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April 4, 2014

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

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

Dear Ms. Chiavetta:

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

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

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

Very truly yours,

Shawane Lee
Counsel for PECO Energy Company
SL/lo

cc: Fred Bobb

REPLY OF PECO ENERGY COMPANY
TO COMPLAINANT'S PETITION FOR RECONSIDERATION

PECO Energy Company ("PECO") hereby replies to the Petition for Reconsideration filed by Fred Bobb ("Complainant") in the above-referenced matter on March 26, 2014. The Petition for Reconsideration was served on PECO by the Complainant on March 31, 2014. On March 4, 2013, Complainant filed a formal complaint against PECO. In his formal complaint, Complainant alleged that he purchased land approximately two years ago to use as a tree farm. The Complainant claims there are Leland Cypress trees bordering the property that he has pruned to an 8-10 foot height. He stated that PECO threatened to remove his trees and did not offer him compensation for the trees. Respondent, PECO filed an Answer on April 11, 2013, denying the allegations in the complaint and averred that the trees at issue were located under the company's overhead transmission lines. PECO also averred that consistent with an easement the company has on the property and Section 10.9 of the tariff, the company had the right to remove the trees because they threatened the safety of the high voltage overhead transmission lines.

A hearing was held before Administrative Law Judge David A. Salapa on November 5, 2013. During the hearing, PECO presented two witnesses from Vegetation Management and Real Estate and fourteen exhibits. The Complainant testified on his own behalf and presented no exhibits. ALJ Salapa issued an Initial Decision on November 26, 2013, dismissing the Complainant's formal complaint. The Complainant filed Exceptions to ALJ Salapa's Initial Decision, which were served on PECO on December 17, 2013. PECO filed a response to the Exceptions on December 19, 2013. On March 20, 2014, the Commission issued an Opinion and Order, adopting ALJ Salapa's Initial Decision and dismissing the formal complaint. The Commission stated in its Opinion and Order:

PECO presented evidence which demonstrated that its actions were consistent with both Section 10.9 of its tariff and its transmission maintenance guidelines, the purpose of which is to ensure compliance with NERC Standard FAC-003-1. PECO Exh. 3. PECO's guidelines provide that for 230 kV lines, such as the transmission lines at issue here, the maximum allowable height for vegetation within the transmission line right of way is ten to fifteen feet. The guidelines state that the maximum allowable heights refer to vegetation at maturity. Tr. At 73; PECO Exh. 3 at 9. Ms. Hall testified that the Leland Cypress trees on the Complainant's property have the potential to grow to a height of 100 feet, and, accordingly, are incompatible with PECO's guidelines and would have to be removed. Tr. At 73-74. She indicated that trimming or pruning the trees would not prevent the trees from growing taller. Tr. at 74. Ms. Hall also testified that the conductors on the Complainant's property are abnormally low, *i.e.*, less than fifty feet from the ground. Due to this factor, Ms. Hall explained that PECO's guidelines would call for the removal of all of the trees within its transmission line right of way on the Complainant's property. Tr. at 69, 75. Based on the evidence presented by PECO, we concur with the ALJ that PECO's compliance with the NERC standards in this case was reasonable. *See*, I.D. at 14.

Fred Bobb v. PECO Energy, C-2013-2344026 (Order entered, March 20, 2014).

The Complainant filed a Petition for Reconsideration of the Commission's Opinion and Order. PECO respectfully requests that the Complainant's Petition for Reconsideration be dismissed.

I. Complainant's Petition for Reconsideration should be dismissed because it does not raise any new or novel arguments.

The standard of review for a Petition for Reconsideration is set forth under 66 Pa.C.S. §703(g). In Duick v. Pennsylvania Gas and Water Co., 56 Pa. P.U.C. 553 (1982), the Commission provided the following guidance on the criteria it would consider in deciding requests for reconsideration:

A petition for reconsideration, under the provisions of 66 Pa.C.S. §703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code

section to rescind or amend a prior order in whole or in part. In this regard we agreed with the Court in the Pennsylvania Railroad Company case, wherein it was said that “[p]arties..., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them...” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

In this case, the Complainant attaches to his Petition for Reconsideration the Right of Way Grant (easement) offered by PECO as Exhibits “11” and “12” in the company’s case. The transcript demonstrates there was considerable testimony, regarding PECO’s easement and the company’s right to remove the trees at issue. Tr. 20; Tr. 31-33; Tr. 46-48; Tr. 50-51. Therefore, the documents do not raise “new or novel” evidence, warranting reconsideration or review.

The Complainant also attaches a document stating “We argue the right to use property as zoned to earn a wage and protect neighborhood aesthetics.” In the document, the Complainant argues that PECO will not compensate for damages to property, crops or land. He argues the definition of maturity of crops and disputes PECO’s contention that the Leland Cypress trees at issue can grow to 100 feet. The Complainant also argues that he is unable to use his land as intended and will not receive reimbursement for the wholesale cost of each Leland Cypress tree. Additionally, the Complainant disputes the language and interpretation of the easement. Clearly, the arguments the Complainant sets forth are not “new or novel” and therefore, do not satisfy the standard for a Petition for Reconsideration. All of the Complainant’s arguments were heard and considered by ALJ Salapa at the Initial Hearing. Specifically, ALJ Salapa asked the Complainant:

Judge Salapa: And what is it that you want the Commission, or what is it that you want the Commission to order PECO to do or not do?

Complainant: I mean, I'm just thinking that, you know, if they have to destroy them all, I'd like to be compensated.

I mean, I have a lot of money involved in this.

And the agriculture part of this is what I bought it for; so, I don't know where the landscape and – the thing I don't understand is where did they come up with vineyards, grazing, and things like that? That's not on the deed, I mean, for what the property can actually be used for.

Tr. at 29-30.

In addition to the testimony above, the transcript reflects additional testimony offered by PECO, regarding the Complainant's use of the land and compensation. Tr. 52-53; Tr. 55-60.

Thus, this argument is not "new or novel" and has been previously heard and considered. The same can be said with respect to the Complainant's argument about the potential growth of the Leland Cypress trees. The transcript is replete with testimony in this regard. Tr. 19; Tr. 35-36.

Specifically, the Complainant testified:

Judge Salapa: What kind of border trees are these?

Complainant: Well, they are Leland Cypress, which get pretty tall, but I was told by a couple different landscapers and other people, even Asplundh, that once I top them – I got them right now between eight and 10 foot – if I top them off – which they will never grow tall again – they'll only grow as bushes. So, I got them down to the fence line, the height, which helps the neighborhood and, you know, just the environment part of it. So, that's what I was concerned about.

And when I looked into the Leland Cypress, they grow beyond the height that was normal. I don't – I didn't realize they picked out the wrong kind of tree.

So I topped them and found out that once you top them, they become bushes.

Tr. 19.

The transcript reflects additional testimony from PECO's Vegetation Management witness (Sarah Hall - a Certified Herbalist), refuting the Complainant's theory of the potential growth of the Leland Cypress trees who categorically states the trees can grow to 100 feet. Tr. 69; Tr. 74. The Commission included this fact in their Opinion and Order and used it as a basis in determining that PECO's compliance with NERC standards was reasonable. Accordingly, the Complainant has not raising any "new or novel" argument here.

The Complainant's Petition for Reconsideration should be dismissed. The Complainant offers no new arguments to warrant reconsideration pursuant to the standard of review set forth in Duick v. Pennsylvania Gas and Water Co.

WHEREFORE, For the reasons set forth above, PECO respectfully requests that the Commission deny the Complainant's Petition for Reconsideration on the merits and issue an Order upholding the Initial Decision and the Commission Final Order and Opinion in its entirety.

Respectfully submitted,



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