



Exelon Business Services Company
Legal Department

2301 Market Street/S23-1
Philadelphia, PA 19103

215 568 3389 Fax
www.exeloncorp.com

Direct Dial: 215.841.6863

March 28, 2014

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

**RE: Petition of PECO Energy Company for a Declaratory Order To Resolve A Controversy Regarding PECO's Point of Delivery And For Determination That PECO Does Not Have Responsibility For Customer Facilities Beyond The Point-Of-Delivery
Docket No. P-_____**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is a Petition for Declaratory Order with regard to the aforementioned matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ward L. Smith".

Ward L. Smith
Counsel for PECO Energy Company

wls/LO

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY
COMPANY FOR A DECLARATORY
ORDER TO RESOLVE
CONTROVERSY REGARDING
PECO ENERGY COMPANY'S
POINT-OF-DELIVERY
AND A FOR A DETERMINATION
THAT PECO DOES NOT HAVE
RESPONSIBILITY FOR CUSTOMER
FACILITIES BEYOND THE
POINT-OF-DELIVERY**

:
:
: **DOCKET NO. P-** _____
:
:
:
:
:
:
:
:
:

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§5.42 and 5.61, you are hereby notified that, if you do not file a written Answer to the enclosed Petition For Declaratory Order within 20 days from service of this notice, a ruling may be entered without further opportunity for your comments. Your Answer must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Ward Smith and other entities listed on the Certificate of Service attached to this Petition.

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

With a copy to:
Ward L. Smith
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Date: March 28, 2014



Ward L. Smith, Esq. (Pa. I.D. 47670)
Counsel for PECO Energy Company
2301 Market Street
Philadelphia, PA 19101-8699
Phone: 215.841.6863
Fax: 215.568.3389
E-mail: ward.smith@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY :
COMPANY FOR A DECLARATORY :
ORDER TO RESOLVE A : DOCKET NO. P - _____
CONTROVERSY REGARDING :
PECO'S POINT-OF-DELIVERY :
AND FOR A DETERMINATION :
THAT PECO DOES NOT HAVE :
RESPONSIBILITY FOR CUSTOMER :
FACILITIES BEYOND THE :
POINT-OF-DELIVERY :**

PECO Energy Company (“PECO”), pursuant to 52 Pa. Code §5.42, hereby petitions the Pennsylvania Public Utility Commission (the “Commission”) for a declaratory order. PECO requests that the Commission issue a declaratory order: (1) that PECO’s point-of-delivery, for its aerial facilities at the location at issue¹, is the first suitable support of the customer, nominally 100 feet inside the property line of the customer,² and (2) that PECO does not have responsibility for customer facilities beyond the point-of-delivery.

A Commission declaration on these two issues will assist in resolving an ongoing controversy between PECO and the estate of Mr. Zdzislaw Jarema. Mr. Jarema was fatally electrocuted while trimming trees near a power line located at 612 New Galena Road, Chalfont,

¹ The location in question is 612 New Galena Road, Chalfont, Pennsylvania, 18914, which is the residence of Barbara Cram-Crabtree and Loren Crabtree (the “Crabtree Property”).

² The phrase “first suitable support of the customer, nominally 100 feet inside the property line of the customer,” is taken from PECO’s Electric Service Tariff Rule 6.1(b), which is discussed in more detail below.

Pennsylvania, 1914, owned by Barbara Cram-Crabtree and Loren Crabtree (the “Crabtree Property.”) Mr. Jarema’s estate sued PECO and other parties in civil court.³

The line in question is a multi-pole line located on the Crabtree Property. The location of the incident is not in meaningful dispute – the incident occurred more than 100 feet inside the Crabtree Property line, and beyond the first pole located on the Crabtree Property. Thus, in the language of PECO’s Tariff as discussed below, the incident occurred beyond “the first suitable support of the Customer, nominally 100 feet inside the property line of the Customer.”

As to PECO, the civil plaintiffs nonetheless claim that the line on which Mr. Jarema was electrocuted is owned, operated and maintained by PECO. For its part, PECO contends that the line that Mr. Jarema contacted is on the customer side of PECO’s point-of-delivery and is owned by the Crabtrees, and that PECO therefore is not responsible for the ownership, operation, or maintenance of that line.

Resolution of this issue is a matter of public utility law and policy. The point-of-delivery is determined by provisions in PECO’s Electric Service Tariff. The Commission has special expertise to review that Tariff and determine the point-of-delivery and whether PECO has responsibility to own, maintain and operate facilities beyond the point-of-delivery; indeed, the Commission has previously decided cases that determine precisely those legal points and

³ In the civil proceeding, the estate is styled as “Hubert Jarema, a/e/o Zdzislaw Jarema and in his own right.” The civil suit by Mr. Jarema’s estate against the Crabtrees was settled. Mr. Jarema’s tree trimming work was being performed on behalf of Peter Krawtchuk, d/b/a Chalfont Custom Painting, which is an active defendant in the civil case. A copy of the civil complaint is attached as Attachment A.

which distinguish utility-owned facilities from customer-owned facilities. In addition, in its *amicus curiae* brief before the Pennsylvania Supreme Court in the case of *Alderwoods, Inc. v. Duquesne Light Company*, No. 12 WAP 2013 (brief filed on July 24, 2013),⁴ the Commission set forth at length its position that expanding a utility's operational responsibilities beyond the point-of-delivery is unduly burdensome and contrary to the public interest. PECO's Petition for Declaratory Order provides the Commission with the opportunity to make the initial determination, in the instant controversy, as to PECO's point-of-delivery and thus avoid having the civil courts create a burdensome expansion of utility responsibility to include responsibility for facilities on the customer side of the point-of-delivery.

⁴ A copy of the Commission's *amicus* brief is attached as Attachment B.

CONTENTS

1. Statements Required by 52 Pa. Code §5.42	
a. The Controversy or Uncertainty Which Is The Subject Matter of This Petition	5
b. The Statutory Provision or Other Authority Involved	6
c. The Facts and Grounds Prompting This Petition	9
d. The Interest of Petitioner PECO	9
2. Argument	
a. The Commission Has Jurisdiction To Issue The Requested Declarations	10
b. Determination of The Point-of-Delivery	17
c. Responsibility on the Customer Side of The Point of Delivery	11
3. Relief Requested	23

1. **Statements Required by 52 Pa. Code §5.42⁵**

a. **The Controversy Or Uncertainty Which Is The Subject Matter of This Petition**

PECO has been sued in civil court by the estate of Zdzislaw Jarema. *See HUBERT JAREMA, As Administrator of the Estate of ZDZISLAW JAREMA and in His Own Right*, Philadelphia Court of Common Pleas, No. 461 EDA 2014. Mr. Jarema was fatally electrocuted on May 28, 2010, while performing tree removal work at the Crabtree Property located at 612 New Galena Road, Chalfont, Pennsylvania, 18914.⁶ Mr. Jarema ascended an aluminum ladder and was using an extension pole with a bungied hook to remove tree branches in an area immediately surrounding an overhead power line, when the pole and/or hook came into contact with the line.

The line in question is a multi-pole line located on the Crabtree Property. The location of the incident is not in meaningful dispute – the incident occurred more than 100 feet inside the Crabtree Property line, and beyond the first pole located on the Crabtree Property. Thus, in the language of PECO’s Tariff as discussed below, the incident occurred beyond “the first suitable support of the Customer, nominally 100 feet inside the property line of the Customer.”

⁵ 52 Pa. Code § 5.42(a) states that petitions for declaratory orders must:

- (1) State clearly and concisely the controversy or uncertainty which is the subject of the petition.
- (2) Cite the statutory provision or other authority involved.
- (3) Include a complete statement of the facts and grounds prompting the petition.
- (4) Include a full disclosure of the interest of the petitioner.

⁶ As previously noted, the civil suit against the Crabtrees was settled.

The civil plaintiff nonetheless alleges that “[t]he overhead power lines involved in the accident *were owned, operated and maintained by PECO* on property owned by Defendant Crabtree.” (Ex. A, Compl. ¶ 11) (emphasis added).

PECO contends that the overhead power line in question is a customer-owned facility located on the Crabtree property beyond PECO’s point-of-delivery, and that PECO consequently does not have responsibility for the ownership, operation, or maintenance of the line.

The controversy or uncertainty which is the subject matter of this petition is two-fold: (1) what is the location of the point-of-delivery at which PECO’s ownership of the line ends, and (2) whether PECO has responsibility to own, operate or maintain the line on the customer side of the point-of-delivery.

b. The Statutory Provision or Other Authority Involved

The Commission has authority to determine and regulate the character of PECO’s facilities pursuant to Sections 501 and 1501 of the Public Utility Code, 66 Pa. C.S. §501,1501.

The point-of-delivery for PECO’s aerial electric facilities is determined by reference to PECO’s Electric Service Tariff which, as a Commission-approved tariff, has the force of law, *Brockway Glass Co. v. Pa. PUC*, 437 A. 2d 1067, 1070 (Pa. Cmwlth. 1981), and by the Company’s Electric Service Requirements, which are specifically incorporated into its Tariff. The relevant portions of the Tariff and Electric Service Requirements include the following Tariff Rules:

1.3 APPLICATION. The Tariff provisions apply to everyone lawfully receiving service from the Company, under the rates therein, and the recipient of service, whether service is based upon contract, agreement, accepted signed application, or otherwise, shall be subject to the terms of the Tariff. In addition, the rates therein shall apply to everyone receiving service unlawfully or otherwise, including unauthorized use as referred to in Rule 4.7 of this Tariff. A customer will receive service under the rates and riders of this tariff effective with their first scheduled billing cycle after the effective date of the tariff or as otherwise indicated in this tariff.

1.5 RULES AND REGULATIONS. The Rules and Regulations, filed as part of this Tariff, are a part of every contract for service made by the Company and govern all classes of service where applicable, unless specifically modified by a rate or rider provisions. The obligations imposed on customers in the Rules and Regulations apply as well to everyone receiving service unlawfully and to unauthorized use of service.

3.3 POINT OF DELIVERY. The company will designate in writing, upon request, a satisfactory point of delivery where the customer shall terminate the wiring and facilities for connection to the distribution lines of the Company. The failure to request and obtain such location may result in refusal of service pending rearrangement of customer's facilities, but the designation of a point of delivery does not constitute an agreement or obligation on the part of the Company to furnish service.

. . . The customer will have the option of extending its own facilities to the Company's point of service delivery.

3.4 SERVICE ENTRANCE EQUIPMENT. All equipment beyond the point of delivery, except the meter, shall be installed by the customer. Installation shall be in conformity with the National Electric Code and the Company's published "Electric Service Requirements"

4.5 ACCEPTANCE. Before the Company affirmatively accepts an application, the Company will consider the application to be "pending". When an application is accepted, it constitutes the contract between the customer and the Company, subject to the Rules and Regulations. A customer or other recipient of service also becomes contractually obliged to the Company when service is provided according to the application either with or without modification, or when the customer otherwise receives service.

6.1 COMPANY SERVICE-SUPPLY LINES. Where the Company has supply facilities of adequate capacity on the highway or in other trunk line location adjacent to the premises to be served, it will provide, own and maintain standard service-supply lines as follows:

. . . (b) AERIAL.

A single span of aerial open wire or cable construction to the first suitable support of the Customer, nominally 100 feet inside the property line of the Customer. The Customer's support shall be so located that the service span will be free of obstruction and adequately supported as required by the size and weight of the conductors.

6.3 CUSTOMER SERVICE EXTENSION. The customer shall provide, own and maintain the service extension from the Company's service-supply lines to the receiving equipment.

6.4 METERS AND TRANSFORMERS. The Company will provide, own and maintain any meter or meters, and also the transformer or transformers . . . required in the supply of service of the current characteristics specified by the Base Rate or rider under which service is provided

PECO's Electric Service Requirements, which are incorporated into its Tariff by Rule 3.4, provide further information for customers and electrical contractors on the technical requirements for different types of electrical services. Several sections of those Requirements pertain to privately owned, customer-installed power supply lines, as follows:

4.3 CUSTOMER'S INSTALLATION

4.3.1 Point of Delivery

The Company will designate in writing, upon request, a satisfactory point of delivery where the Customer shall terminate wiring and facilities for connection to the supply lines of the Company. . . .

4.3.2 Service Entrance Equipment

The Customer shall install all equipment beyond the point of delivery, except the meter. Installation shall conform with the National Electrical Code as well as with all applicable ordinances of authorities having jurisdiction and to these Electric Service Requirements. Where necessary, the Customer shall provide an acceptable sealable/lockable device for mounting a meter, which will be furnished and owned by the customer, and sealed by the Company.

4.4 PRIVATE PROPERTY CONSTRUCTION

4.4.1 Company's Service Supply Lines

Where the Company has supply facilities of adequate capacity adjacent to the premises to be served, it will provide, own and maintain standard service supply lines for a new service or for a change in load, or for a change in rate as follows:

4.4.1.1 Overhead Service – All Customers

Where existing Company supply facilities are overhead, the Company will install a single span of aerial wire or cable to the first suitable support of the Customer, nominally 100 feet inside the property line of the Customer. The Customer's support shall be so located that the service span will be free of obstruction, and adequately supported as required by the size and weight of the conductors. The span shall meet all clearance specifications as required by the National Electrical Code, the National Electric Safety Code, and any legal codes having jurisdiction.

c. The Facts and Grounds Prompting This Petition

In the civil proceeding, PECO filed a request with the trial court that this matter be sent to the Commission for a determination of the tariff issues now posed in this Petition. The trial court denied that request. PECO has appealed that determination to the Superior Court and the trial court proceeding has been stayed, pending that appeal.⁷

This provides an opportunity for the Commission to resolve the question of PECO's point-of-delivery and whether PECO has responsibility for facilities on the customer side of the point-of-delivery.

d. The Interest of Petitioner PECO

As noted above, PECO has been sued in civil court by the estate of Zdzislaw Jarema. PECO's primary interest in obtaining this declaratory order is to make certain that the determination of the point-of-delivery, and the determination of whether PECO has

⁷ A copy of the court's stay order is attached as Attachment C.

responsibility for facilities on the customer side of the point-of-delivery, is in accord with its tariff and Commission policy. Such a Commission determination will of course be useful in resolving the civil litigation, as well as any future similar litigation in the courts or at the Commission.

4. Argument

a. The Commission Has Jurisdiction To Issue The Requested Declarations

PECO requests that the Commission issue two declarations: (1) PECO's point-of-delivery, for its aerial facilities at the location at issue, is the first suitable support of the customer, nominally 100 feet inside the property line of the customer, and (2) PECO does not have responsibility for customer facilities beyond the point-of-delivery.

There can be no doubt that the Commission has jurisdiction to issue rulings on these subject matters, because the Commission has in fact issued rulings on both of these issues in recent years. See, *Norbeck v. Pennsylvania Public Utility Com'n*, 2011 WL 10857826 (Pa. Commw. 2011); *Jeremy Kashuba v. PECO Energy Company*, C-2012-2333019 (Opinion and Order Entered Dec. 5, 2013). Moreover, in the Commission's *amicus curiae* brief in the *Alderwoods* proceeding, the Commission extensively presented the case that it is the subject matter expert agency with responsibility to comprehensively regulate utilities on determination of the point-of-delivery because the determination of the point-of-delivery – and whether the utility has responsibility on the customer side of the point-of-delivery – has important implications for utility safety, reliability, and cost issues that are within the Commission's scope of responsibility.

The dispute posed by the Jarema/PECO controversy raises many of the same policy questions raised in the *Alderwoods* proceeding. If it is determined that PECO has responsibility for the facilities on the customer side of the point-of-delivery, then PECO arguably would have to operate and maintain all private pole lines and private facilities in its service territory, and would be responsible for incidents that occur on the customer side of the point-of-delivery. That is precisely the outcome against which the Commission argued in *Alderwoods*. PECO therefore urges the Commission to issue the requested declarations so that the court has its guidance when proceeding with this matter.⁸

PECO contends that the Commission can issue the requested rulings because it has exclusive jurisdiction over matters involving the reasonableness, adequacy and sufficiency of services rendered by a utility. Specifically, the question of whether PECO has any duty to inspect and/or maintain a customer-owned aerial power line involve complex issues within the primary jurisdiction of the Commission, including interpretation of PECO's Tariff and the Public Utility Code (the "Code"). The Commission has decided nearly identical issues in prior decisions, and PECO requests that the Commission exercise its subject matter jurisdiction and decide the issues involved here.

The Commission has long been recognized as the appropriate forum for the adjudication of issues involving the reasonableness, adequacy and sufficiency of public utility services. *Elkin v. Bell Telephone Company of Pennsylvania*, 420 A.2d 371, 374 (Pa. 1980); *Behrend v. Bell Telephone Co. of Pennsylvania*, 243 A.2d 346 (Pa. 1968); *Bell Telephone Company of*

⁸ Once the Commission issues the requested declarations, the civil matter would proceed, but with the Commission's guidance on point-of-delivery issues.

Pennsylvania v. Sanner, 375 A.2d 93 (Pa. Super. 1977). In Pennsylvania, the powers of the Commission are outlined in the Public Utility Code (the “Code”). *See generally* 66 Pa. C.S. §§ 101-3316 (2006). The Commission has extensive statutory responsibility to regulate and supervise all matters of service and facilities provided by public utilities.⁹ *See* 66 Pa. C.S. § 501. For example, Section 1501 of the Code requires every utility to “furnish and maintain adequate, efficient, safe, and reasonable service and facilities” and to make any repairs or changes as necessary for the safety of the public. *Id.* § 1501. Additionally, Section 1504 of the Code enables the Commission to prescribe “just and reasonable standards, classifications, regulations and practices to be furnished, imposed, observed and followed by any or all public utilities.” *See* 66 Pa. C.S. § 1504(1).

While the courts of common pleas have original jurisdiction over lawsuits seeking money damages, even against public utilities,¹⁰ the Pennsylvania Supreme Court has recognized that, in such instances, both the courts and administrative agencies must play a role in the adjudication of certain matters. *Elkin v. Bell Telephone Company of Pennsylvania*, 420 A.2d 371, 375 (Pa. 1980). To accommodate the role of the court with that of the agency, the doctrine of primary

⁹ The utilities regulated by the Commission include railroads, aircraft, buses, taxis, trucks, ferries, and services such as electric, gas, telephone, water, sewage, and steam heat. *See* 66 Pa. C.S. §§ 101-3316 (2006).

¹⁰ Section 103(c) of the Code provides that “nothing in this part shall abridge or alter the existing rights of action or remedies in equity or under common or statutory law of this Commonwealth, and the provisions of this part shall be cumulative and in addition to such rights of action and remedies.” 66 Pa. C.S. § 103(c). *See also DeFrancesco v. Western Pa. Water Company*, 453 A.2d 595 (Pa. 1982); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978); *Poorbaugh v. Pa. Public Utility Commission*, 666 A.2d 744 (Pa. Commw. 1995), *petition for allowance of appeal denied*, 678 A.2d 367 (Pa. 1996); *Mattes v. Commonwealth*, 503 A.2d 78 (Pa. Commw. 1985).

jurisdiction requires that the administrative agency charged with regulating the subject matter of a controversy—in this case, the Commission—must be provided the first opportunity to adjudicate the issues within its jurisdiction and expertise, thus requiring abstention by the courts of common pleas. *Elkin*, 420 A.2d at 376. See also *Poorbaugh v. Pa. Public Utility Commission*, 666 A.2d 744 (Pa. Commw. 1995), *petition for allowance of appeal denied*, 678 A.2d 367 (Pa. 1996); *Optimum Image, Inc. v. Philadelphia Electric Co.*, 600 A.2d 553 (Pa. Super. 1991).

Moreover, the Public Utility Code, and PECO's Tariff created pursuant to the Code, determine the scope of PECO's responsibilities as a public utility. Accordingly, the Tariff controls over common law theories that might hold otherwise. See *State Farm Fire & Cas. Co. v. PECO Energy Company*, No. 0904-1860, 6 (C.P. Phila. July 20, 2013) ("the Public Utility Code, and by extension the tariffs made pursuant to it, are 'intended to be the supreme law of the Commonwealth in the regulation and supervision of public utilities'") (quoting *PECO Energy Co. v. Township of Upper Dublin*, 922 A.2d 996, 1001 (Pa. Commw. 2007)). For instance, in *State Farm*, just this past summer, the Court of Common Pleas enforced PECO's tariff, holding it "should not usurp the rulemaking authority of the [Commission] by applying other law" *State Farm*, No. 0904-1860, at 6 (observing that "[t]ariffs lawfully established, including limitations of liability, have the effect of law and are binding on both utility and subscriber") (citing *Behrend v. Bell Telephone Co.*, 363 A.2d 1152, 1164 (Pa. Super. 1976)).

The doctrine of primary jurisdiction was first espoused by this Commonwealth in *Weston v. Reading Co.*, 282 A.2d 714 (Pa. 1977). The Pennsylvania Supreme Court defined “primary jurisdiction” as follows:

The doctrine “. . . requires judicial abstention in cases where protection of the integrity of a regulatory scheme dictates preliminary resort to the agency which administers the scheme.” *United States v. Philadelphia National Bank*, 374 U.S. 321, 353, 83 S. Ct. 1715, 1736, 10 L. Ed. 2d 915 (1963). Such abstention is necessary to promote “. . . proper relationships between the courts and administrative agencies charged with particular regulatory duties” *United States V. Western Pacific Railroad Co.*, 352 U.S. 59, 63, 77 S. Ct. 161, 165, 1 L. Ed. 2d 126, 135 Ct. Cl. 997 (1956).

Weston, 282 A.2d at 723. See also *Drafto Corp. v. Nat’l Fuel Gas Distribution Corp.*, 806 A.2d 9, 12 (Pa. Super. 2002). Essentially, the doctrine creates a workable relationship between the courts and the administrative agencies wherein, in appropriate circumstances, the courts can have the benefit of the agency’s views on issues within the agency’s competence. *Elkin*, 420 A.2d at 376. See also *Bean v. Dep’t of State, State Bd. of Funeral Dirs. Ass’n*, 855 A.2d 148, 154 (Pa. Commw. 2004).

The Public Utility Code, 66 Pa. C. S. § 1501, clearly indicates that “every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service.” *Id.* A utility compiles its policies, rules and regulations into its tariff, which it submits to the Commission for review. *Brockway Glass Co. v. Public Utility Commission*, 437 A.2d 1067, 1070 (Pa. Commw. 1981); 66 Pa. C.S. § 1302. Once approved, the tariff provisions are legally binding on both the utility and its customers. *Id.* Accordingly, PECO is required to adhere with those tariffs. See 66 Pa. C.S. § 1303. ***Pennsylvania courts have already determined that matters relating to tariff, necessity of equipment, deposits and***

use of various types of services are within the particular expertise of the Pennsylvania Utility Commission. See *DeFrancesco*, 453 A.2d at 596; *Optimum*, 600 A.2d at 557; *Poorbaugh*, 666 A.2d at 751; *Morrow v. Bell Telephone Co. of Pennsylvania*, 479 A.2d 548 (Pa. Super. 1984); *Norbeck v. Pennsylvania Public Utility Com'n*, 2011 WL 10857826 (Pa. Commw. 2011). Whether PECO has any duty with regard to a customer's privately owned aerial power line is derived solely from the policies, rules and regulations contained in PECO Energy Company's Electric Service Tariff, which is in the exclusive jurisdiction and expertise of the Commission.¹¹ Accordingly, PECO requests the expertise of the Commission in interpreting the Tariff to determine what, if any, duty PECO existed with regard to the maintenance of privately installed and owned aerial power lines.

Clearly, the remedial and enforcement powers vested in the Commission by the Public Utility Code were designed to allow the Commission to enforce its orders and regulations. *Feingold v. Bell of Pennsylvania*, 383 A.2d 791, 795 (Pa. 1977). The competence of the Commission in this area is substantially greater than the competence of a court, and the need for uniformity of policy is apparent. Since resolution of the plaintiff's lawsuit depends wholly on the interpretation of PECO Energy Company's Electric Service Tariff and the Public Utility Code, the technical expertise of the Commission is required to resolve the present dispute. The issues involving PECO's alleged duty to maintain a customer's privately installed and owned aerial power line must be reviewed and analyzed within the regulatory scheme to maintain uniformity and consistency in the Commission's policy. Neither uniform regulatory policy nor

¹¹ As set forth in detail, *infra*, Part C, PECO does not have a duty to maintain customer-owned facilities, and it is not permitted to so, by the Tariff, the Regulations, and the Code. See *Kossmann v. PUC*, 894 A. 2d 1147, 1997 Pa. Commw. LEXIS 223 (1997).

the legislative objective can be achieved if courts and lay factfinders throughout the Commonwealth are permitted to impose differing service standards in individual cases. *See Elkin*, 420 A.2d at 378 (J., Roberts concurring).

As previously stated herein, the Public Utility Law of Pennsylvania provides that the Commission prescribes, as to service and facilities, just and reasonable standards, classifications, regulations and practices to be furnished, imposed, observed and followed by any and all public utilities. *Optimum Image*, 600 A.2d at 557. Further, the law provides that the Commission may prescribe adequate and reasonable standards for the measurement of quantity, quality, pressure, initial voltage or other condition pertaining to the supply of service. *Id.* In addition, the statute provides that the Commission may prescribe reasonable regulations, specifications and standards to secure the accuracy of all meters and appliances for measurement. 66 Pa. C.S. § 1504.

Indeed, in a case raising the strikingly similar question of PECO's ownership of and responsibility for an underground line, the Commission and its Administrative Law Judge evaluated PECO's tariff provisions and the Commission's regulations at great length to determine that the facility in question was privately owned, not owned by PECO, and that PECO therefore did not have responsibility to maintain the line in question. Importantly, in that case, the Commission based its decision in part upon its view of proper public utility policy with respect to forcing other PECO customers to bear the burden of maintaining private facilities, stating that:

We are not inclined to expose PECO's ratepayers to the costs of installing, maintaining or replacing customer-owned service lines

that exceed the provisions of our regulations or commission-approved tariffs.¹²

The Commission's determination was later upheld on appeal to the Commonwealth Court. *Norbeck v. Pennsylvania Public Utility Com'n*, 2011 WL 10857826 (Pa. Commw. 2011) (interpreting and applying PECO's Tariff and determining that the "point of delivery," for purposes of establishing ownership, was 18 inches within the property line, as set forth in the tariff).

As the Commission itself acknowledge in similar circumstances in the *Alderwoods* case, the expertise, specialized knowledge and competence of the Commission is required to protect the integrity of the regulatory scheme. Accordingly, PECO respectfully requests that the Commission issue the requested declaratory orders based on the Tariff, regarding the point-of-delivery and PECO's duties with regard to a customer's privately installed and owned aerial power line.

B. DETERMINATION OF THE POINT-OF-DELIVERY

In recent years, the Commission has had several opportunities to determine the point-of-delivery of utility facilities – that is, the point at which a utility's facilities and responsibility ends, and the customer's facilities and responsibility begins.

¹² *Norbeck v. PECO Energy Company*, Docket No. C-2008-2051267, Opinion and Order entered August 23, 2010, at 14.

Several of the Commission's recent cases involve direct examinations of the PECO Tariff. For example, in *Norbeck v. Pennsylvania Public Utility Com'n*, 2011 WL 10857826 (Pa. Commw. 2011), the Commission determined that, under the provisions of PECO's Tariff, the point-of-delivery for PECO's underground facilities is 18" over the property line of the customer. In *Norbeck*, the Administrative Law Judge and the Commission were called upon to interpret the provision of the tariff regarding underground lines—the corollary to the provision at issue in this case regarding overhead lines. Both the ALJ and the Commission determined that the “point of delivery” as defined in the tariff was 18 inches within the property line. *Id.* at *3. The Commission and the Commonwealth Court, therefore, determined that “since PECO did not own the underground cable, it had no obligation or responsibility under Section 1501, 66 Pa. C.S. § 1501 to maintain it.” *Id.* at *4. Thus, under the facts presented here, where the only difference is that an aerial line, as opposed to an underground line, is at issue, it follows that PECO similarly had no obligation or responsibility to maintain it. *See also DeHaven v. PECO Energy Co.*, No. 0602-0510 (C.P. Phila. Oct. 19, 2006) (“on the issue of whether Defendant PECO has a duty to maintain or inspect a customer owned utility pole, the Court finds that PECO had no such duty as to the privately owned pole . . .”).

In the recent case *Jeremy Kashuba v. PECO Energy Company*, C-2012-2333019 (Opinion and Order Entered Dec. 5, 2013), the Commission reviewed the portions of PECO's tariff dealing with the point-of-delivery for aerial power lines such as the line involved in the instant proceeding. In that case, the Commission stressed that the determination of the point-of-delivery is to be made by reviewing the utility tariff, stating (p. 9, emphasis added) that:

In deciding the question of who is responsible for repairing the poles and sagging wires at issue in this case, we will rely upon the applicable provisions of PECO's tariff. In doing so, we note that Commission-approved tariff provisions have the force of law and are binding on both the public utility and its customers. Brockway Glass Co. v. Pa. PUC, 437 A. 2d 1067, 1070 (Pa. Cmwlth. 1981).

PECO's Tariff¹³ makes it quite clear that, for aerial lines, the point-of-delivery – which is the point when responsibility for the line transfers from PECO to the customer is -- the first suitable support of the Customer, nominally 100 feet inside the property line of the Customer.

Tariff Rules 6.1 and 6.3 set forth this delineation:

6.1 COMPANY SERVICE-SUPPLY LINES. Where *the Company* has supply facilities of adequate capacity on the highway or in other trunk

¹³ The Tariff provisions comprehensively apply to PECO's facilities and customer facilities. See the following Tariff rules:

1.3 APPLICATION. The Tariff provisions apply to everyone lawfully receiving service from the Company, under the rates therein, and the recipient of service, whether service is based upon contract, agreement, accepted signed application, or otherwise, shall be subject to the terms of the Tariff. In addition, the rates therein shall apply to everyone receiving service unlawfully or otherwise, including unauthorized use as referred to in Rule 4.7 of this Tariff. A customer will receive service under the rates and riders of this tariff effective with their first scheduled billing cycle after the effective date of the tariff or as otherwise indicated in this tariff.

1.5 RULES AND REGULATIONS. The Rules and Regulations, filed as part of this Tariff, are a part of every contract for service made by the Company and govern all classes of service where applicable, unless specifically modified by a rate or rider provisions. The obligations imposed on customers in the Rules and Regulations apply as well to everyone receiving service unlawfully and to unauthorized use of service.

4.5 ACCEPTANCE. Before the Company affirmatively accepts an application, the Company will consider the application to be "pending". When an application is accepted, it constitutes the contract between the customer and the Company, subject to the Rules and Regulations. A customer or other recipient of service also becomes contractually obliged to the Company when service is provided according to the application either with or without modification, or when the customer otherwise receives service.

line location adjacent to the premises to be served, it *will provide, own and maintain standard service-supply lines as follows:*

... (b) AERIAL.

A single span of aerial open wire or cable construction *to the first suitable support of the Customer, nominally 100 feet inside the property line of the Customer.* The Customer's support shall be so located that the service span will be free of obstruction and adequately supported as required by the size and weight of the conductors.

6.3 CUSTOMER SERVICE EXTENSION. *The customer shall provide, own and maintain the service extension from the Company's service-supply lines to the receiving equipment.*

Rules 3.3 and 3.4 also make clear that all equipment beyond the point of delivery are owned and operated by the customer:

3.3 POINT OF DELIVERY. The company will designate in writing, upon request, a satisfactory point of delivery where the customer shall terminate the wiring and facilities for connection to the distribution lines of the Company. The failure to request and obtain such location may result in refusal of service pending rearrangement of customer's facilities, but the designation of a point of delivery does not constitute an agreement or obligation on the part of the Company to furnish service.

... *The customer will have the option of extending its own facilities to the Company's point of service delivery.*

3.4 SERVICE ENTRANCE EQUIPMENT. *All equipment beyond the point of delivery, except the meter, shall be installed by the customer.* Installation shall be in conformity with the National Electric Code and the Company's published "Electric Service Requirements"

In turn, PECO's Electric Service Requirements provide further information for customers and electrical contractors on the technical requirements for different types of electrical services. The Electric Service Requirements mirror the Tariff as it pertains to privately owned, customer-installed power supply lines, as follows:

4.3 CUSTOMER'S INSTALLATION

4.3.1 Point of Delivery

The Company will designate in writing, upon request, a satisfactory point of delivery where the Customer shall terminate wiring and facilities for connection to the supply lines of the Company. . . .

4.3.2 Service Entrance Equipment

The Customer shall install all equipment beyond the point of delivery, except the meter. Installation shall conform with the National Electrical Code as well as with all applicable ordinances of authorities having jurisdiction and to these Electric Service Requirements. Where necessary, the Customer shall provide an acceptable sealable/lockable device for mounting a meter, which will be furnished and owned by the customer, and sealed by the Company.

4.4 PRIVATE PROPERTY CONSTRUCTION

4.4.1 Company's Service Supply Lines

Where the Company has supply facilities of adequate capacity adjacent to the premises to be served, it will provide, own and maintain standard service supply lines for a new service or for a change in load, or for a change in rate as follows:

4.4.1.1 Overhead Service – All Customers

Where existing Company supply facilities are overhead, the Company will install a single span of aerial wire or cable to the first suitable support of the Customer, nominally 100 feet inside the property line of the Customer. The Customer's support shall be so located that the service span will be free of obstruction, and adequately supported as required by the size and weight of the conductors. The span shall meet all clearance specifications as required by the National Electrical Code, the National Electric Safety Code, and any legal codes having jurisdiction.

PECO respectfully submits that these cases, Tariff provisions, and Electric Service Requirements inevitably lead to a single conclusion – that PECO's facilities end at the point-of-delivery, which for aerial electric facilities is the first suitable support of the Customer, nominally 100 feet inside the Crabtree Property line. PECO requests that the Commission issue a declaratory order so stating.¹⁴

¹⁴ As previously noted, there is no dispute that Mr. Jarema's fatal contact occurred more than 100 feet over the property line, and beyond the first suitable support of the customer. However, PECO is not seeking a declaratory order from the Commission to establish this factual averment. Rather, PECO simply seeks the declaration noted in text. The Commission's declaration can

C. RESPONSIBILITY ON THE CUSTOMER SIDE OF THE POINT-OF-DELIVERY

The Commission and courts have long recognized that the ownership and maintenance responsibility of an electric utility ends at the point of delivery to the customer. *Hineline v. Metro. Edison Co.*, *Norris v. Phila. Elec. Co.*; *DeHaven*, No. 0602-0510; *Jeremy Kashuba v. PECO Energy Company*, C-2012-2333019 (Opinion and Order Entered Dec. 5, 2013).¹⁵ The Commission's recent *Kashuba* order makes this abundantly clear, stating succinctly that facilities beyond the point-of-delivery are "not PECO's responsibility."

PECO's Tariff provides that where PECO "has supply facilities of adequate capacity on the highway or in other trunk line location adjacent to the premises to be served, it will provide, own and maintain standard service-supply lines [for] . . . [a] single span of aerial open wire or cable construction to the first suitable support of the Customer, nominally 100 feet inside the property line of the customer." (Ex. B, at 6.1).¹⁶ It is undisputed, however, that the location of the subject accident was more than 100 feet inside the Crabtrees' property line and beyond the first suitable support of the customer. Accordingly, PECO had no duty, pursuant to the express

then be utilized in the civil court proceeding. If in fact there is a factual dispute (about which PECO is unaware) as to whether the incident occurred more than 100 feet over the property line, or beyond the first support of the customer, then that factual determination can be resolved by the civil court *within the declaratory legal framework established by the Commission*.

¹⁵ The Commission's Opinion and Order is available on the Commission's website.

¹⁶ Other aspects of PECO's Tariff support this conclusion. For example, Tariff Rule 3.4 provides that all equipment beyond the point of delivery, except the meter, shall be installed by the customer. Tariff Rule 6.3 states the customer shall provide, own, and maintain their service extension. (*See Ex. B*).

language of the Tariff, to own or in any way maintain the subject lines. PECO requests that the Commission issue a declaration stating that PECO is not responsible for facilities on the customer side of the point-of-delivery.¹⁷

5. RELIEF REQUESTED

6.

For the foregoing reasons, PECO respectfully requests that the Pennsylvania Public Utility Commission exercise its jurisdiction over the subject matter at issue in this dispute, and issue a declaratory order: (1) that PECO's point-of-delivery, for its aerial facilities at the location at issue, is the first suitable support of the Customer, nominally 100 feet inside the property line of the Customer, and (2) that PECO does not have responsibility for customer facilities beyond the point-of-delivery.



Ward L. Smith, Esquire
Exelon Business Services Company
2301 Market Street, S23-1
Philadelphia, PA 19103
215-841-6863
ward.smith@exeloncorp.com

Counsel for PECO Energy Company

Date: March 28, 2014

¹⁷ PECO's Tariff Rule 6.4 provides two exceptions to this general rule. First, PECO owns, operates, and is responsible for its meter, which will always be located beyond the point-of-delivery. Second, PECO may install, own, and operate a transformer on the customer side of the point-of-delivery. These two exceptions do not undercut the general principle that PECO is not responsible for equipment on the customer side of the point-of-delivery. To the contrary, they make clear that, if and when PECO has responsibility for equipment on the customer side of the point-of-delivery, the Tariff will explicitly so state. The absence of such a statement with respect to the private pole line contacted by Mr. Jarema is thus a further demonstration that PECO does not have responsibility for that facility.

Attachment A

Civil Complaint

***HUBERT JAREMA, As Administrator of the Estate of ZDZISLAW JAREMA and in His Own
Right, Philadelphia Court of Common Pleas, No. 461 EDA 2014***

Court of Common Pleas of Philadelphia County
Trial Division

Civil Cover Sheet

For Prothonotary Use Only (Docket Number)
DECEMBER 2011
E-Filing Number: 1112037718 **002836**

PLAINTIFF'S NAME HUBERT JAREMA		DEFENDANT'S NAME PECO ENERGY COMPANY	
PLAINTIFF'S ADDRESS 202 CAYUGA CIRCLE DOYLESTOWN PA 18901		DEFENDANT'S ADDRESS 2301 MARKET STREET PHILADELPHIA PA 19101	
PLAINTIFF'S NAME		DEFENDANT'S NAME PETER KRAWTCHUK, ALIAS: CHALFONT CUSTOM PAINTING	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS 62 CALLOWHILL ROAD DOYLESTOWN PA 19801	
PLAINTIFF'S NAME		DEFENDANT'S NAME BARBARA CRABTREE	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS 612 NEW GALENA ROAD CHALFONT PA 18914	
TOTAL NUMBER OF PLAINTIFFS 1	TOTAL NUMBER OF DEFENDANTS 3	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input checked="" type="checkbox"/> Transfer From Other Jurisdictions	
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Mass Tort <input type="checkbox"/> Commerce <input type="checkbox"/> Settlement <input checked="" type="checkbox"/> Jury <input type="checkbox"/> Savings Action <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Minors <input type="checkbox"/> Non-Jury <input type="checkbox"/> Petition <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> W/D/Survival <input type="checkbox"/> Other:		
CASE TYPE AND CODE 2S - PREMISES LIABILITY, SLIP/FALL			
STATUTORY BASIS FOR CAUSE OF ACTION			
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)		FILED PRO PROTHY DEC 22 2011 S. GARRETT	
		IS CASE SUBJECT TO COORDINATION ORDER? YES NO	
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: <u>HUBERT JAREMA</u> Papers may be served at the address set forth below.			
NAME OF PLAINTIFFS/PETITIONER'S/APPELLANT'S ATTORNEY ROBERT J. MONGELUZZI		ADDRESS ONE LIBERTY PLACE 52ND FLOOR 1650 MARKET ST. PHILADELPHIA PA 19103	
PHONE NUMBER (215) 496-8282	FAX NUMBER (215) 496-0999		
SUPREME COURT IDENTIFICATION NO. 36283		E-MAIL ADDRESS ajones@smbb.com	
SIGNATURE OF FILING ATTORNEY OR PARTY ROBERT MONGELUZZI		DATE SUBMITTED Thursday, December 22, 2011, 11:26 am	

SALTZ, MONGELUZZI, BARRETT & BENDESKY, P.C.
 BY: ROBERT J. MONGELUZZI/ DAVID L. KWASS/
 DAVID J. LANGSAM
 IDENTIFICATION NO. 36283/65856/308764
 52ND FLOOR
 1650 MARKET STREET
 PHILADELPHIA, PA 19103
 (215) 496-8282



ATTORNEYS FOR PLAINTIFF

<p>HUBERT JAREMA, As Administrator of the Estate of ZDZISLAW JAREMA and in His Own Right 202 Cayuga Circle Doylestown, PA 18901</p> <p>v.</p> <p>PECO ENERGY COMPANY 2301 Market Street Philadelphia, PA 19101</p> <p>And</p> <p>PETER KRAWTCHUK, D/B/A, CHALFONT CUSTOM PAINTING 62 Callowhill Road Doylestown, PA 18901</p> <p>And</p> <p>BARBARA CRABTREE 612 New Galena Road Chalfont, PA 18914</p>	<p>PHILADELPHIA COUNTY COURT OF COMMON PLEAS</p> <p>DECEMBER TERM, 2011</p> <p>No.</p> <p>JURY TRIAL DEMANDED</p>
--	--

COMPLAINT - CIVIL ACTION

NOTICE

"You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by causing a written appearance personally or by an attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further action for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

PHILADELPHIA BAR ASSOCIATION
 LAWYER REFERRAL and INFORMATION SERVICE
 One Reading Center
 Philadelphia, Pennsylvania 19107
 (215) 238-1701*

AVISO

demandado en corte. Si usted quiere defenderse contra las demandas nombradas en las páginas siguientes, tiene veinte (20) días, a partir de recibir esta demanda y la notificación para establecer personalmente o por un abogado una comparecencia escrita y también para establecer con la corte en forma escrita sus defensas y objeciones a las demandas contra usted. Sea avisado que si usted no se defiende, el caso puede continuar sin usted y la corte pueda incorporar un juicio contra usted sin previo aviso para otorgar el dinero demandado en el pleito o para conseguir cualquier otra demanda o alivio solicitado por el demandante. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE ABOGADO (O NO TIENE DINERO SUFICIENTE PARA PAGAR A UN ABOGADO), VAYA EN PERSONA O LLAME POR TELEFONO LA OFICINA NOMBRADA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL. ESTA OFICINA PUEDE PROPORCIONARLE LA INFORMACION SOBRE CONTRATAR A UN ABOGADO.

SI USTED NO TIENE DINERO SUFICIENTE PARA PAGAR A UN ABOGADO, ESTA OFICINA PUEDE PROPORCIONARLE INFORMACION SOBRE AGENCIAS QUE OFRECEN SERVICIOS LEGALES A PERSONAS QUE CUMPLEN LOS REQUISITOS PARA UN HONORARIO REDUCIDO O NINGUN HONORARIO.

ASOCIACION DE LICENCIADOS DE FILADELFA
 SERVICIO DE REFERENCIA E INFORMACION LEGAL
 One Reading Center
 Philadelphia, Pennsylvania 19107
 Telefono: (215) 238-1701*

1. Plaintiff, Hubert Jarema is an adult resident of Pennsylvania, and resides at 202 Cayuga Circle, Doylestown, PA 18901. On June 17, 2010, Mr. Jarema was duly qualified as Administrator of the Estate of Zdzislaw Jarema.
2. Mr. Jarema died with a spouse, Dorota Jarema, a son, Hubert Jarema, and a daughter, Kornelia Jarema. Under 42 Pa. C.S.A. § 8301(b), his beneficiaries are his wife, Dorota Jarema and his daughter Kornelia Jarema, who currently live in Poland, and his son, Hubert Jarema, who lives at 202 Cayuga Circle, Doylestown, PA 18901.
3. Hubert Jarema brings this suit as the Administrator of the Estate of Zdzislaw Jarema; on his own behalf as a statutory beneficiary; and as personal representative of Zdzislaw Jarema.
4. Defendant PECO Energy Company ("PECO") is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, which maintains its principal place of business at 2301 Market Street, Philadelphia, PA 19101. At all times relevant to this cause of action, PECO was engaged in business within the Commonwealth of Pennsylvania and the County of Philadelphia on a regular, systematic, continuous and substantial basis the manufacture, distribution, transmission, supply and sale of electrical power.
5. Defendant, Peter Krawtchuk, d/b/a Chalfont Custom Painting, is an adult resident of Pennsylvania who resides at 62 Callowhill Road, Doylestown, PA 18901.
6. Defendant, Barbara Crabtree, is an adult resident of Pennsylvania who resides at 612 New Galena Road, Chalfont, PA 18914, the location at which the accident occurred.
7. On May 28, 2010, Mr. Jarema was performing tree removal work at the property owned by Defendant Crabtree at 612 New Galena Road, Chalfont, PA 18914, on behalf of Defendant Krawtchuk, d/b/a Chalfont Custom Painting.

8. On this date, Mr. Jarema began to clear branches which had grown around a power line owned by Defendant PECO in an effort to prevent the branches from striking the power line upon removal of this particular tree.

9. To this end, Mr. Jarema ascended an aluminum ladder and used a painter's roller extension pole with a bungied hook to remove the branches from the area immediately surrounding Defendant, PECO's, power line, when the pole and/or hook came into contact with the power line, causing Mr. Jarema to be thrown from the ladder to the ground.

10. Mr. Jarema was transported via ambulance to Doylestown Hospital, where he was pronounced dead.

11. The overhead power lines involved in the accident were owned, operated and maintained by PECO on property owned by Defendant Crabtree.

12. Defendant PECO knew, or in the exercise of the highest degree of care required by law, should have known that devastating injuries and/or death would result if workers came in contact with its high voltage power conductors while performing tree removal work.

13. Before the date of this accident, defendant PECO was aware of prior accidents resulting in injury and/or death occurring during tree trimming operations when PECO's high voltage power conductors were contacted.

14. Notwithstanding the fact that defendant PECO knew, or in the exercise of the highest degree of care required by law, should have known that devastating injuries and/or death would result if workers performing tree removal work came in contact with PECO's high voltage power conductors, PECO failed to enact and enforce an adequate policy and appropriate procedures for maintaining lines clearances so as to reduce the life hazard as far as practicable,

including, but not limited to an adequate tree trimming and line maintenance policy, or vegetation management policy.

15. In 1990, defendant PECO retained a company called Environmental Consultants to review its vegetation management policies, procedures and plans.

16. In April 1991, Environmental Consultants provided a report to PECO which made recommendations on how to improve PECO's line clearance activities.

17. The Environmental Consultants report indicated that in the late 1980s and early 1990s, PECO devoted insufficient resources to its tree trimming and line clearance operations.

18. The Environmental Consultants report indicated that for the time period it studied, PECO's line clearance operations had degenerated into emergency trimming based on service interruption.

19. The Environmental Consultants report suggested that in order to maintain sufficient clearances between PECO's power lines and vegetation, PECO should implement a three year vegetation management cycle where vegetation was trimmed along circuits every three years.

20. PECO failed to implement the recommendations of Environmental Consultants with respect to a three year trim cycle, and instead adopted a longer trim cycle.

21. PECO failed to adhere even to the lower frequency trim cycle it adopted.

COUNT I - NEGLIGENCE
PLAINTIFF V. PECO ENERGY COMPANY.

22. All preceding paragraphs in this complaint are incorporated here.

23. Defendant PECO, by and through its agents, servants, workmen and employees, was careless and negligent in the following:

- (a) failing to use insulated conductors;
- (b) failing to place barriers, hoses, sleeves or other protective devices over its power conductors to prevent workers from coming into direct contact or in close proximity with its power lines when tree trimming;
- (c) failing to adequately warn workers of the hazardous condition created by the flow of large amounts of electricity and the lethal hazard presented by trimming trees that have power conductors running through them;
- (d) failing to adequately warn workers of the hazardous condition created by power lines running through trees and the hazard presented by trimming trees with power lines running through them;
- (e) failing to enact and enforce the policy or program to educate workers of the dangers of trimming trees if PECO's power conductors are running through them;
- (f) failing to enact and enforce a policy or program to educate workers of the dangers associated with high voltage power conductors;
- (g) failing to comply with the National Electrical Codes;
- (h) failing to comply with the National Electrical Safety Codes;
- (i) failing to exercise the highest degree of care commensurate with its responsibility as a supplier of electrical power of its circumstances;
- (j) breaching its duties under Sections 402A, 413, 416 and 427 of the Restatement (Second) of Torts;
- (k) failing to inspect its high voltage power conductors to determine whether the power conductors were in a reasonably safe condition under the facts and circumstances then and there existing;
- (l) failing to adopt and employ proper and adequate safety precautions, procedures, measures, programs, and plans;
- (m) failing to employ proper and adequate safety devices and other safety equipment;
- (n) failing to enact and enforce adequate tree clearance guidelines;
- (o) failing to have an adequate vegetation management program;
- (p) failing to allot sufficient resources to carry out an adequate vegetation management system;
- (q) failing to formulate, enact and enforce adequate safety programs and measures with respect to its power conductors;

(r) failing to require or suggest recommendations or guidelines for companies that perform its tree trimming on its overhead power conductors;

(s) failing to retain a sufficient number of contractors to perform its vegetation management;

(t) failing to ensure that the companies hired to perform its vegetation management were equipped and competent to do so;

(u) failing to properly investigate and analyze accidents and take appropriate corrective actions;

(v) failing to adequately fund its vegetation management program;

(w) failing to periodically inspect vegetation to ensure safe and adequate clearances from overhead power conductors;

(x) failing to adequately train individuals responsible for inspecting vegetation clearances;

(y) failing to ensure that vegetation is a safe distance away from overhead power conductors;

(z) failing to perform periodic visual inspections of its power conductors to ensure adequate line clearances from vegetation;

(aa) failing to follow the recommendations of Environmental Consultants with respect to its vegetation management operations;

(bb) failing to place the overhead power conductors underground;

(cc) placing large stretches of its distribution system on deferred maintenance;
and

(dd) spending money on expense accounts, advertising, trips and lobbying rather than on the public welfare.

WHEREFORE, Plaintiff claims damages against Defendant PECO Energy Company for an amount in excess of \$50,000.

COUNT II – NEGLIGENCE
PLAINTIFF V. PETER KRAWTCHUK, D/B/A CHALFONT CUSTOM PAINTING

24. All preceding paragraphs of this complaint are incorporated here.

25. Defendant, Peter Krawtchuk, d/b/a Chalfont Custom Painting, requested that Mr. Jarema assist in the tree removal on Defendant Crabtree's property, was present on the property at the time of the accident and was responsible for worksite safety.

26. Defendant Krawtchuk selected and provided the equipment used to perform the tree trimming work upon Defendant Crabtree's property.

27. At the time of the accident, the property contained an unreasonably dangerous and hazardous condition, namely the close proximity between the branches of tree(s) on which work was being done and overhead high voltage lines.

28. The property was unreasonably dangerous and in a hazardous condition because the close proximity between the tree limbs and PECO's high voltage lines increased the risk that harm would befall the workers, who were forced to work in close proximity to overhead high voltage lines.

29. Mr. Krawtchuk either knew, or in the reasonable exercise of care should have known, both of the close physical proximity between the tree(s) where work was being performed and PECO's overhead power lines, and of the electrical and life hazard posed to workers in close proximity thereto.

30. Mr. Krawtchuk either knew, or in the reasonable exercise of care should have known, that workers trimming tree(s) would fail to see and/or appreciate the hazard posed by PECO's overhead power lines.

31. Mr. Krawtchuk is therefore liable to Plaintiff for the injuries suffered by Zdzislaw Jarema, and their correspondent damages, in the following ways:

- a. failing to notice and correct the hazard posed by the close physical proximity between the tree(s) where work was being performed and PECO's overhead power lines;
- b. failing to warn workers of the hazard posed by the close physical proximity between the tree(s) where work was being performed and PECO's overhead power lines;
- c. failing to contact PECO to request that it correct the hazard posed by the close physical proximity between the tree(s) where work was being performed and PECO's overhead power lines;
- d. failing to contact PECO to request that it protect against the hazard posed by the close physical proximity between the tree(s) where work was being performed and PECO's overhead power lines through the use of line snakes or other physical barriers;
- e. allowing workers who were business invitees to be exposed to the hazard posed by the close physical proximity between the tree(s) where work was being performed and PECO's overhead power lines;
- f. failing to ensure a safe worksite free from unreasonable hazards to life and limb;
- g. failing to provide workers with appropriate equipment to safely complete the tree-trimming work at the worksite.

WHEREFORE, Plaintiff Hubert Jarema claims damages against Defendant Peter Krawtchuk, d/b/a Chalfont Custom Painting, for an amount in excess of \$50,000.

COUNT III – NEGLIGENCE
PLAINTIFF V. BARBARA CRABTREE

- 32. All preceding paragraphs of this complaint are incorporated here.
- 33. Defendant, Barbara Crabtree owned the property upon which the tree-trimming work was being performed, was present on the property when the accident occurred and was responsible for worksite safety.
- 34. At the time of the accident, the property contained an unreasonably dangerous and hazardous condition, namely the close proximity between the branches of tree(s) on which work was being done and overhead high voltage lines.

35. The property was unreasonably dangerous and in a hazardous condition because the close proximity between the tree limbs and PECO's high voltage lines increased the risk that harm would befall the workers, who were forced to work in close proximity to overhead high voltage lines.

36. Ms. Crabtree either knew, or in the reasonable exercise of care should have known, both of the close physical proximity between the tree(s) where work was being performed and PECO's overhead power lines, and of the electrical and life hazard posed to workers in close proximity thereto.

37. Ms. Crabtree either knew, or in the reasonable exercise of care should have known, that workers trimming tree(s) would fail to see and/or appreciate the hazard posed by PECO's overhead power lines.

38. Ms. Crabtree is therefore liable to Plaintiff for the injuries suffered by Zdzislaw Jarema, and their correspondent damages, in the following ways:

- a. failing to notice and correct the hazard posed by the close physical proximity between the tree(s) where work was being performed and PECO's overhead power lines;
- b. failing to warn workers of the hazard posed by the close physical proximity between the tree(s) where work was being performed and PECO's overhead power lines;
- c. failing to contact PECO to request that it correct the hazard posed by the close physical proximity between the tree(s) where work was being performed and PECO's overhead power lines;
- d. failing to contact PECO to request that it protect against the hazard posed by the close physical proximity between the tree(s) where work was being performed and PECO's overhead power lines through the use of line snakes or other physical barriers;
- e. allowing workers who were business invitees to be exposed to the hazard posed by the close physical proximity between the tree(s) where work was being performed and PECO's overhead power lines;
- f. failing to ensure a safe worksite free from unreasonable hazards to life and limb;

WHEREFORE, Plaintiff Hubert Jarema claims damages against Defendant Barbara Crabtree, for an amount in excess of \$50,000.

COUNT IV
HUBERT JAREMA, AS PERSONAL REPRESENTATIVE OF ZDZISLAW JAREMA V.
ALL DEFENDANTS

39. All preceding paragraphs of this complaint are incorporated here by reference.

40. Plaintiff Hubert Jarema brings this action as personal representative of Zdzislaw Jarema, on behalf of those entitled by law to recover for his wrongful death, under and by virtue of 42 Pa. C.S.A. §8301, et seq., commonly known as the Pennsylvania Wrongful Death Act.

41. No action for damages was brought by Mr. Jarema during his lifetime as a result of the accident at issue in this case.

42. Plaintiff Hubert Jarema claims damages for the pecuniary loss suffered by decedent's beneficiaries by reason of the death of Mr. Jarema, and specifically for reimbursement of medical expenses, funeral expenses, and expenses of administration.

43. Plaintiff Hubert Jarema claims damages resulting from the deprivation of comfort, aid, assistance, and society, and the loss of guidance and tutelage to children, due to the death of Mr. Jarema.

WHEREFORE, Plaintiff Hubert Jarema, for the benefit of those entitled by law to recover damages for Zdzislaw Jarema's wrongful death, claims compensatory damages against defendants in an amount in excess of \$50,000.

COUNT V
ESTATE OF ZDZISLAW JAREMA V. ALL DEFENDANTS

44. All preceding paragraphs of this complaint are incorporated here by reference.

45. Plaintiff Hubert Jarema, Administrator of the Estate of Zdzislaw Jarema, also brings this action under and by virtue of 42 Pa. C.S.A. §8302, commonly known as the Pennsylvania Survival Act.

46. The estate of Zdzislaw Jarema claims damages for pain and suffering undergone by the decedent as a result of the defendants' tortuous conduct, up to and including the time of death, and damages for the net amount that Mr. Jarema would have earned from the date of his death to the end of his life expectancy.

WHEREFORE, Plaintiff Hubert Jarema, Administrator of the Estate of Zdzislaw Jarema, claims compensatory damages against all defendants for an amount in excess of \$50,000.

SALTZ, MONGELUZZI, BARRETT & BENDESKY, P.C.

BY: /s/ David L. Kwass

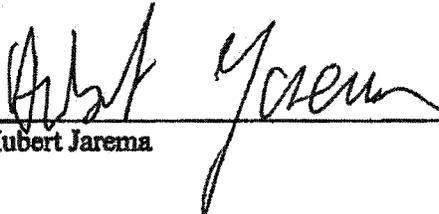
Robert J. Mongeluzzi, Esquire
David L. Kwass, Esquire
David J. Langsam, Esquire
Attorneys for Plaintiff

Date: 12/22/11

VERIFICATION

The averments or denials of fact contained in the foregoing are true based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are inconsistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. This Verification is made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

DATE: 12/19/2011


Hubert Jarema

Attachment B

Amicus Brief

Pennsylvania Public Utility Commission

Alderwoods, Inc. v. Duquesne Light Company, No. 12 WAP 2013

IN THE SUPREME COURT OF PENNSYLVANIA

**Alderwoods (Pennsylvania), Inc.,
Appellee**

v.

**Duquesne Light Company,
Appellant**

:
:
:
:
:
:
:
:
:
:
:
:

No. 12 WAP 2013

**BRIEF OF *AMICUS CURIAE* PENNSYLVANIA PUBLIC UTILITY
COMMISSION IN SUPPORT OF
APPELLANT DUQUESNE LIGHT COMPANY**

On Petition for Allowance of Appeal from the Order of the Superior Court of Pennsylvania dated July 27, 2012 at No. 1967 WDA 2010, Reversing the Order of the Court of Common Pleas of Allegheny County, Civil Division, at No. GD-09-14720, dated March 8, 2011.

Kenneth R. Stark
Assistant Counsel

Patricia T. Wiedt
Assistant Counsel

Robert F. Young
Deputy Chief Counsel

Bohdan R. Pankiw
Chief Counsel

Counsel for Pennsylvania
Public Utility Commission

P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-5000
Dated: July 24, 2013

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iii
STATEMENT OF INTEREST OF <i>AMICUS CURIAE</i>	1
STATEMENT OF ISSUES AS RAISED BY APPELLANT	2
STATEMENT OF THE CASE.....	3
SUMMARY OF THE ARGUMENT.....	4
ARGUMENT	6
I. Introduction: The Regulatory Purview and Expertise Of The Commission	6
A. Service Outage And Restoration Under The Public Utility Code	6
B. The Service Point Of Electricity Separates Ownership And Maintenance Responsibility Between The Electric Utility And The Customer	8
C. Commission Regulation of Electric Utility Service and Reliability	11
D. Duty Of Electric Utilities Regarding Inspection Of Neutral Connections	14
II. The New And Unprecedented Duty Imposed By The Superior Court On Electric Utilities Is Burdensome And Contrary To The Public Interest.....	16
A. Case Law And Regulatory Practice Demonstrate That An Electric Utility Has No Duty To Inspect Customer Equipment Before Restoring Power After An Outage.....	17
B. The Superior Court Erred In Its Application Of The <i>Althaus</i> Duty Factors	18
1. Nature Of Relationship Between Customer And Utility	19

2.	Prompt Restoration Of Electric Service And Power Has Great Social Utility	20
3.	Any Potential Harm Or Risk Is Not Sufficiently Concrete Or Foreseeable To Require Imposing a Duty of Inspection.....	21
4.	The Detrimental Consequences Of Imposing A Duty On The Electric Utility To Inspect A Customer's Electrical Panel Box Before Restoring Power	23
5.	The Overall Public Interest In Not Imposing A Duty....	25
III.	Conclusion Of Argument And The Commission's Regulatory Role	26
	CONCLUSION	28

TABLE OF AUTHORITIES

Cases

<i>Althaus v. Cohen</i> 756 A.2d 1116 (Pa. 2000)	17,18,23
<i>Aronson v. Pa. Public Utility Commission</i> , 740 A.2d 1208; <i>appeal denied</i> , 751 A.2d 193 (Pa. 2000)	6
<i>Dunnaway v. Duquesne Light Co.</i> 423 F.2d 66 (3d Cir. 1970)	18
<i>Elkin v. Bell Tel. Co. of Pa.</i> 420 A.2d 371 (Pa. 1980)	17
<i>Luketich v. Duquesne Light Co.</i> 132 A.2d 268 (Pa. 1957)	18
<i>Norris v. Phila. Elec. Co.</i> 5 A.2d 114 (Pa. 1939)	8,17
<i>Popowsky v. Pa. Public Utility Commission</i> , 706 A.2d 1197 (Pa. 1997)	17
<i>Reed v. Duquesne Light Co.</i> 47 A.2d 136 (Pa. 1946)	17,18
<i>R.W. v. Manzek</i> 888 A.2d 740 (Pa. 2005)	17,21

Statutes

66 Pa. C.S. § 501	1,6,7,27
66 Pa. C.S. § 1301	26
66 Pa. C.S. § 1501	<i>passim</i>
66 Pa. C.S. § 2802(20)	11,14
66 Pa. C.S. § 2804	19
66 Pa. C.S. § 2804(1)	7,8,10
66 Pa. C.S. § 2804(1)(ii)	15

Rules and Regulations

52 Pa. Code § 57.191i-iv 21
52 Pa. Code §§ 57.191-57.197 12
52 Pa. Code § 57.194(b) 7
52 Pa. Code § 57.197(a) 7
52 Pa. Code § 57.198(b) 7
52 Pa. Code § 67.1 7,20
52 Pa. Code § 69.1901 8

Other Authorities

*Advance Notice of Proposed Rulemaking for Revision of 52 Pa. Code
Chapter 57, Commission Order, Docket No. L-2008-2044821
(Feb. 25, 2010)* 14,27

Craft v. Pa. Elec. Co.
1976 Pa. PUC LEXIS 95 (Pa. PUC 1976) 16

Duquesne Light: Construction and Renovation 10

Hineline v. Metro. Edison Co.
1990 Pa. PUC LEXIS 156, (Pa. PUC 1990) 8,10,17

NESC, § 214A (2012) 15

NESC, 2012 Edition, Foreword, p. iii-vi (June 2011) 9

NESC, § 2: Definitions (2012) 8,9

*Policy Statement Regarding Utility Service Outage Public Notification
Guidelines, Final Policy Statement, Docket No. M-2008-2065532
(Dec. 15, 2011)* 8,27

*Prevention and Mitigation of Extended Service Outages, Commission Order,
Docket No. I-2011-2271989 (Nov. 10, 2011)* 7,26

*Proposed Rulemaking for Revision of 52 Pa Code Chapters 57, 59, 65, and 67
Pertaining to Utilities' Service Outage Response and Restoration
Practices, Final Rulemaking Order, Docket No. L-2009-2104274
(Sep. 22, 2011) 27*

**Summary Report of Outage Information Submitted by Electric Distribution
Companies Affected by Hurricane Sandy October 29-31, 2012, p. 58
(prepared by PUC Bureau of Technical Services, May 2013) 24**

STATEMENT OF INTEREST OF *AMICUS CURIAE*

Pursuant to Rule 531 of the Pennsylvania Rules of Appellate Procedure, the Pennsylvania Public Utility Commission (“Commission” or “PUC”) files this brief *amicus curiae* to explain its statutory role in regulating electric utilities regarding service outage and restoration practices and issues pursuant to the Public Utility Code. The Commission is very concerned that in the Opinion and Order below, the Superior Court imposed a burdensome and unprecedented duty upon electric utilities. This newly imposed duty upon electric utilities will increase costs for consumers and utilities as well as delay efforts by electric utilities to restore power after storms and other outages. Furthermore, the Superior Court’s ruling intrudes upon the PUC’s statutory duty to regulate service, restoration practices, and duties of public utilities. *See* 66 Pa. C.S. §§ 501, 1501.

STATEMENT OF ISSUES AS RAISED BY PETITIONER

1. Whether the Superior Court erred in imposing upon electric utilities a burdensome and unprecedented duty to enter customers' premises and inspect customers' electrical facilities before restoring power after an outage?

Suggested answer: yes.

2. Whether the Superior Court overlooked the deleterious effects of its ruling upon public health and safety, in that by requiring utilities to inspect customers' premises before restoring power, the new duty created by the Superior Court will delay utilities' efforts to restore power after storms and other outages?

Suggested answer: yes.

3. Whether the Superior Court overlooked undisputed facts of record that undermine the rationale of its decision?

Suggested answer: The PUC will not address this question in this amicus brief.

STATEMENT OF THE CASE

The Commission, the *amicus curiae*, incorporates by reference and adopts the Statement of the Case as set forth in the brief of Appellant Duquesne Light (Duquesne).

SUMMARY OF ARGUMENT

The Superior Court has imposed a burdensome and unprecedented duty upon electric utilities to inspect customer equipment after storms and outages. This new duty will increase consumer costs and delay efforts to restore electric service. An electric utility does not have a duty to enter a customer's premises and inspect customer equipment under the Public Utility Code. As the expert in utility law, the PUC is charged with administering the Code and regulating electric utilities in Pennsylvania.

An electric utility only has a duty to inspect its own transmission and distribution facilities. An electric utility's maintenance responsibility and legal duties end at the point of delivery, *i.e.*, **service point**, to the customer. The service point is where the utility's wiring ends and the customer's wiring begins. Beyond the service point, the customer is responsible for maintenance of its internal wiring and electrical equipment.

The Superior Court mistakenly found a duty in its analysis of the negligence claim in this case. Prompt restoration of power has great social utility and is expected by customers. Duty should only be imposed when there is a *reasonable foreseeability* that a party's conduct creates an unreasonable risk of harm to others. Requiring the electric utility to only inspect its *own* facilities prior to service restoration does not create an unreasonable risk of harm. Imposing this new duty

of inspection on electric utilities is not in the public interest because it is both severely burdensome and costly to utilities and customers. Accordingly, the new and unprecedented duty of inspection imposed by the Superior Court is contrary to the Public Utility Code, relevant case law, and the public interest.

ARGUMENT

Pursuant to Rule 531 of the Pennsylvania Rules of Appellate Procedure, the PUC files this brief *amicus curiae* to inform this Honorable Court as to the PUC's role in regulating electric utilities and the effect of the Superior Court's decision on electric utilities and electric utility customers throughout Pennsylvania.

I. Introduction: The Regulatory Purview And Expertise Of The Commission

The PUC's mission entails ensuring safe and reliable utility service at reasonable rates, protecting the public interest, and fostering new technologies and competitive markets in an environmentally sound manner. The Commission's administrative expertise in public utility law includes the interpretation of its regulations and its governing statute, the Public Utility Code. *Aronson v. Pa. Public Utility Commission*, 740 A.2d 1208, 1211, *appeal denied*, 751 A.2d 193 (Pa. 2000). The Commission regulates public utilities in Pennsylvania, including Duquesne, an electric distribution company (EDC). *See* 66 Pa. C.S. §§ 501, 1501.

A. Service Outage And Restoration Under The Public Utility Code

Under the Public Utility Code, an electric utility in Pennsylvania has a legal duty to maintain safe and reasonable service and facilities and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa. C.S.

§ 1501. Pursuant to its statutory powers, the Commission is authorized to adopt and enforce rules to ensure that EDCs, i.e., electric utilities, provide safe, adequate, and reliable service. 66 Pa. C.S. § 501. The Commission must ensure that electric utilities adhere to the established industry standards and practices, such as the standards of the National Electrical Safety Code (NESC)¹, regarding the installation and maintenance of transmission and distribution facilities. 66 Pa. C.S. § 2804(1); 52 Pa. Code §§ 57.194(b), 57.198(b). Commission staff may initiate an investigation, or may do so upon complaint by an affected party, to determine whether an electric utility is providing utility service in accordance with such standards. 52 Pa. Code § 57.197(a).

In performing its mission to serve the public interest and all customers of the Commonwealth, the Commission strives to balance the reliability of utility service with affordability of utility service. *See Prevention and Mitigation of Extended Service Outages*, Commission Order, Docket No. I-2011-2271989 (Nov. 10, 2011). As to restoration of electric service after an outage, the Commission emphasizes the speed of restoration since customers expect their power to be restored as quickly as possible. *See* 52 Pa. Code § 67.1 (requiring utilities to report certain

¹ The NESC is maintained and published by the Institute of Electrical and Electronics Engineers, Inc. The current edition of the NESC is the 2012 Edition, approved as an American National Standard on June 3, 2011 by the American National Standards Institute. General references to the NESC in this brief will be to the “NESC” while specific citations to the NESC will be to the “2012 NESC.”

outages when service is not restored within specified times).² The Commission has also enacted policies to encourage utilities to provide better public notification to customers regarding service outages and estimated restoration times. *See* 52 Pa. Code § 69.1901 (providing guidelines for electric utilities).³ However, for sound reasons of policy and law, the Public Utility Code and established industry standards and practices do not impose a duty upon electric utilities, beyond the maintenance of utilities' own transmission and distribution facilities, to enter customers' premises and inspect customers' electrical equipment before restoring power after an outage. *See* 66 Pa. C.S. § 2804(1) (adopting the NESC).

B. The Service Point Of Electricity Separates Ownership And Maintenance Responsibility Between The Electric Utility And The Customer

The Commission and courts have long recognized that the ownership and maintenance responsibility of an electric utility ends at the point of delivery to the customer. *Hineline v. Metro. Edison Co.*, 1990 Pa. PUC LEXIS 156, at *6 (Pa. PUC 1990); *Norris v. Phila. Elec. Co.*, 5 A.2d 114, 116 (Pa. 1939) (holding that electric utility companies do not have a duty to inspect customer equipment).

Under the standards of the NESC, adopted by the Public Utility Code, the point of delivery is known as the **service point**. 2012 NESC, § 2: Definitions, at p. 15

² *See also Proposed Rulemaking for Revision of 52 Pa Code Chapters 57, 59, 65, and 67 Pertaining to Utilities' Service Outage Response and Restoration Practices*, Final Rulemaking Order, Docket No. L-2009-2104274 (Sep. 22, 2011).

³ *See also Policy Statement Regarding Utility Service Outage Public Notification Guidelines*, Final Policy Statement, Docket No. M-2008-2065532 (Dec. 15, 2011).

(2012).⁴ The **service point** is the point of connection between the distribution facilities of the serving utility delivering the electricity and the premises wiring system of the customer. *Id.* The **premises** are the land and buildings located on the user (customer) side of the service point. *Id.* The **premises wiring system** is the “[i]nterior and exterior wiring, including power, lighting, control, communication, and other signal circuit wiring together with all their associated hardware, fittings, and wiring devices, both permanently and temporarily installed...from the service point or the premises power source to the outlets.” *Id.* In other words, the **service point** is the point on the wiring system where the utility’s wiring ends and the customer’s wiring begins.⁵ *See id.* (explanatory note).

The **service point** is also the jurisdictional line of demarcation between two national codes: (1) the NESC and (2) the National Electrical Code (NEC).⁶ *See* Appendix A (2012 NESC Figure 011-1 – Service point – General illustration of what is covered and not covered by the NESC). The Public Utility Code adopts the standards of the NESC and requires electric utilities to adhere to the NESC

⁴ The NESC standards and definitions cited in this brief were revised in the 2012 Edition. “The Scope, Application, and Definition rules were extensively revised in 2012 to better reflect the historical application of the NESC versus the NEC. **The changes in Rules 010 – Purpose and 011 – Scope are not changes in either scope of purpose; they are clear statements of the almost 100-year application of the requirements of the NESC to the specified circumstances....** 2012 NESC, Foreword at p. iv (emphasis added).

⁵ The serving electric utility generally specifies the location of the service point based on the utility’s condition of service. Exact locations for a service point vary from utility to utility and from premises to premises, but service points are often located on the rooftop of a premises. *See* 2012 NESC, § 2: Definitions, at p. 15.

⁶ The National Electrical Code (“NEC”) is published and maintained by the National Fire Protection Association. The NEC is also an American National Standard.

maintenance and installation standards for transmission and distribution facilities. 66 Pa. C.S. § 2804(1). The NEC, which governs electricians and building contractors and not public utilities, provides standards for the safe installation of electrical wiring inside the premises (*i.e.*, the **premises wiring system**).⁷ The 2012 NESC clarifies the relative applicability of the NESC versus the NEC. 2012 NESC Standard 011.B.1 at p. 2 (“NESC Rules do not cover: 1. [u]tilization equipment or premises wiring located beyond the service points to buildings or outdoor installations....”).

Beyond the **service point**, the customer owns and assumes the responsibility for the maintenance and security of the premises wiring. *See Hine*, 1990 Pa. PUC LEXIS 156, at *6; NESC definition of premises wiring at p. 13 (“[S]uch wiring does not include ... utility equipment and wiring on the utility side of the service point.”). Requiring utilities to perform inspections of customer wiring prior to service restoration after an outage would increase costs to both utilities and customers. *Hine* at *7-8. An electric utility may provide a customer with a list of recommended electricians, but utility jurisdiction and responsibility do not extend to inspection of customer equipment and wiring. *See e.g.*, Duquesne Light: Construction and Renovation, <https://www.duquesnelight.com/forYour->

⁷ See <http://www.nfpa.org/codes-and-standards/document-information-pages?mode=code&code=70> (last accessed Jul. 2, 2013); see also <http://www.nema.org/Technical/FieldReps/Pages/National-Electrical-Code.aspx> (last accessed Jul. 2, 2013).

Home/CustomèrService/ConstructionandRenovation.cfm (offering to work with builders and licensed electricians to assist customers) (last accessed Jul. 2, 2013). Indeed, as more fully explained below, the time and expense of a newly imposed obligation on electric utilities to inspect the internal wiring of all premises impacted by a major storm, such as Hurricane Sandy, would be substantial, and would further and unreasonably delay the restoration of power to all affected customers. There is no such existing obligation on electric utilities in the Public Utility Code, the NESC or Commission regulations, nor should such a new obligation be created by the Superior Court ruling below.

Accordingly, the ownership and maintenance responsibility and legal duties of an electric utility end at the service point of electricity to the customer.

C. Commission Regulation Of Electric Utility Service And Reliability

Under Section 1501 of the Public Utility Code the Commission has long regulated electric utilities to ensure they provide safe, adequate and reliable electric service to the public. 66 Pa. C.S. § 1501. The Commission must also balance the reliability of service with affordability of service; an electric distribution system completely immune to outages would not be affordable for most customers. When the Electricity Generation Customer Choice and Competition Act became effective January 1, 1997, the Commission began examining the electric utilities' inspection, maintenance, repair and replacement internal standards. 66 Pa.C.S §2802. In 1998

the Commission adopted a Final Rulemaking Order, Docket No. L-00970120, setting forth various reporting requirements designed to ensure the continuing safety, adequacy, and reliability of the generation, transmission, and distribution of electricity in the Commonwealth. *See* 52 Pa. Code §§ 57.191-57.197. These reporting requirements included, *inter alia*, descriptions of each major event affecting reliability, the achieved values on various reliability indices monitored by the Commission, analysis of major outages during the study, and a list of remedial efforts taken for the electric utility's worst performing 5% of circuits. *See id.*

On June 12, 2002, the Legislative Budget and Finance Committee (LB&FC) issued a Report entitled, *Assessing the Reliability of Pennsylvania's Electric Transmission and Distribution Systems*. Available at <http://lbfc.legis.state.pa.us/re-ports/2002/144.PDF>. The LB&FC Report made several recommendations regarding the issue of reliability, including revising and enhancing electric utility reliability reporting requirements and performance monitoring standards, clarifying reporting requirements regarding the exclusion of data for major events, requiring formal waivers for electric utilities unable to comply with all reporting requirements, and completing the pending inspection and maintenance study by Commission staff. *Id.*

On July 18, 2002, at Docket No. M-00021619, the Commission adopted its Bureau of Conservation Economics and Energy Planning's (CEEP) *Inspection and*

Maintenance Study of Electric Distribution Systems dated July 3, 2002. CEEP, in part, recommended that the annual reliability reporting requirements be revised to include the causes of outages and percentages categorized by type as well as the annual reporting of each company's planned inspection and maintenance activities including: (1) vegetation management; (2) distribution and substation maintenance activity; and (3) capital improvement projects.

On June 27, 2003, at Docket No. L-00030161, the Commission adopted proposed regulations governing the reliability of electric service in Pennsylvania. On May 7, 2004, a final rulemaking order was entered in *Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa. Code Chapter 57*. Docket No. L-00030161. On April 20, 2006, the Commission adopted a proposed rulemaking order seeking to implement proposed minimum inspection, maintenance, repair and replacement ("I&M") standards on electric utilities. Docket No. L-00040167. The Proposed Rulemaking Order added a regulation at 52 Pa. Code § 57.198 which proposed minimum standards regarding vegetation maintenance, pole, line, reclosers, sub-station inspections, maintenance, and repair standards as well as directing electric utilities to file biannually plans with annual updates in compliance with the minimum standards. *Id.* On May 22, 2008, the Commission adopted a Final-Form Rulemaking Order which implemented minimum inspection, maintenance, repair and replacement standards on electric utilities operating in the

Commonwealth. Docket No. L-00040167. These regulations became effective on September 27, 2008. *See* 52 Pa. Code § 57.198.

D. Duty Of Electric Utilities Regarding The Inspection Of Neutral Connections

In February 2010, the Commission initiated a proceeding to consider whether to amend its inspection and maintenance standards to require electric utilities to inspect neutral connection wires. *Advance Notice of Proposed Rulemaking for Revision of 52 Pa. Code Chapter 57*, Commission Order, Docket No. L-2008-2044821 (Feb. 25, 2010) (hereinafter Chapter 57 Rulemaking Investigation). In the Chapter 57 Rulemaking Investigation, the Commission evaluated the necessity of additional standards requiring electric utilities to inspect, maintain, repair, and replace damaged neutral connections.⁸ *Id.*

Given that the continued reliability of electric service depends on adequate generation and on conscientious inspection and maintenance of transmission and distribution systems, the Commission must set and enforce appropriate regulatory standards to ensure reliable electric service. 66 Pa. C.S. § 2802(20). The Public Utility Code also requires electric utilities to comply with the NESC standards

⁸ A neutral connection is a wire that provides a return path to complete the flow of electricity so that all appliances can operate. A damaged neutral connection can cause an uneven flow of electricity that results in voltage fluctuations and power surges that have the potential to cause damage to a home and appliances in the home. Weather related oxidation can damage a neutral connection. *Advance Notice of Proposed Rulemaking for Revision of 52 Pa. Code Chapter 57*, Advanced Notice of Proposed Rulemaking Order, Docket No. L-2008-2044821, at p. 2. and fn. 2 (Jul. 17, 2008).

regarding the installation and maintenance of transmission and distribution facilities. 66 Pa. C.S. § 2804(1)(ii). Section 214A of the 2012 NESC provides that lines and equipment should be inspected and tested as necessary. Additionally, lines and equipment with recorded defects that could reasonably be expected to endanger life or property must be promptly repaired, disconnected, or isolated. 2012 NESC, § 214A.

In the Chapter 57 Rulemaking Investigation, the numerous commenting parties, from which the Commission solicited comments, were generally opposed to the Commission adopting specific inspection and maintenance standards at transformers and lines for neutral connections. Chapter 57 Rulemaking Investigation. The Commission concluded that adopting specific standards for neutral connections would be unnecessary, cost prohibitive, and of minimal value in comparison to the significant cost of over \$85 million per year in the aggregate to the electric utilities for compliance. *Id.* These significant compliance costs to the electric utilities would result in increased rates for customers with minimal increased benefits regarding service reliability. *Id.* The Commission noted that neutral connection failures are low in number compared to other common causes of outages that require more Commission tracking and oversight. *Id.* Accordingly, the Commission withdrew and discontinued the Chapter 57 Rulemaking Investigation.

Even though these neutral connections are located at lines and transformers as part of an electric utility's transmission and distribution facilities, the Commission determined that imposing a heightened duty for electric utilities to inspect these neutral connections was not in the public interest. In this instant case, imposing a duty on the electric utility to inspect customer wiring/equipment prior to service restoration after an outage is not only also cost-prohibitive and not in the public interest, but also is beyond the utility's jurisdiction and responsibility. The Commission did not impose a duty on electric utilities to inspect neutral connections that are a part of the utilities' own wiring and facilities. By requiring an electric utility to inspect inside the customer's premises beyond the service point, the Superior Court has gone even further than the Commission regarding a utility's duty of inspection.

II. The New And Unprecedented Duty Imposed By The Superior Court On Electric Utilities Is Burdensome And Contrary To The Public Interest

The Commission respectfully contends that the Superior Court erred in imposing upon electric utilities a burdensome and unprecedented duty to enter customers' premises and inspect customers' electrical equipment before restoring power after an outage. This new duty is contrary to the public interest as it will increase costs for electric utilities and consumers and delay utilities' efforts to restore power after storms and other outages. *See Craft v. Pa. Elec. Co.*, 1976 Pa. PUC LEXIS 95, at *7-8 (Pa. PUC 1976).

A. Case Law And Regulatory Practice Demonstrate That An Electric Utility Has No Duty To Inspect Customer Equipment Before Restoring Power After An Outage

In its Opinion and Order below, the Superior Court specifically erred by deciding to apply the duty factors from *Althaus v. Cohen*, 756 A.2d 1166, 1168 (Pa. 2000), to the facts of this case. While the existence of a duty is a question of law for the court to decide, *see R.W. v. Manzek*, 888 A.2d 740, 746 (Pa. 2005), a court may provide deference to the expertise and determinations of a regulatory agency when regulatory practice and case law already clearly provide a line of demarcation between the duties of two parties. *See Popowsky v. Pa. Public Utility Commission*, 706 A.2d 1197 (Pa. 1997) (providing deference to PUC determinations based on PUC's expertise in utility regulation); *see also Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371, 374 (Pa. 1980) (observing the importance of utilizing an administrative "agency's special experience and expertise in complex areas with which judges and juries have little familiarity").

As discussed *supra*, the ownership and maintenance responsibility of an electric utility ends at the point of delivery, *i.e.*, the **service point**, to the customer. *See Hine*, 1990 Pa. PUC LEXIS 156, at *6; *Norris*, 5 A.2d at 116. This Court has held that after an electric utility properly installs and maintains its lines, there is "no continuing duty of inspection" upon the utility. *Reed v. Duquesne Light Co.*, 47 A.2d 136, 139 (Pa. 1946) (observing that imposing a duty here would require

“constant surveillance” by the utility). An electric utility’s duty of inspection only applies to its own facilities. *Dunnaway v. Duquesne Light Co.*, 423 F.2d 66, 70 (3d Cir. 1970) (citing *Reed*, 47 A.2d at 139); *Luketich v. Duquesne Light Co.*, 132 A.2d 268, 270 (Pa. 1957).

B. The Superior Court Erred In Its Application Of The *Althaus* Duty Factors

Even if this Honorable Court still wants to investigate any potential duty for purposes of a negligence claim, the Commission contends that the Superior Court erred in finding a legal duty when applying the *Althaus* factors to the facts of this case. See *Alderwoods v. Duquesne Light Co.*, 52 A.3d 347 (Pa. Sup. Ct. 2012). In *Althaus*, this Honorable Court explained that a court weighs the following discrete factors in determining whether a duty exists in a particular case: “(1) the relationship between the parties; (2) the social utility of the actor's conduct; (3) the nature of the risk imposed and foreseeability of the harm incurred; (4) the consequences of imposing a duty upon the actor; and (5) the overall public interest in the proposed solution.” 756 A.2d at 1169. In *Althaus*, this Court stressed that a reviewing court must carefully weigh the risk, foreseeability, and likelihood of injury against the social utility of the actor’s conduct, the magnitude of the burden of guarding against the injury, and the consequences of placing that burden on the actor. *Id.*

1. Nature Of Relationship Between Customer And Utility

In discussing the first duty factor, relationship between the parties, the Superior Court merely stated that Duquesne provided electricity to the Hirsch Funeral Home (Hirsch). Without expounding upon the nature of the relationship, especially with respect to the specific facts of the case, the Superior Court generally concluded that this factor weighed in favor of imposing a duty upon Duquesne. *Alderwoods*, 52 A.3d at 353.

Duquesne's duty and relationship to Hirsch extends to maintaining safe and reasonable service of its transmission and distribution facilities and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. *See* 66 Pa. C.S. §§ 1501, 2804. Duquesne is Hirsch's electric utility; however, Duquesne is not Hirsch's electrician. Accordingly, since Duquesne does not have a relationship to Hirsch with respect to the inspection of Hirsch's damaged electrical panel box where the fire began, this factor weighs in favor of not imposing a duty upon Duquesne.⁹

⁹ As discussed earlier in this Brief, electric utilities must maintain their distribution and transmission facilities in compliance with the NESC, rather than the NEC which governs in-premises wiring. While an electric utility's field employees are likely competent to work with in-premises wiring, the electric utilities do not generally train their employees for NEC compliance, much less obtain the licenses and certifications necessary to routinely inspect in-premises wiring. There is nothing in the Public Utility Code or Commission regulations that requires electric utilities to train their employees in the NEC.

2. Prompt Restoration Of Electric Service And Power Has Great Social Utility

The Superior Court found that requiring the electric utility to inspect a customer's electrical power panel box prior to service restoration outweighs the social utility of prompt restoration of power. *Alderwoods*, 52 A.3d at 353. In supporting its finding, the Superior Court found persuasive Hirsch's averments that an inspection by Duquesne was feasible and would have prevented the destruction caused by the resulting fire. *Id.*

In its analysis of social utility, the Superior Court only weighed the feasibility of Duquesne to inspect Hirsch's damaged electrical panel box in this case and not the social utility of an electric utility's obligation to promptly restore power for all customers in all outage situations throughout the Commonwealth of Pennsylvania. Since customers want their power restored as quickly as possible after an outage, Commission policies and regulations emphasize the speed of restoration after an outage. *See* 52 Pa. Code § 67.1 (requiring utilities to report certain outages within specified times when service is not restored); *see also Proposed Rulemaking for Revision of 52 Pa Code Chapters 57, 59, 65, and 67 Pertaining to Utilities' Service Outage Response and Restoration Practices*, Final Rulemaking Order, Docket No. L-2009-2104274 (Sep. 22, 2011). The Commission's reliability indices require each electric utility to track the frequency

and duration of outages.¹⁰ Accordingly, given the great social utility of prompt restoration of electric service and power to customers generally, this factor weighs in favor of not imposing a duty upon Duquesne.

3. Any Potential Harm Or Risk Is Not Sufficiently Concrete Or Foreseeable To Require Imposing A Duty Of Inspection

In finding that this factor weighed in favor of imposing a duty, the Superior Court determined that “the nature of risk and harm resulting from a power surge, following contact between the primary and secondary conductors was reasonably foreseeable” because Duquesne had “actual knowledge...that the restoration of power under such circumstances could cause a fire.” *Alderwoods*, 52 A.3d at 355.

However, duty only arises and should only be imposed when there is a *reasonable foreseeability* that a party’s conduct creates an unreasonable risk of harm to others. *Alderwoods*, 52 A.23d at 353 (citing *Manzek*, 888 A.2d at 747). An electric utility’s knowledge of a potential power surge after contact between primary and secondary conductors creates a general possibility, plausibility, or

¹⁰ Per 52 Pa.Code §57.191 the reliability indices are:

(i) *CAIDI—Customer Average Interruption Duration Index*—The average interruption duration of sustained interruptions for those customers who experience interruptions during the analysis period...

(ii) *MAIFI—Momentary Average Interruption Frequency Index*—The average frequency of momentary interruptions per customer occurring during the analysis period. ...

(iii) *SAIDI—System Average Interruption Duration Index*—The average duration of sustained customer interruptions per customer occurring during the analysis period. It is the average time customers were without power. ...

(iv) *SAIFI—System Average Interruption Frequency Index*—The average frequency of sustained interruptions per customer occurring during the analysis period.

conceivability of harm. This general plausibility is not the same as reasonable foreseeability to the specific factual situation; otherwise, the doctrine of foreseeability would know no bounds, for a fire occurring somewhere after a downed electrical line was restored to service would always be generally plausible. Furthermore, Duquesne did not inspect the electrical equipment of the other nearby customers before restoring power and the fact that those customers did not experience any problems goes against the finding that Hirsch's fire was reasonably foreseeable.

In relying on the facts of *Poorbaugh v. Pa. Public Utility Commission*, 666 A.2d 744 (Pa. Cmwlth. 1995), the Superior Court observed that the facts of *Poorbaugh* were similar to the facts of this case and thereby demonstrated foreseeability of harm. First, the Superior Court's reliance on *Poorbaugh* is improper and misplaced because the court in *Poorbaugh* did not draw legal conclusions in applying those facts to the rules of duty and foreseeability; rather, the *Poorbaugh* court only discussed a jurisdictional issue and did not conduct an analysis of the duty of an electric utility to its customer.¹¹ Second, the *Poorbaugh* opinion does not provide enough facts to determine whether the facts of the two cases are sufficiently analogous. Third, factual distinctions between the cases can

¹¹ In *Poorbaugh*, the Commonwealth Court evaluated the doctrine of primary jurisdiction and whether the case should have been transferred from the Court of Common Pleas to the Public Utility Commission. 666 A.2d at 750 ("The overriding issue is whether *Poorbaugh's* allegations against West Penn required judicial abstention and transfer of the matter from the trial court to the PUC. We conclude that they did not.").

be made. The *Poorbaugh* court noted the allegations of negligence were directed at the utility's maintenance of its own facilities. 666 A.2d at 745-46.

In sum, requiring the electric utility to only inspect its *own* facilities does not create an unreasonable risk of harm. Accordingly, this factor weighs in favor of not imposing a duty upon Duquesne.

4. The Detrimental Consequences Of Imposing A Duty On The Electric Utility To Inspect A Customer's Electrical Panel Box Before Restoring Power

The Superior Court found that the consequences of imposing a duty upon Duquesne to inspect or warn a customer “under the facts alleged [did] not place an undue burden upon Duquesne.” *Alderwoods*, 52 A.3d at 355. The Superior Court surmised that inspecting a single customer's electrical equipment prior to restoring electric service would not create an undue burden. *Id.* While imposing this duty on the electric utility for a single customer in an isolated incident does not on its surface appear to create an undue burden, the Superior Court did not take into account the full consequences of imposing this duty on an electric utility with respect to *all* customers throughout the Commonwealth.

In discussing this fourth duty factor, the Superior Court kept referring to “the defendant's conduct” instead of “the actor's conduct,” as the factor is described in *Althaus*. See *Alderwoods*, 52 A.3d at 352. The Superior Court established new legal precedent in imposing a duty of inspection on an actor, *i.e.*, the electric

utility, before restoration of power. In its simplified analysis, the Superior Court did not fully appreciate the consequences of placing this severe burden on *all* similarly situated actors, *i.e.*, all electric utilities in Pennsylvania, to inspect customer electrical equipment before restoration of electric service after *all* storms and outages.

In its opinion, the Superior Court did not curtail or limit the imposition of this duty of inspection to small storms or specific types of outages. Requiring electric utilities to field electricians to inspect customer equipment before service restoration after all storms and outages would drastically increase costs, resources, and manpower. For example, during Hurricane Sandy of October 2012, PPL Electric Utilities Corporation (“PPL”) estimated an expected need of 437 company linemen, approximately 400 contracted linemen, 300 vegetation management personnel, and 1,144 other personnel. Summary Report of Outage Information Submitted by Electric Distribution Companies Affected by Hurricane Sandy October 29-31, 2012, p. 58 (prepared by PUC Bureau of Technical Utility Services, May 2013). During the storm, PPL actually utilized 2,274 linemen resources. *Id.* at 52. As a result of Hurricane Sandy, PPL had to replace 619 poles, 501 transformers, and 1,494 crossarms. *Id.* at 32. Seventy-six miles of spans of wire were also damaged. *Id.* In total, 523,936 PPL customers were affected by Hurricane Sandy. *Id.* at 31.

If utilities were required to hire or subcontract electricians to inspect the interior of all residential, business, and industrial premises before service restoration, even simple outages could take days to weeks to address. Every customer within a circuit or section of the area affected by the outage would have to provide the utility with an electrician's certificate ensuring that the customer's electrical box is safe before the electric utility could restore power to the entire affected area. If a customer is on vacation for two weeks, the utility would have to wait to get permission to enter that customer's premises before restoring power to the customer. Consequently, power restoration after storms and other outages would be significantly delayed to the detriment of customers who expect prompt restoration in order to turn back on appliances, to preserve food in refrigerators and freezers, or to conduct other business operations.

Accordingly, this factor weighs in favor of not imposing a duty upon Duquesne.

5. The Overall Public Interest In Not Imposing A Duty

Without conducting a thorough analysis, the Superior Court found that weighing the public interest in restoring electric service safely against the prompt restoration of power did not tip the scales in favor of either party. *Alderwoods*, 52 A.3d at 355-56.

As discussed, imposing a duty of inspection on electric utilities would significantly delay restoration after storms and other outages to the detriment of customers who expect prompt restoration at reasonable costs in order to turn back on appliances, to preserve food in refrigerators and freezers, or to conduct other business operations. Furthermore, due to increased costs of inspection, customers/ratepayers would realize increased rates in their electric bills. Under Section 1301 of the Public Utility Code, utility rates for customers must be “just and reasonable.” 66 Pa. C.S. § 1301.

The overall public interest goals of prompt restoration of power and reasonable rates for customers easily outweigh imposing a duty on electric utilities to inspect individual customer electrical equipment before service restoration. Accordingly, this factor weighs in favor of not imposing a duty upon Duquesne.

III. Conclusion Of Argument And The Commission’s Regulatory Role

The Commission adopts and enforces rules to ensure that electric utilities provide safe, adequate, and reliable service at just and reasonable rates for its customers. 66 Pa. C.S. §§ 1301, 1501. The PUC actively regulates electric utilities with respect to utilities' service outage response and restoration

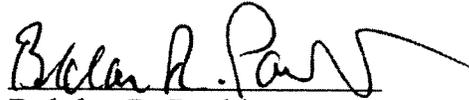
practices.¹² While the PUC has been actively regulating utilities on service restoration, the Commission has not imposed a duty on electric utilities to enter the interior of the premises beyond the service point to inspect customer equipment and wiring. In its opinion below in this case, the Superior Court intruded on the PUC's statutory duty to regulate service duties of public utilities. *See* 66 Pa. C.S. §§ 501, 1501.

¹² *See Prevention and Mitigation of Extended Service Outages*, Commission Order, Docket No. I-2011-2271989 (Nov. 10, 2011); *see also Proposed Rulemaking for Revision of 52 Pa Code Chapters 57, 59, 65, and 67 Pertaining to Utilities' Service Outage Response and Restoration Practices*, Final Rulemaking Order, Docket No. L-2009-2104274 (Sep. 22, 2011); *see also Policy Statement Regarding Utility Service Outage Public Notification Guidelines*, Final Policy Statement, Docket No. M-2008-2065532 (Dec. 15, 2011); *see also Advance Notice of Proposed Rulemaking for Revision of 52 Pa. Code Chapter 57*, Commission Order, Docket No. L-2008-2044821 (Feb. 25, 2010) (hereinafter Chapter 57 Rulemaking Investigation).

CONCLUSION

For the foregoing reasons, the Pennsylvania Public Utility Commission, acting as *Amicus Curiae*, respectfully request this Honorable Court to reverse the July 27, 2012 Order of the Superior Court.

Respectfully submitted,



Bohdan R. Pankiw
Chief Counsel
Attorney ID #24825

Robert F. Young
Deputy Chief Counsel

Kenneth R. Stark
Assistant Counsel

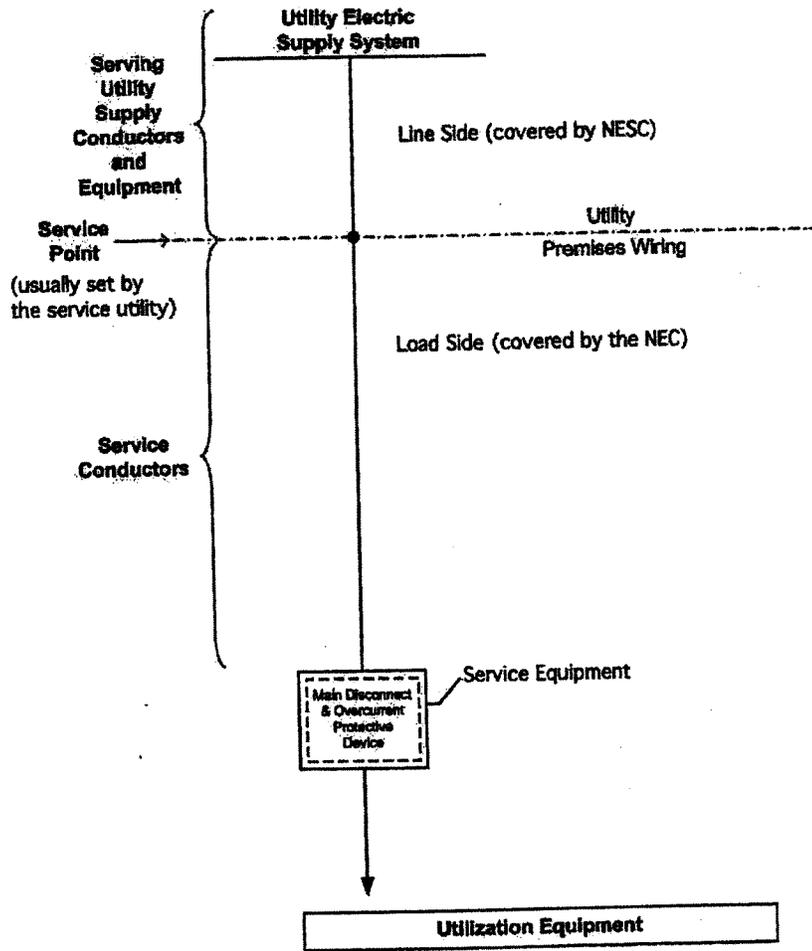
Patricia T. Wiedt
Assistant Counsel

Counsel for Pennsylvania Public
Utility Commission, *Amicus Curiae*

P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-5000

Date: July 24, 2013

Appendix A



**ILLUSTRATION
UTILITY ELECTRIC SUPPLY AND
PREMISES WIRING**

Figure 011-1—Service point—General illustration of what is covered and not covered by the NESC

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document, Brief of *Amicus Curiae* In Support of Appellant, upon the persons listed and in the manner indicated below:

Notification by first class mail addressed as follows:

Bradley S. Tupi, Esquire
Richard B. Tucker, III, Esquire
Erin Beckner Conlin, Esquire
Tucker Arenberg, PC
1500 One PPG Place
Pittsburgh, PA 15222
Phone: 412-566-1212

Peter t. Parashes, Esquire
Alan J. Charkey, Esquire
White & Williams
One Liberty Place Ste 1800
1650 Market Street
Philadelphia, PA 19103



Kenneth R. Stark
Assistant Counsel
Attorney ID #312945
(Counsel for Pa. Public Utility Commission)

P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-5000

Dated: July 24, 2013

Attachment C

HUBERT JAREMA, As Administrator of the Estate of ZDZISLAW JAREMA and in His Own

Right, Philadelphia Court of Common Pleas, No. 461 EDA 2014

February 28, 2014 Civil Stay Order

HUBERT JAREMA, as Administrator of the
Estate of ZDZISLAW JAREMA and in His
Own Right
Plaintiff
vs.
PECO ENERGY COMPANY
and
PETER KRAWTCHUK, d/b/a
CHALFONT CUSTOM PAINTING
and
BARBARA CRABTREE
Defendants.

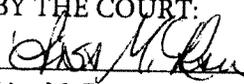
COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CIVIL ACTION

DECEMBER TERM, 2011
NO.: 002836

ORDER

AND NOW, this 28th day of February, 2014, upon consideration of Defendant, PECO Energy Company's Motion to Stay All Trial Court Proceedings Pending Superior Court Appeal, and all responses thereto, it is hereby **ORDERED** that this action is STAYED, except with respect to the pending settlement between some of the parties. Plaintiff Hubert Jarema has reached a settlement with Defendant Barbara Crabtree, and that settlement is awaiting approval by the Orphan's Court. This Order will not delay the Orphan's Court consideration of that settlement. As to the remaining parties, this action is hereby STAYED pending appeal of the jurisdictional issue (Superior Court docket 461 EDA 2014).

BY THE COURT:


Lisa M. Rau, J.

Jarema Vs Crabtree-ORDER



Case ID: 111202836
Control No.: 14023305

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :
COMPANY FOR A DECLARATORY :
ORDER TO RESOLVE : **DOCKET NO. P-_____**
CONTROVERSY REGARDING :
PECO ENERGY COMPANY'S :
POINT-OF-DELIVERY :
AND A FOR A DETERMINATION :
THAT PECO DOES NOT HAVE :
RESPONSIBILITY FOR CUSTOMER :
FACILITIES BEYOND THE :
POINT-OF-DELIVERY :

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of PECO Energy Company's Petition for Declaratory Order to Resolve Controversy Regarding PECO Energy Company's Point-of-Delivery on the following persons in the manner specified in accordance with the requirements of 52 Pa. Code § 1.54:

VIA E-FILING

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

VIA FIRST CLASS MAIL

Robert Mongeluzzi
David Kwass
Saltz Mongeluzzi Barrett & Bendesky, P.C.
1650 Market Street, 52nd Floor
Philadelphia, PA 19103

*Counsel for Herbert Jarema
a/k/a Zdislaw Jarema*

Paul A. Logan
David M. Burkholder
Powell, Trachtman, Logan, Carrie &
Lombardo, P.C.
475 Allendale Road, Suite 200
King of Prussia, PA 19406

Counsel for Peter Krawtchuk

William J. Taylor, Jr.
Louis J. Isaacsohn
Karen M. Gottlieb
Wilson, Elser, Moskowitz, Edelman & Dicker
LLP
The Curtis Center, Suite 1130 East
Independence Square West
Philadelphia, PA 19106

Counsel for Barbara Crabtree

Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, PA 17101-1923

d/b/a Chalfont Custom Painting
Bureau of Investigation & Enforcement
Pa. Public Utility Commission
400 North Street, 2nd Floor – West
Harrisburg, PA 17120

Office of Small Business Advocate
Commerce Building, Suite 1102
300 N. Second Street
Harrisburg, PA 17101

Date: March 28, 2014



Ward L. Smith, Esq. (Pa. I.D. 47670)
Counsel for PECO Energy Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101-8699
Phone: 215.841.6863
Fax: 215.568.3389
E-mail: ward.smith@exeloncorp.com