

July 1, 2014

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
Commonwealth Keystone Building, 2 North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Docket No. C-2013-2393779
Roger McCall v. Pennsylvania Electric Company
Motion to Dismiss of Penelec**

Dear Secretary Chiavetta:

Attached for filing is the Motion to Dismiss of Pennsylvania Electric Company to the Complaint filed by Roger McCall in the above captioned proceeding.

A copy of the Motion to Dismiss has been provided to the Complainant in the manner indicated on the attached Certificate of Service.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/jmm
Enclosure

cc: Hon. Dennis J. Buckley, PA Public Utility Commission [w/enc.]
Lauren Lepkoski, Esquire, FirstEnergy Service Company [w/enc.]
Roger McCall [w/enc.]

**Re: Docket No. C-2013-2393779
Roger McCall v. Pennsylvania Electric Company
Motion to Dismiss of Penelec**


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

Via E-Mail

Roger McCall
P.O. Box 225
Reynoldsville, PA 15851
RogerMcCall@verizon.net

Dated: July 1, 2014


Margaret A. Morris, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROGER MCCALL

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v.

Docket No. C-2013-2393779

PENNSYLVANIA ELECTRIC COMPANY

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.103 you are hereby notified that if you do not file a written response answering the enclosed Motion to Dismiss of Pennsylvania Electric Company within twenty (20) days from the date of service of this notice, the Motion to Dismiss of Pennsylvania Electric Company may be granted without further notice. All pleadings, such as an Answer to Motion to Dismiss, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Pennsylvania Electric Company, Margaret A. Morris, Esq., and the presiding Administrative Law Judge, the Honorable Dennis J. Buckley.

File with:

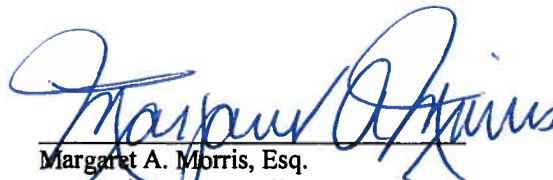
Rosemary Chiavetta, Esq.
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building -2 North
P.O. Box 3265
Harrisburg, PA 17105

With a copy to:

The Honorable Dennis J. Buckley
PA PUC – OALJ
Commonwealth Keystone Building – 2 West
P.O. Box 3265
Harrisburg, PA 17105

Margaret A. Morris, Esq.
Reger Rizzo & Darnall LLP
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2929 Arch Street
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Date: July 1, 2014



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Counsel for Pennsylvania Electric Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROGER MCCALL

v.

PENNSYLVANIA ELECTRIC
COMPANY

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Docket No. C-2013-2393779

**PENNSYLVANIA ELECTRIC COMPANY'S
MOTION TO DISMISS COMPLAINT OF ROGER MCCALL**

Now comes Pennsylvania Electric Company (Penelec or Respondent) pursuant to 52 Pa. Code § 5.103, by and through its attorneys, Reger Rizzo and Darnall LLP, and hereby files this Motion to Dismiss with prejudice the Complaint of Roger McCall (Complainant) for failure to prosecute, and in support thereof avers as follows:

1. On November 18, 2013, the Complainant filed a Formal Complaint alleging that the readings used to bill his account for electric service provided by the Respondent at 503 South Church Street, DuBois, Pennsylvania (Service Location) were inaccurate.

2. On December 12, 2013, Penelec timely filed its Answer and New Matter denying the allegations and requesting mediation.

3. By Interim Order Setting Resolution Conference dated December 17, 2013, the parties were directed to attempt to resolve the issues raised in the Complaint. Mediation was not successful; the Complainant requested the matter be scheduled for hearing.

4. A Notice was issued on March 19, 2014, scheduling the Initial Telephonic Hearing on April 30, 2014 before Administrative Law Judge Dennis J. Buckley.

5. By Prehearing Order dated April 2, 2014, Judge Buckley advised the parties of the procedural requirements for the scheduled telephonic hearing.

6. At the April 30, 2014 telephonic hearing, Judge Buckley converted the proceedings to a prehearing conference as a result of the Complainant's attempt to expand the scope of his Formal Complaint to include allegations for electric service provided by Penelec to properties other than the Service Location and to introduce proposed exhibits related to those other service locations.

7. A Second Prehearing Order, dated May 21, 2014, was issued by Judge Buckley specifically directing:

“That, if the Complainant wished to expand the scope of his Complaint to include allegations with respect to service by Penelec at addresses owned or maintained by Complainant other than the Service Location, he must file an Amended Complaint with the Secretary of the Commission by June 9, 2014, and serve the same on counsel for [Penelec]. Alternatively, if Complainant wishes to prosecute his Complaint with respect to [Service Location] only, he must advise the [Judge Buckley] and counsel for [Penelec] of that, in writing, by June 9, 2014.”

8. The Complainant failed to file an Amended Complaint on or before June 9, 2014 as directed in the Second Prehearing Order.

9. The Complainant failed to advise Judge Buckley on or before June 9, 2014 of his intention to prosecute the Formal Complaint as directed by the Second Prehearing Order.

10. The Complainant did not seek an extension of the due date set forth in the Second Prehearing Order.

11. The Complainant was afforded due process and an opportunity to proceed with his Formal Complaint. *Schneider v. PA PUC*, 479 A2d.10 (1984). The Complainant chose not to amend his Formal Complaint or to advise Judge Buckley that he wished to proceed with the Formal Complaint as directed by Second Prehearing Order.

12. The Complainant's failure to comply with the clear directive set forth in the Second Prehearing Order should be deemed evidence that the Complainant no longer wishes to pursue his Formal Complaint. See, *Brown v. PECO*, Docket No. F-2012-2325085, Final Order entered April 4, 2013.

13. A presiding officer's orders must be complied with and such a lack of compliance presents a sufficient basis to dismiss a complaint without a hearing. *Treffinger v. PPL Electric Utilities Corp.*, Docket No. C-20027978, (Opinion and Order entered March 3, 2003); *Snyderville Community Development Corp. v. Philadelphia Gas Works*, Docket No. C-20055032, (Opinion and Order entered July 31, 2006); *Peter Coppola v. PECO Energy Company*, Docket No. C-2010-2186754, (Opinion and Order entered October 14, 2011).

WHEREFORE, Respondent, Pennsylvania Electric Company, requests that the Formal Complaint filed by Roger McCall on November 18, 2013, be dismissed with prejudice for failure to prosecute in compliance with the Second Prehearing Order dated May 21, 2014.

Respectfully submitted,

Dated: July 1, 2014



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