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December 19, 2013

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

RE: Fred Bobb v. PECO Energy Company
PUC Docket No.: C-2013-2354026

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the following documents in the matter referenced above.

—	Answer
—	Answer & New Matter
—	Motion Objecting to Continuance Request
—	Motion for Judgment on the Pleadings
—	Motion to Admit Exhibits
—	Motion to Consolidate
—	Preliminary Objection
—	Exceptions
<u>X</u>	Reply Exceptions
—	Main Brief
—	Reply Petition

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,

Shawane Lee
Counsel for PECO Energy Company
SL/lo

cc: Fred Bobb (via First Class Mail)

REPLY EXCEPTIONS

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Fred Bobb (“Complainant”) in the above-referenced matter on December 16, 2013. On March 4, 2013, Complainant filed a formal complaint against PECO Energy. In his formal complaint, Complainant alleged that he purchased land approximately two years ago to use as a tree farm. The Complainant claims there are Leland Cypress trees bordering the property that he has pruned to an 8-10 foot height. He stated that PECO Energy threatened to remove his trees and did not offer him compensation for the trees. The Complainant alleged that he did not have the funds to remove and replant the trees at issue in a timely manner.

Respondent, PECO Energy filed an Answer on April 11, 2013, denying the allegations in the complaint and averred that the trees at issue were located under the company’s overhead transmission lines. PECO Energy also averred that consistent with an easement the company has on the property and Section 10.9 of the tariff, the company had the right to remove the trees because they threatened the safety of the high voltage overhead transmission lines. Additionally, the company offered to purchase the Complainant’s property at a fair market value; however, the Complainant had rejected the company’s offer. A hearing was held before Administrative Law Judge David A. Salapa on November 5, 2013. During the hearing, PECO Energy presented two witnesses from Vegetation Management and Real Estate and fourteen exhibits. The Complainant testified on his own behalf and presented no exhibits. ALJ Salapa issued an Initial Decision on November 26, 2013, wherein he held inter alia:

The Complainant has failed to establish by a preponderance of the evidence that the Respondent’s attempts to remove the trees in its transmission right of way on the Complainant’s property constitute unreasonable service. The Commission’s regulations governing vegetation management have deferred to NERC vegetation management standards for transmission lines and the Respondent

is attempting to comply with the NERC standards by removing the trees. In addition, the Respondent's tariff Rule 10.9, authorizing the Respondent to remove vegetation near its wires where the vegetation may pose a threat to public safety or system reliability, is presumed to be reasonable. The Complainant has failed to present evidence to rebut that presumption.

See ALJ Salapa, Initial Decision, p. 15, dated 11/5/13.

The Commission should sustain the initial decision of ALJ Salapa. First, the Complainant's exceptions are procedurally improper and should be dismissed under that basis alone. Pursuant to 52 Pa. Code 5.533(b), "[e]ach exception must . . . identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision," and "[s]upporting reasons for the exceptions shall follow each specific exception." Complainant's Exceptions consists of two sentences as follows:

I disagree with the ruling. I found new evidence in prejudice towards our particular parcel, concerning our Christmas tree farm.

In his Exceptions, Complainant did not discuss the new evidence he claims to have or enumerate the basis for his Exceptions in any way. Complainant's attempt to further litigation in this matter by simply disagreeing with the outcome of the Initial Decision without identifying any specific error of law or abuse of discretion fails to satisfy the requirements is procedurally improper and should be dismissed summarily. Complainant excepts to the decision issued by ALJ Salapa because he simply disagrees with the ALJ's decision and believes he submitted adequate proof to the ALJ to support his position. Complainant's vague exception should not be taken into consideration by the Commission and is not grounds to overturn ALJ Salapa's Initial Decision.

ALJ Salapa properly reviewed the testimony and evidence presented at the hearing and his Initial Decision contains well-reasoned findings. The record clearly demonstrates that PECO

Energy has a right to remove the Complainant's trees consistent with an easement that has been in place since the 1927 and Section 10.9 of the company's Commission-approved tariff.

Specifically, the 1927 easement states that PECO Energy has the right:

From time to time to cut down, trim and/or remove from said premises and the premises of Grantors adjoining the same on either side, any trees, branches, bushes or any other thing which in the judgment of Grantee, his or his successors and assigns, may endanger the safety, interfere with the use of, or be a menace to said line or lines or supporting structures or any part thereof or any structures which may be located on said right of way and once removed said menace cannot be replaced without the consent of Grantee.

Further, Section 10.9 of the company's tariff states:

10.9. Aerial Line Clearance. In accordance with the requirements set forth in the National Electric Safety Code, *the Company shall have the right to trim, remove or separate trees, vegetation or any structures therein which, in the opinion of the Company, interfere with its aerial conductors, such that they may pose a threat to public safety or to system reliability.*

In this case, PECO Energy's transmission maintenance guidelines indicate that for 230 kV lines, (such as the overhead transmission lines at issue), the company may allow vegetation with a maximum height of 10-15 feet to grow within the transmission line right of way. N.T. 73. PECO Energy's vegetation management witness testified that the Leland Cyprus trees at issue have the potential to grow 100 feet. N.T. 74. The trees located on the Complainant's premises are a menace and threat to the safety and reliability of the company's high voltage overhead transmission lines. As ALJ Salapa clearly stated in his Initial Decision:

Tariff Rule 10.9 authorizes the Respondent to trim or remove trees or vegetation from the vicinity of its wires in accordance with the requirements set forth in the National Electric Safety Code, where the Respondent believes that the vegetation may pose a threat to public safety or system reliability. N.T. 93.

See ALJ Salapa, Initial Decision, p. 14, dated 11/5/13.

ALJ Salapa correctly concluded, that the Complainant has not met his burden of proof in this matter pursuant to 66 Pa. C.S. § 332(a). Accordingly, ALJ Salapa's decision to dismiss the Complainant's case against PECO Energy should be upheld.

For the reasons set forth above, PECO respectfully requests that the Commission deny the Exceptions and issue an Order upholding the Initial Decision in its entirety.

Respectfully submitted,



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FRED BOBB

COMPLAINANT

v.

PECO ENERGY COMPANY,

RESPONDENT

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Docket No. C-2013-2354026

VERIFICATION

I, Shawane L. Lee, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.



Date: December 19, 2013

Shawane L. Lee

**BEFORE THE
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FRED BOBB

COMPLAINANT

v.

PECO ENERGY COMPANY,

RESPONDENT

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Docket No. C-2013-2354026

CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a true copy of the foregoing Reply Exceptions upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**Fred Bobb
1167 MacPherson Drive
West Chester, PA 19380**

Dated at Philadelphia, Pennsylvania, December 19, 2013



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