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February 17, 2015

VIA E-FILING

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

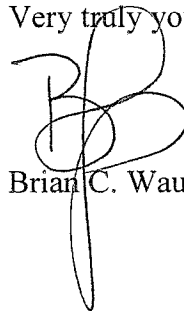
Re: Thomas Gigliotti v. Pennsylvania Electric Company
Docket No. C-2015-2464205

Dear Secretary Chiavetta:

On behalf of Pennsylvania Electric Company, I have enclosed for electronic filing the Preliminary Objections of Pennsylvania Electric Company to the Formal Complaint of Thomas Gigliotti in the above-captioned matter.

Copies have been served on all parties as indicated in the attached certificate of service.

Very truly yours,



Brian C. Wauhop

BCW/tlg

Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

THOMAS GIGLIOTTI

v.

PENNSYLVANIA ELECTRIC COMPANY

:
:
:
:
:

Docket No. C-2015-2464205

NOTICE TO PLEAD

TO: Thomas Gigliotti
P.O. Box 83
Walston, PA 15781

Pursuant to 52 Pa. Code § 5.101(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objections of Pennsylvania Electric Company to the Formal Complaint of Thomas Gigliotti within **ten (10) days** from service of this Notice, the facts set forth by Pennsylvania Electric Company in the Preliminary Objections may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Pennsylvania Electric Company, and where applicable, the Administrative Law Judge presiding over the case.

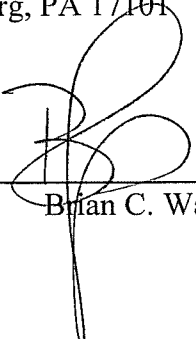
File with:

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

With a copy to:

Brian C. Wauhop
Buchanan Ingersoll & Rooney, PC
409 North Second Street
Suite 500
Harrisburg, PA 17101

Dated: February 17, 2015



Brian C. Wauhop, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

THOMAS GIGLIOTTI	:	
	:	
v.	:	Docket No. C-2015-2464205
	:	
PENNSYLVANIA ELECTRIC COMPANY	:	

**PRELIMINARY OBJECTION OF PENNSYLVANIA ELECTRIC COMPANY
TO THE COMPLAINT OF THOMAS GIGLIOTTI**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, Pennsylvania Electric Company (“Penelec” or the “Company”), by and through its counsel, Brian C. Wauhop, Alan Michael Seltzer, and Buchanan Ingersoll & Rooney PC, files these Preliminary Objections to the Formal Complaint of Thomas Gigliotti (“Formal Complaint”) pursuant to Section 5.101(a)(4) of this Commission’s regulations, 52 Pa. Code § 5.101(a)(4), and in support thereof states as follows:

I. Introduction

1. These Preliminary Objections request the dismissal of the Formal Complaint of Thomas Gigliotti (“Complainant”) because: (i) it is legally insufficient, as a matter of law; and (ii) it does not claim—as required by Section 701 of the Public Utility Code (“Code”), 66 Pa. C. S. § 701—that the Company has taken any action or failed to take an action in violation of any law or regulation that the Company is required to follow.

II. Factual Background

2. The Complainant resides at 1883 Walston Road, Walston, Pennsylvania 15781.

3. Previously, Penelec offered a service called “Outdoor Lighting” (“OL”) providing that for a fee, customers could elect to have the Company install a mercury-vapor outdoor light fixture at their premise. On January 12, 2010, the Complainant elected to receive OL service.

4. On January 11, 2007, the Commission entered an Order at Docket No. R-00061367 *et al.*, that, among other things, approved Penelec's proposed tariff providing for the phase out of OL service by June 10, 2012. In May 2007, Penelec notified customers of the proposed phase out of OL service.

5. In response to the May 2007 notification, customers filed Formal Complaints raising health and safety issues related to Penelec's proposed elimination of OL service and the mercury vapor light fixtures.

6. On May 8, 2009, the Commission entered an Order ("May 8, 2009 Order") directing, among other things, that the Company submit a plan for replacement of existing mercury vapor lighting fixtures:

5. That within thirty (30) days of the entry date of this Opinion and order that Pennsylvania Electric Company is to submit to the Commission's Bureau of Conservation, Economics and Energy Planning ("CEEP") a plan for replacing outdoor mercury vapor lighting with outdoor lighting that is in compliance with existing Federal and State laws and regulations.

May 8, 2009 Order, Ordering Paragraph 5.

7. In accordance with the May 8, 2009 Order, the Company submitted the following plan to CEEP on February 1, 2010 describing how the Company would replace outdoor mercury vapor lighting in compliance with existing State and Federal laws and regulations:

If a customer's OL bulb or lamp burns out, they will be instructed to contact the Companies' Customer Service Center, and the Companies will repair or replace the light. If a customer has a mercury vapor light that becomes inoperable as a result of a non-working ballast, the Companies will replace the mercury vapor light fixture with an equivalent-sized sodium vapor light fixture to comply with the Federal Energy Policy Act of 2005 that prohibits the import or manufacture of mercury vapor ballasts. If such a replacement occurs, sodium vapor OL rates will apply based on the Companies' current electric service tariffs. Prior to the current tariff provision expiring on June 11, 2012, the Companies will propose for PUC

review and approval a revised OAL service, with revised rates, terms and conditions, to become available on June 11, 2012, for customers receiving OAL service at that time. The plan further proposed that the new service will reflect new cost-based service rates for the continuation of OAL service.

The Company voluntarily postponed the effective date of its tariff supplement to August 1, 2012.

8. On April 12, 2012, Penelec filed Supplement No. 21 to Tariff Electric Pa. P.U.C. No. 80 to replace the current Outdoor Lighting service that was set to expire June 10, 2012. *See Pennsylvania Electric Company Request for Approval of Supplement No. 21 to Tariff Electric Pa. P.U.C. No. 80*, Docket No. R-2012-2299628. The new Outdoor Lighting service was to be renamed “Outdoor Area Lighting” (“OAL”) service and would be effective August 1, 2012. Consistent with the May 8, 2009 Order and the plan submitted to CEEP, Penelec sought to limit OAL service only to existing customers as of August 1, 2012, and discontinue offering OAL service to new customers.

9. On July 19, 2012, the Commission approved Supplement No. 21 to the Company’s electric service tariff (“Tariff”) eliminating OL service and restricting OAL service only to existing customers and existing locations as of August 1, 2012. *Pennsylvania Electric Company Request for Approval of Supplement No. 21 to Tariff Electric Pa. P.U.C. No. 80*, Docket No. R-2012-2299628 (Order entered July 19, 2012). The Company’s current Tariff¹ provides that OAL service is be restricted to existing customers at existing locations as of August 1, 2012.

10. On November 8, 2014, the Company terminated OAL service to the Complainant and removed the outdoor light because the Complainant failed to make payment on the OAL service account. The Complainant is now deemed a new customer in accordance with the Company’s Tariff.

¹ See *Pennsylvania Electric Company Electric Service Tariff*, Electric Pa. P.U.C. No. 80 (Supp. 67), Twenty-fourth revised page 141 (effective December 1, 2014) (“Tariff”).

11. The instant Formal Complaint has been filed with the Public Utility Commission (“Commission”) at Docket No. C-2015-2464205.

12. Despite the provisions in the Company’s Tariff restricting outdoor lighting service to new customers, the Formal Complaint requests that the Company install an outdoor area light by demanding as follows: “I would like to have the light reinstalled.” (Compl. ¶ 5.)

13. In an Answer being filed contemporaneously with these Preliminary Objections, Penelec denied the material allegations in the Formal Complaint and request that it be dismissed.

III. Argument

A. Legal Standard: Preliminary Objections

14. The Commission’s Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code § 5.101; see also *Equitable Small Transportation Interveners v. Equitable Gas Company*, Docket No. C-00935435 (July 18, 1994).

15. The grounds for preliminary objections are limited to those set forth in 52 Pa Code § 5.101(a) as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

16. The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Interveners*, supra.

17. The Commission may dismiss a complaint without hearing if, in its opinion, a hearing is not necessary in the public interest. 52 Pa. Code § 5.21(d).

18. The Public Utility Code provides that “. . . any person . . . may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or any regulation or order of the Commission.” 66 Pa.C.S. § 701.

19. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991). The Commission has adopted this standard. *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

20. The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985). Therefore, in ruling on a preliminary objection, the Commission must assume, for decisional purposes only, that the factual allegations of the Formal Complaint are true. *Id.*

B. The Formal Complaint is Insufficient as a Matter of Law.

21. The preceding paragraphs are incorporated herein.

22. The only relief demanded by the Complainant is reinstallation of an OAL light, which is a service not available to new customers under the Company's Tariff. As such, the relief requested by the Complainant is not available as a matter of law.

23. In addition, the Formal Complaint contains no allegations that would constitute a violation of the Code, Commission order or regulation. Assuming all the facts pleaded in the Complaint are true, the Complainant has failed to state a claim upon which the Commission can grant relief.

24. On November 8, 2014, the Company terminated OAL service provided by the Company to the Complainant because the Complainant had not made a payment on the OAL Account for over 17 months, resulting in an outstanding balance on the OAL Account of \$168.67.

25. Pursuant to the Tariff and all applicable regulations, the Company lawfully and reasonably terminated OAL service to the Complainant due to the Complainant's failure to make timely and complete payment of bills for such service.

26. As a public utility, the Company is required to adhere to its duly-filed and Commission-approved tariff. Such tariff has the force and effect of law in Pennsylvania and is legally binding upon the utility, its customers and the public. *See* 66 Pa. C.S. § 1303; *DiSanto v. Dauphin Consolidated Water Supply Co.*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. Public Utility Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

27. Applied here, the Formal Complaint does not allege any conduct on the part of the Company that violates a law, regulation or order that the Commission has jurisdiction to

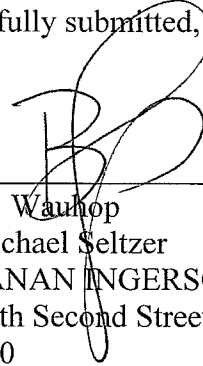
administer. The Company lawfully and appropriately terminated OAL service to the Complainant. As a result, as described above, the Complainant is not an “existing [OAL] customer at an existing location.” See Tariff, Twenty-fourth revised page 141 (effective December 1, 2014). The Tariff provision presupposes that an existing customer is an *existing customer in good standing*, meaning that the customer receiving OAL service is complying with all Tariff provisions, rules, and laws, including the requirement that customers make timely and complete payment for service.² Therefore, because the Complainant’s OAL service was lawfully and properly terminated by the Company due to the Complainant’s failure to make payment for AOL service, the Company is now prohibited by the Tariff from providing such OAL service to “new” OAL customers, like the Complainant is now, after August 1, 2012.

28. There is no provision in the Tariff authorizing the Company to provide OAL service to former OAL customers once OAL service is terminated. Therefore, the Complaint is legally insufficient and fails to state a claim upon which relief may be granted.

² By law, a public utility is entitled to receive payment for the service it provides. *Scaccia v. West Penn Power Co.*, 55 Pa. PUC 637 (1982). *Kea v. Peoples Natural Gas Co.*, 60 Pa. PUC 215 (1985); *Mill v. Pa. Public Utility Comm’n*, 447 A.2d 1100 (Pa. Cmwlth. 1982). A public utility has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. §1303. *Neal v. Philadelphia Gas Works*, Docket No. Z-00971874, (Order entered January 4, 2002); *Angie’s Bar v. Duquesne Light Co.*, 72 Pa. PUC 213 (1990). All customers are obligated to pay for utility service. Otherwise, unpaid bills are included in the utility’s uncollectible expenses, which all of its remaining customers must pay. *Bolt v. Duquesne Light Co.*, Docket No. Z-8712758 (Order entered April 8, 1988).

WHEREFORE, for the reasons set forth above, Pennsylvania Electric Company hereby requests that the Commission grant this Preliminary Objection and (i) dismiss the Formal Complaint filed by Thomas Gigliotti; and (ii) grant the Company such other relief as is just and reasonable under the circumstances.

Respectfully submitted,



Dated: February 17, 2015

Brian C. Wauhop
Alan Michael Seltzer
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409 North Second Street
Suite 500
Harrisburg, PA 17101
(717) 237-4975

Attorneys for
Pennsylvania Electric Company

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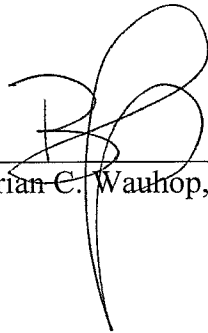
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Via First-Class Mail

Thomas Gigliotti
P.O. Box 83
Walston, PA 15781

Dated this 17th day of February, 2015.



Brian C. Wauhop, Esq.