Extension occurs: “[w]hen the Company is requested to increase capacity, expand facilities or construct Speculative Single Phase Line Extensions and/or Service Lines or Three-Phase Line Extensions and/or Service Lines, the Company shall determine from the circumstances of each case the nature and level of financing and/or guarantee of revenue required of the Applicant/Customer prior to construction or installation of Company facilities.”⁴ Valdes Affidavit, ¶ 18.

25. The Proposed Service Location is not a Non-Speculative Line Extension because it: (i) does not contain permanently installed heating, plumbing and sewage systems; and (ii) will not be occupied year-round for normal living purposes. Therefore, the Proposed Service Location is a Speculative Line Extension. Valdes Affidavit, ¶ 19.

26. Under Rule 6 of the Retail Tariff, the Company is permitted to charge an applicant for the costs of extending the Company's facilities to provide electric service.⁵ Valdes Affidavit, ¶ 20.

27. 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.

³ Retail Electric Tariff, Electric Pa. P.U.C. No. 80, Original Page 30, Effective: January 1, 2011.

⁴ Retail Electric Tariff, Electric Pa. P.U.C. No. 80, Original Page 37, Effective: January 1, 2011.

⁵ *Id.*

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. Pub. Serv. Comm'n*, 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. Pa. Pub. Util. Comm'n*, 185 A.2d 628 (Pa. Super. 1962).

28. The clear and unequivocal terms of the Retail Tariff authorize the Company to charge an applicant for service the costs of extending the Company's facilities to provide that service. Consistent with the Retail Tariff, the Company provided to the Complainant an estimate of \$3,192.26 to upgrade the transformer for the Proposed Service Location. Because the Company fully complied with the Retail Tariff, the Complainant is not entitled to the relief requested in the Formal Complaint as a matter of law.

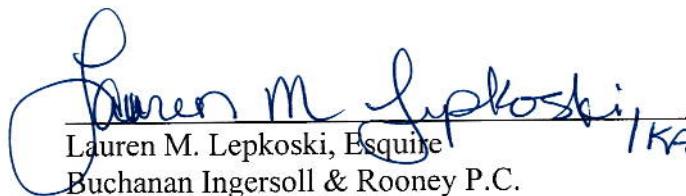
29. In accordance with Section 5.102(d)(1) of the Commission's regulations, 52 Pa. Code § 5.102(d)(1), there are no genuine issues of material fact in this proceeding, and Penelec is entitled to a judgment as matter of law.

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 Darrell R. Pound, and grant Penelec such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

Dated: July 5, 2012

Handwritten signature of Lauren M. Lepkoski in blue ink, written over a horizontal line. The signature is cursive and includes the initials 'KA' at the end.

Lauren M. Lepkoski, Esquire
Buchanan Ingersoll & Rooney P.C.
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Harrisburg, PA 17101-1503
(717) 237-4841

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**

DARRELL R. POUND	:	
	:	
v.	:	Docket No. C-2012-2304847
	:	
PENNSYLVANIA ELECTRIC COMPANY	:	

**AFFIDAVIT OF RAYMOND E. VALDES IN SUPPORT OF
PENNSYLVANIA ELECTRIC COMPANY'S MOTION FOR SUMMARY JUDGMENT**

Raymond E. Valdes, being duly sworn according to law, deposes and says the following:

1. My name is Raymond E. Valdes and my business address is 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601.

2. I am employed by FirstEnergy Service Company as Advisor for Rates and Regulatory Affairs - Pennsylvania. FirstEnergy Service Company's Pennsylvania Rates and Regulatory Affairs Department provides rate and regulatory support for FirstEnergy's Pennsylvania electric distribution companies, which includes Pennsylvania Electric Company ("Penelec" or the "Company"), as well as Metropolitan Edison Company, Pennsylvania Power Company, and West Penn Power Company.

3. As an Advisor for Rates and Regulatory Affairs, I am responsible for the development, coordination, preparation and presentation of retail tariffs; the development of retail electric rates, rules and regulations; the development and preparation of default service plans; the development and preparation of certain accounting and financial data; and the development and preparation of certain reports to the Pennsylvania Public Utility Commission ("Commission").

4. The Company provides residential retail electric service to 9875 New Road, North East, Pennsylvania 16428 ("Service Location") under Account No. 100004543284.

5. On January 4, 2012, the Complainant applied for electric service for a separately metered garage owned by the Complainant at 9875 New Road, North East, Pennsylvania 16428 ("Proposed Service Location").

6. On January 5, 2012, Sue Brown, an Associate Distribution Specialist for the Company, contacted the Complainant to advise him that the Company would need a load data sheet to determine if the transformer serving the Service Location would be able to support the additional electric load of the Proposed Service Location. On that same day, Ms. Brown sent the Complainant a load data sheet via e-mail.

7. On January 5, 2012, Rick Gnacinski, a Company employee in its Line Construction and Maintenance Department, visited the Proposed Service Location to suggest the appropriate location for the electric meter to be installed. During this visit, Mr. Gnacinski advised the Complainant of: (i) the appropriate meter location for the Proposed Service Location; and (ii) the Complainant's need to provide wire from the meter point to the Company's facilities.

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the incremental electric load from the Proposed Service Location, and that it should be upgraded to a 50 KVA transformer.

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13. On April 17, 2012, the Complainant filed an Informal Complaint with the Commission's Bureau of Consumer Services ("BCS") at Case No. 2956044 ("Informal Complaint") disputing any obligation to pay \$3,192.26 for the installation of a new transformer necessary for the Company to provide electrical service the Proposed Service Location.

14. On April 27, 2012, the BCS closed the case without a decision because it related to a commercial account.

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16. Since the Proposed Service Location does not qualify for Residential Service in accordance with the Retail Tariff, the Company classified the Complainant's electric account for the Proposed Service Location as commercial.

17. Rule 6 of the Retail Tariff, Original Page 30, Effective: January 1, 2011, defines a Non-Speculative Line Extension as "[a] Line Extension for a Permanent Residential Customer..." and defines a Permanent Residential Customer as "[a] Customer occupying a dwelling or mobile home on a permanent foundation which is the Customer's primary residence occupied year-round for normal living purposes and including...a permanently installed heating system and permanently installed plumbing and sewage systems".

18. Rule 6 of the Retail Tariff, Original Page 37, Effective: January 1, 2011, describes when and under what circumstances a Speculative Line Extension occurs: "[w]hen the Company is requested to increase capacity, expand facilities or construct Speculative Single Phase Line Extensions and/or Service Lines or Three-Phase Line Extensions and/or Service Lines, the Company shall determine from the circumstances of each case the nature and level of financing and/or guarantee of revenue required of the Applicant/Customer prior to construction or installation of Company facilities."

19. The Proposed Service Location is not a Non-Speculative Line Extension because it: (i) does not contain permanently installed heating, plumbing and sewage systems; and (ii) will not be occupied year-round for normal living purposes. Therefore, the Proposed Service Location is a Speculative Line Extension.

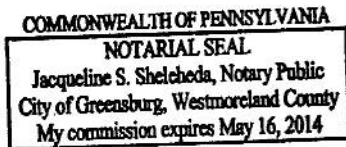
20. Under Rule 6 of the Retail Tariff, Original Page 37, Effective: January 1, 2011, the Company is permitted to charge an applicant for service the costs of extending the Company's facilities to provide electric service.

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


Raymond E. Valdes

Sworn and subscribed before me this 5th
day of July 2012.

Notary Public *Jacqueline S. Shelcheda*
My Commission expires on: *5/16/14*



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DARRELL R. POUND

v.

PENNSYLVANIA ELECTRIC COMPANY

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Docket No. C-2012-2304847


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 U.S. Mail

Darrell R. Pound
9875 New Road
North East, Pennsylvania 16428

Dated this 5th day of July, 2012.


Lauren M. Lepkoski, Esq. /KA