

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joseph & Lisa DeGennaro

v.

Pennsylvania Electric Company

DOCUMENT
FOLDER

C-20066055

ORDER ESTABLISHING A BRIEFING SCHEDULE

At the conclusion of the hearing in this matter, on August 30, 2006, I indicated that I would be issuing a briefing order after receipt of the transcript, and that I generally allow fourteen (14) days for Main Briefs and ten (10) days for Reply Briefs. Tr. 172. After the hearing, the parties requested three weeks for Main Briefs and I indicated that I would grant that request. I will also allow two weeks for Reply Briefs.

The transcript of the August 30, 2006, hearing was received by the Office of Administrative Law Judge on Wednesday, October 4, 2006. Main Briefs will be due twenty-one days from today, or October 25, 2006, and Reply Briefs will be due on November 8, 2006.

THEREFORE,

IT IS ORDERED:

DOCKETED
JAN 18 2007

1. That Main Briefs must be received by me and all parties ("in hand" service) and deemed to be filed with the Commission, no later than Wednesday, October 25, 2006. Reply Briefs, if any, must be received by me, deemed to be filed with the Commission, and served upon other parties no later than Wednesday, November 8, 2006. Briefs can be e-mailed or faxed to me to comply with the in-hand directive, if followed by a hard copy addressed and sent to me by first class

or express mail. All parties are to provide an electronic version or disk of their Main and Reply Briefs to me in Word 2003, if possible.

2. That briefs are to comply with 52 Pa. Code §§5.501 and 5.502, including the requirement that briefs provide transcript page and exhibit references to show where the evidence appears in the record. Proposed findings of fact, conclusions of law, and ordering paragraphs are optional.

3. That if a brief contains a citation to an unreported decision, which is not available on LEXIS or the Commission's website, a copy of that unreported decision must be appended to the brief.

4. That any request for a change in the briefing deadlines must be submitted to me in writing no later than five (5) days prior to the deadline. 52 Pa. Code §1.15(b). Requests for changes must state the agreement or opposition of other parties, and must be sent to me and all parties of record. My mailing address is: Administrative Law Judge Kandace F. Melillo, P.O. Box 3265, Harrisburg, PA, 17105-3265; my fax number is (717) 787-0481; and my e-mail address is kmelillo@state.pa.us.

5. That when filing exceptions and reply exceptions, the parties shall serve a copy on the Commission's Office of Special Assistants.

Date: October 4, 2006

Kandace F. Melillo
Kandace F. Melillo
Administrative Law Judge

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ORIGINAL

October 25, 2006

Via UPS Overnight
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Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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OCT 25 2006

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Joseph & Lisa DeGennaro v. Pennsylvania Electric Company
Docket No. C-20066055

Dear Secretary McNulty:

Enclosed for filing by Pennsylvania Electric Company ("Penelec") are an original and nine (9) copies of the Main Brief of Penelec in the above-referenced matter. The enclosed Main Brief has also been served on all parties of record per the attached Certificate of Service.

If you have any questions, please contact me.

Very truly yours,

RYAN, RUSSELL, OGDEN & SELTZER LLP



Bridgid M. Good

DOCUMENT
FOLDER

Enclosures

c: Administrative Law Judge Kandace F. Melillo
Per Certificate of Service

BTL

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ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOSEPH & LISA DEGENNARO

v.

Docket No. C-20066055

PENNSYLVANIA ELECTRIC COMPANY:

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Main Brief of Pennsylvania Electric Company upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by UPS Overnight, postage prepaid, addressed as follows:

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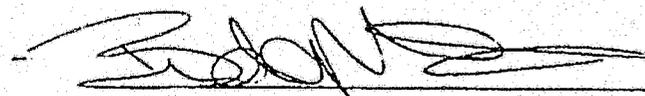
PA PUBLIC UTILITY COMMISSION
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Dated: October 25, 2006



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JOSEPH & LISA DEGENNARO

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

MAIN BRIEF OF PENNSYLVANIA ELECTRIC COMPANY

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I. STATEMENT OF THE CASE

This case is about whether (i) Penelec improperly located its electric service pole to serve the DeGennaro's property ("Pole") at 1909 North Eleventh Avenue, Altoona, Pennsylvania ("Service Location"); (ii) the alleged improper location of the electric service pole caused the DeGennaros to locate its underground electric service line on the neighboring property; and (iii) the unsafe condition of the underground electric service line, subsequently caused by the excavation of the neighboring property, was the responsibility of Penelec to remedy. The DeGennaros' argument is that the Pole was improperly placed by Penelec causing their underground electric line extension to trespass on the neighboring property. They further argue that they should not have been responsible for the costs of the relocation of the underground service line when an unsafe condition was found that was caused by the excavation of the neighboring property.

On or about March 17, 2006, Joseph and Lisa DeGennaro (the "DeGennaros" or the "Complainants") filed a Complaint ("Complaint") with the Pennsylvania Public Utility Commission ("Commission") against Pennsylvania Electric Company ("Penelec" or the "Company") alleging that Penelec improperly located an electric service pole at their Service Location causing the installation of their underground electric service to be on the neighboring property. The Complainants further claim that they were forced to relocate their underground electric service, at their sole cost, when an unsafe condition occurred due to some excavation conducted by the neighboring property owner. The Complainants request that the Commission compel Penelec to pay for all of their costs of relocating their underground service wire to remedy the unsafe condition.

Penelec filed an Answer on April 24, 2006 denying all the material allegations in the Complaint and asserting that it properly (i) located the electric service pole and (ii)

followed its tariff in extending service to the DeGennaros and relocating their underground electric service.

An initial hearing was convened before the Honorable Kandace F. Melillo ("ALJ") on August 30, 2006 at which time the Complainant and Penelec presented the testimony of witnesses and introduced exhibits into the record. Mr. DeGennaro testified as his own witness, while Penelec presented the testimony of Eileen Schlecht, Rick Gunsallus, Sid Atherton, Beverly Green, Chris Wehr, the Company's tariff expert, and Carl Weyandt, the former electrical inspector for the City of Altoona.

The events leading to this Complaint began in May 2004 when the DeGennaros requested electric service from Penelec to their Service Location. (Tr. 46). Eileen Schlecht ("Ms. Schlecht"), a Penelec line designer, contacted Mr. DeGennaro and first met with him at the Service Location in June 2004 to discuss the extension of electric service to the Service Location. (Tr. 11-12, 46). Ms. Schlecht explained what would be required to extend electric service to the Service Location, including any particular requirements requested by the DeGennaros. (Tr. 47-48). These requirements included (i) the removal of trees along North Eleventh Street; (ii) the installation of water and sewer facilities on the DeGennaros' property; (iii) the provision of the conduit by the DeGennaros, and (iv) the necessary trenching, excavating and backfilling for the installation of the underground service. (Tr. 47-48). Before any further planning for the line extension could take place, the trees were required to be removed and water and sewage facilities needed to be installed. (Tr. 11-12, 47). The line extension to the Service Location was intended to run from Penelec's facilities on North Twentieth Street

and along North Eleventh Avenue on public right-of-way in a southwesterly direction to the Service Location. (Tr. 47, 50-60, Penelec Exhibit 2).

Once the removal of the trees and the installation of the sewer and water facilities were completed, Mr. DeGennaro contacted Ms. Schlecht and they again met at the Service Location in November 2004 to agree on the placement of the Pole. (Tr. 13, 29, 48). Ms. Schlecht advised Mr. DeGennaro that it was Penelec's policy to place the electric service poles at the corner of the adjoining property, in public right-of-way, so the electric service pole and its associated facilities could be used to serve the neighboring property as well as the location requesting service. (Tr. 48). The Company intended to use this standard approach in this case with the Complainants. Id. Since Ms. Schlecht did not see any property stakes in the ground during this on-site meeting, Mr. DeGennaro advised Ms. Schlecht of his property boundaries, the location of the water and sewer facilities and they agreed on the location for the Pole ("Original Location"). (Tr. 14, 29, 48-49, 63). Ms. Schlecht further advised Mr. DeGennaro that in accordance with Penelec's Tariff Rule 7, he would be sent a bill from Penelec for the line extension and was responsible for arranging and paying the costs of the excavating, trenching, backfilling and conduit for the underground electric service. (Tr. 49). She further advised him that the underground line extension *must be on his property*. Mr. DeGennaro had no objection to extending the underground service along his property boundary¹. (Tr. 49, 56, 60). It is not Penelec's policy to verify the property boundaries of any location to which it is extending service. (Tr. 49).

¹ It is important to note that Penelec never required the DeGennaros to place their underground service wire along their property boundary. Penelec only required its underground service wire be placed on the DeGennaro property. (Tr. 61, 66).

Ms. Schlecht designed the line extension and sent the DeGennaros a \$374 bill for the costs of the line extension. This amount included *only* the cost for the wire and the labor to install the underground electric service and the \$319 credit required by Penelec's Tariff Rule 7. (Tr. 61-63, Penelec Exhibit 3).

During mid-December 2004, Penelec commenced construction of the line extension and placement of the Pole at the Original Location. (Tr. 63, 95). However, it encountered and damaged the sewer facilities because they were not marked. (Tr. 95, 96). Thus, construction had to stop and the Pole was not placed at that time, nor was it ever placed at the Original Location.

Penelec verified that the sewer facilities were fixed and contacted Mr. DeGennaro to schedule another meeting to decide on a new location of the Pole. (Tr. 32, 63, 96). Two Penelec representatives, Rick Gunsallus, a Penelec Regional Operations Supervisor, and Ms. Schlecht again met Mr. DeGennaro at the Service Location, in mid to late December 2004, to determine a new location for the Pole. (Tr. 63-66, 96-97). During this meeting, Mr. DeGennaro again advised Ms. Schlecht of his property boundaries and agreed to the new location of the Pole, which was approximately 12 feet away from the Original Location towards N. 11th Avenue. (Tr. 63-65). Ms. Schlecht staked the Pole location at this time. (Tr. 57-61, 63). The Pole was subsequently placed, the underground electric service facilities were installed and the DeGennaros began receiving service on December 29, 2004. (Tr. 20, 66). The Company received an Occupancy Permit from the City of Altoona for the placement of the Pole. (Tr. 76-78, Penelec Exhibit 6).

In May 2005, the property owner adjoining the Service Location ("Neighboring Property Owner") requested electric service from Penelec. (Tr. 67-68). While the Neighboring Property Owner initially disputed the location of the Pole, he ultimately conceded that it was on City of Altoona ("City") right-of-way. Penelec extended electric service from the Pole to the neighboring property owner. (Tr. 67-68). Shortly thereafter, the Neighboring Property Owner excavated his property and uncovered the DeGennaros' underground telephone and cable conduit, which was not located on the DeGennaros' property at all. (Tr. 68). During this excavation process, the Neighboring Property Owner removed much of the ground covering over the conduit containing the underground electric service wire. (Tr. 20, 27, 32-33, 68). The DeGennaros' underground electric service wire was trespassing on the property of the Neighboring Property Owner. (Tr. 20, 68, Penelec Exhibit 1).

In January 2006, the City became involved and advised the DeGennaros that the condition of their underground electric service – not being covered with ground up to 24 inches – was an unsafe condition in accordance with the National Electric Code ("NEC"). (Tr. 68-69, 148-149). Penelec was aware of this claimed violation, but believed this unsafe condition was going to be remedied by either the City or the DeGennaros. (Tr. 69, 97-98). However, as of April 2006, Penelec was advised by the City that the unsafe condition still existed and that it had issued a safety violation notice to the DeGennaros requiring the condition to be remedied. (Tr. 150, Penelec Exhibit 14). Because the DeGennaros had allowed the unsafe condition to exist for over 90 days at the Service Location, erosion had caused more of the ground cover to be worn away, and less than 12 inches of ground cover remained over the electric conduit. (Tr. 105-117, Penelec

Exhibits 1, 7-10). The continuing erosion of the embankment where the facilities were located caused the underground conduit to sink and separate at the Pole exposing live electrical wires. (Tr. 105, 106, 110-112, Penelec Exhibits 7-9). On April 14, 2006, Penelec verified this condition and immediately fixed – on a temporary basis – the separated conduit in order to alleviate temporarily this unsafe condition. (Tr. 105-113, 120, Penelec Exhibits 7-10). Penelec also was concerned with the continual strain on the wires pulling away from the transformer and the meter base because of the continual erosion and sinking of the embankment and the conduit containing the electric service wire. (Tr. 106, 108, 110).

Due to the unsafe condition at the Service Location and the adjoining property, Penelec issued a 48 hour termination notice² to the DeGennaros to remedy the unsafe condition. (Tr. 120-122, Penelec Exhibit No. 12). In response, the DeGennaros decided to relocate their underground electric service. (Tr. 71, 122). Penelec billed the DeGennaros in the amount of \$362 for the wire and labor to relocate the underground electric service – *not the Pole*. (Tr. 71-72, Penelec Exhibit 4). The Pole was never relocated. Penelec relocated the underground electric service wire to the DeGennaros' Property on April 18, 2006. (Tr. 57-61, 71).

² In this instance, the 48-hour termination notice was a notice from the Company advising the DeGennaros that Penelec determined an unsafe condition existed at the Service Location and they had 48 hours to fix the unsafe condition or electric service would be terminated. (Tr. 121, Penelec Exhibit 12).

II. STATEMENT OF THE QUESTIONS PRESENTED

Q. Have the Complainants met their burden of proof under Section 332(a) of the Public Utility Code by demonstrating by a preponderance of evidence that Penelec improperly sited an electric service pole at their Service Location?

A. Suggested Answer: No.

Q. Is Penelec responsible for all labor, materials, and costs associated with the relocation of the Complainants' underground conduit and electric service line when an unsafe condition resulted from the Complainants' failure to comply with Penelec's service and meter installation requirements and Section 300.5 of the National Electric Code?

A. Suggested Answer: Yes.

Q. Have the Complainants met their burden of proof under Section 332(a) of the Public Utility Code that Penelec has improperly interpreted and applied its Tariff Rule 7 in connection with extension and relocation of Company facilities?

A. Suggested Answer: No.

Q. Does the Pennsylvania Public Utility Commission have jurisdiction to award money damages to the Complainants in this proceeding?

A. Suggested Answer: No.

III. SUMMARY OF THE ARGUMENT

Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof in this proceeding on the Complainants. The DeGennaros have not offered or supported any basis upon which relief can be granted.

Indeed, the DeGennaros have ignored the facts, as demonstrated on the record, that (i) Mr. DeGennaro, at least, agreed to the location of the Pole; (ii) Penelec located the Pole based solely on Mr. DeGennaro's representations about his property boundaries; (iii) Penelec did not require the DeGennaros to place the underground electric service along the property line; (iv) the DeGennaros and/or their agents solely determined the actual placement of the DeGennaro's underground electric service; (v) the unsafe condition was caused by the DeGennaros failure to comply with their ongoing obligation to have 24 inches of cover over the underground electric service line in accordance with Penelec's Tariff Rule 7, its Meter and Service Installation Handbook ("Handbook"), and NEC; and (vi) Penelec properly followed its Tariff Rule 7 regarding line extensions and the relocation of electric service facilities.

Based on the evidence of record in this proceeding, the Commission should dismiss the Complaint.

IV. ARGUMENT

A. Applicable Legal Standards

Section 1501 of the Pennsylvania Public Utility Code ("Code"), 66 Pa.C.S. § 1501, establishes the legal standard for assessing the validity of the DeGennaros complaint. Code Section 1501 imposes a duty on every public utility to "...furnish and maintain adequate, efficient, safe, and reasonable service and facilities and to make all such repairs, changes, alterations, substitutions, extensions and improvements in or to

such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public." (66 Pa.C.S. § 1501.) The term "service" means not only the distribution of electrical energy, but includes any and all acts related to that function, even the maintenance practices an electric utility undertakes. (Dorothy J. Taylor v. West Penn Power Company, 1993 PaPUC LEXIS 53 at 24, *citing*, West Penn Power Company v. PaPUC, 578 A.2d 75 (Pa. Cmwlth. 1990)).

Any person with an interest may file a complaint with the Commission 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 of any regulation or order of the Commission." (66 Pa.C.S. § 701.)

Code Section 332(a) sets forth the general rule with respect to burden of proof in proceedings before this Commission;

- a. Burden of proof. - Except as may be otherwise provided in Section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.

(66 Pa.C.S. § 332(a)).

Code Section 332(a) requires the Complainant "to bear the ultimate burden of persuading the Commission, by a preponderance of substantial evidence, that the relief sought is proper and justified under the circumstances." (Motheral, Inc. v. Duquesne Light Company, 2001 Pa. PUC LEXIS 4 at 9; *citing*, Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1954)).

The Supreme Court of Pennsylvania has held that a parties' burden of proof (in order to prevail on a Complaint) means a duty to establish necessary facts by a preponderance of the evidence. Preponderance of the evidence means one (1) party must present evidence which is more convincing by even the smallest amount, than the evidence presented by an opposing party. (*See*, Se-Ling Hosiery, *supra*).

Accordingly, the record in this case must be reviewed to determine whether the Complainants have satisfied his burden of proof.

The Commission's decision must also be supported by substantial evidence – i.e., "relevant evidence that a reasonable mind may accept as adequate to support a conclusion: more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established." (*Id.* at 10-11, *citing*, Murphy v. Pa Department of Public Welfare, White Haven Center, 480 A.2d 382 (Pa. Cmwlth. 1984); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa. Super. 1961)). A complainant must show that the utility is responsible or accountable for the problem described in the Complaint. (*Id.* at 11, *citing*, Feinstein, et al. v. Philadelphia Suburban Water Company, 50 Pa PUC 300, 302.) Finally, credibility determination of witnesses is exclusively within the purview of the ALJ, since the ALJ was present during the testimony of the witnesses. Roane v. PP&L, 1996 Pa. PUC LEXIS 189, Docket No. F-00217203 (November 14, 1996).

B. The Complainants Failed to Prove that Penelec Improperly Sited the Pole at the Service Location

The Complainants have offered no credible evidence demonstrating that Penelec improperly and unreasonably located the Pole serving the Service Location. Indeed, the only evidence provided by Mr. DeGennaro³ at the hearing to substantiate his claim is that (i) Penelec improperly encountered his sewer facilities when attempting to locate the Pole in the Original Location; (ii) Penelec never consulted him as to the current location of the Pole; and (iii) he was forced to relocate his underground service line, at his cost, because it trespassed on his neighbor's property and was uncovered during excavation of the

neighbor's property eventually resulting in an unsafe condition. Based upon the testimony offered by Penelec's witnesses, the Complainants' claims were contradicted with substantial evidence and have no merit. Penelec's actions in this instance were reasonable, appropriate and fully consistent with the Public Utility Code, the Commission's regulations and Penelec's tariff.

1. Penelec did not Improperly Encounter the DeGennaros' Sewer Facilities

Mr. DeGennaro's claims that Penelec improperly encountered his sewer facilities because it did not receive an "all clear" from PA One Call⁴ is simply erroneous. First, Ms. Schlecht's undisputed testimony was that during the meeting in November 2004 to determine the Original Location of the Pole, Mr. DeGennaro advised Ms. Schlecht of the location of his sewer and water facilities. (Tr. 14, 29, 31, 48-49, 63, Penelec Exhibit 1). Mr. DeGennaro represented the location of these facilities and, based upon Mr. DeGennaro's representations, Ms. Schlecht sited and staked the Original Location of the Pole. Initially, Mr. DeGennaro fully agreed with this location! Id.

Further, Penelec did have an "all clear" from PA One Call to go ahead and begin construction at the Service Location. As Penelec witness Gunsallus testified, he received permission to begin construction at the Service Location and that all of the utility facilities had been marked. (Tr. 95-96, 101-102). Indeed, when Mr. Gunsallus went to the Service Location after being contacted by his crew that a sewer line had been

³ Only Mr. DeGennaro appeared at the hearing and presented evidence, not Mrs. DeGennaro.

⁴ PA One Call, also referred to as Pennsylvania One Call, is a system that provides access to information concerning the location of water, power and gas lines so that such lines are not disrupted during construction or other excavation work. Pennsylvania Public Utility Commission v. Pennsylvania-American Water Company, 1988 Pa. PUC LEXIS 510, Docket Nos. R880916, et al. (October 21, 1988). Before beginning construction on any property, a contact must be made to Pa-One Call to have all of the public utility facilities marked at the property. 73 Pa.C.S. § 176, et seq.

encountered, he verified that there were no markings on the property to indicate any utility facilities in the area where the sewer line was encountered.⁵ (Tr. 96, 101-102). Mr. Degennaro presented no evidence suggesting that Penelec did not receive permission from PA One Call to begin construction at his Service Location. Thus, this argument has no merit and should be dismissed.

2. Mr. DeGennaro Agreed to the Current Location of the Pole

Mr. DeGennaro argues that he was never consulted and did not consent to the current location of the Pole. (Tr. 31-32). However, the testimony of two of Penelec's witnesses, Ms. Schlecht and Mr. Gunsallus, and even portions of Mr. DeGennaro's testimony contradict this argument.

Both Ms. Schlecht and Mr. Gunsallus testified that they met Mr. DeGennaro at the Service Location in mid to late December 2004 to determine a new location for the Pole after the sewer facilities had been encountered. (Tr. 63-66, 96-97). At that time, since there were no property stakes at the Service Location, Ms. Schlecht relied on Mr. DeGennaro's representations of his property boundaries. In addition, he agreed to the current location of the Pole. (Tr. 63-65). Mr. Gunsallus was present at this meeting and confirmed this testimony. (Tr. 96-97).

Also, Mr. DeGennaro admitted to observing the actual location of the Pole before the underground electric service wire was installed. (Tr. 36-37). He did not object to the location of the Pole at that time and permitted the installation of the underground service wire. (Tr. 36-37).

⁵ Mr. Gunsallus also traveled to the Service location to verify that the sewer facilities were being repaired. (Tr. 96). As Mr. DeGennaro testified, he was not charged by anyone for this repair. (Tr. 32).

In addition, the Pole is located on City right-of-way for which Penelec has obtained an Occupancy Permit. (Tr. 76-78, Penelec Exhibit 6). Penelec is currently providing service to the Service Location and the neighboring property from this location. (Tr. 67, 70-72). Thus, Penelec has a right to occupy the area where its Pole is located.

3. Penelec Never Required Mr. DeGennaro to Relocate his Underground Electric Facilities

Mr. DeGennaro asserts that he was forced to relocate his underground electric service facilities, at his cost, because of the location of the Pole. (Tr. 26-27). This assertion cannot be supported by the record.

First, as described above, Mr. DeGennaro consented to the current location⁶ of the Pole and, indeed, advised Ms. Schlecht of his property boundaries. *See*, Penelec Main Brief, Section B(2) above.

Second, Penelec did not choose the location of the underground electric service facilities. Rather, this location was determined solely and exclusively by Mr. DeGennaro and his agents and/or representatives who trenched and excavated the Service Location and laid the conduit for the installation of the underground service wire⁷. (Tr. 56, 61, 66, Penelec Exhibit 1). Penelec's only requirement pertinent to the location of the underground electric service facilities was that Mr. DeGennaro put the trench and conduit *on his property*.

⁶ Please note that the Pole was only placed one time – at its current location. The Pole did not need to be relocated when Mr. DeGennaro relocated his underground electric service facilities. (Tr. 72).

⁷ As discussed further below in Section D, Penelec's Tariff Rule 7 requires the customer who requests underground electric service to provide his own trenching, backfilling, excavating and conduit for the installation of the underground electric service facilities. Electric Pa. P.U.C. No. 77, First Revised Page 33, Effective 12/12/2002 (Penelec Exhibit 13).

Third, once an unsafe condition of the underground electric service wire was identified at the Service Location, Penelec did not require the DeGennaros to relocate their underground electric service facilities. (Tr. 121, Penelec Exhibit 12). Rather, Penelec only required that the unsafe condition be remedied and Mr. DeGennaro admitted this fact. (Tr. 38, Penelec Exhibit 12). This required that the underground electric service conduit be covered up to 24 inches in accordance with the Company's Service and Meter Installation Requirement Handbook ("Handbook"), Tariff Rule 7, and the NEC. (Tr. 114-115, 150-151, Penelec Exhibits 11 and 14). Furthermore, Mr. Weyandt, the electrical inspector for the City of Altoona, also only required that the unsafe condition be remedied. (Tr. 151). The underground facilities had to be relocated because they were trespassing on the adjoining property – a condition that was solely decided by the Complainants. The DeGennaros solely and exclusively determined and requested Penelec to relocate the underground electric service facilities⁸. (Tr. 37-38, 61-66).

C. Penelec was Not Responsible to Remedy the Unsafe Condition

There is no real dispute in this proceeding that an unsafe condition of the DeGennaro's underground electric service facilities existed. Both Penelec's expert witness, Mr. Atherton, and Mr. Weyandt from the City, confirmed that an unsafe condition existed. Mr. DeGennaro presented no credible testimony to contradict these witnesses.

⁸ Mr. DeGennaro claimed at the hearing that the unsafe condition could not just be remedied. (Tr. 37-38). Yet, he provided no expert testimony of his claims and, in fact, admitted that he had no experience in excavation or contract work to make such claims. (Tr. 38).

The unsafe condition occurred when the neighboring property owner excavated his property and uncovered the DeGennaros' underground telephone and cable conduit and removed much of the ground covering the conduit containing the underground electric service wire. (Tr. 68). When Mr. Atherton investigated the unsafe condition, in April 2006, he discovered that erosion had caused more of the ground cover to be worn away, with less than 12 inches of ground cover over the electric conduit. (Tr. 105-117, Penelec Exhibits 7-10). The continuing erosion of the embankment where the facilities were located -- due to the DeGennaros neglect for over 90 days- caused the underground conduit to sink and separate at the pole exposing live electrical wires. (Tr. 150). On April 14, 2006, when Penelec verified this condition, it immediately fixed the separated conduit -- at least temporarily- to alleviate that portion of the unsafe condition. (Tr. 105-113, 120, Penelec Exhibits Nos. 7-10). Penelec also was concerned with the continual strain on the wires pulling away from the transformer and the meter base because of the continual erosion and sinking of the embankment. (Tr. 106). This unsafe condition was confirmed by Mr. Weyandt, the City's electrical inspector.

On the other hand, the DeGennaros do dispute and the ALJ questioned at the hearing whether the DeGennaros should be responsible to remedy the unsafe condition. However, this inquiry is incorrect. In this matter, the only parties who could be responsible for alleviating the unsafe condition are the DeGennaros, the Neighboring Property Owner and Penelec. The correct inquiry is whether Penelec is responsible to remedy the unsafe condition. Clearly, based on the below, it was not Penelec's responsibility.

First, contrary to Mr. DeGennaro's claims, Penelec properly and appropriately located the Pole. It should not be Penelec's responsibility to remedy this situation because of the DeGennaros lack of knowledge of their property boundaries. See Section B above.

Second, Penelec did not purchase, nor did it provide, the conduit in which the underground electric service line was placed. The conduit was provided by the DeGennaros in accordance with Penelec's Tariff Rule 7(a)(2) regarding the extension of Company facilities ("Line Extension Rule"),

...the Applicant/Customer shall provide all necessary trenching, excavation, backfilling and grading in accordance with Company specifications in the prevailing Service and Meter Installation Requirement handbook, and shall bear all costs thereof. Residential customers electing to use conduit for their underground Service Line shall pay all related costs associated with such conduit.

Electric Pa. P.U.C. No. 77, First Revised Page 33, Effective: April 12, 2002 (Penelec Exhibit 13). Penelec would not have any right to remove this conduit.

Third, Penelec does not have any rights to enter the property and begin excavation where the underground electric service wire was installed. The DeGennaros excavated and trespassed on the neighboring property when installing the conduit for the electric service wire. Penelec was not requiring that the underground electric service wire be relocated and it, at the time, had no right to enter the property to conduct the relocation.

Finally, as Mr. Atherton testified, the Handbook requires that the conduit be covered with 24 inches of ground cover when it is installed. (Tr. 114-115, Penelec Exhibit 11). This standard is in accordance with the NEC and NESC. Id. Since, in accordance with the Line Extension Rule, the DeGennaros are required to install the conduit in accordance with the Company's Handbook, provide all excavating, trenching

and backfilling and pay all costs associated therewith, it is axiomatic that it is an ongoing obligation of the DeGennaros to comply with these standards at all times⁹. Furthermore, the City did not find Penelec to be responsible for the unsafe condition. (Tr. 149-152).

Thus, based on the above, Penelec should not be responsible for fixing the unsafe condition.

D. The Complainants Failed to Demonstrate that Penelec Improperly Interpreted or Applied its Tariff Rule 7

Penelec's Tariff Rule 7 addresses both extensions and relocations of Company electric service facilities. The DeGennaros implicitly claim that Penelec has improperly interpreted and applied its Tariff Rule 7 as it applies to this situation. However, they presented no witnesses, exhibits, or even cross-examined Penelec's expert tariff witness, Chris Wehr ("Mr. Wehr").

As Mr. Wehr testified, under the Line Extension Rule, it is the Company's obligation to receive a line extension request, process it, engineer the layout, provide the applicable span allowances and construct the line extension upon payment by the customer. (Tr. 128-131, Penelec Exhibit 13). Mr. Wehr expanded further on the span allowances by testifying that on public right-of-way, a customer will receive, at no charge, up to three spans of conductors, poles, and related material on the public right of way and a single span on private right-of-way. (Tr. 129-130, Penelec Exhibit 13). Since the line extension requested on the DeGennaros' property was underground, Mr. Wehr explained that the Company subtracts the span allowance on private right-of-way from

⁹ In addition, although not specifically addressed at the hearing, Penelec's Tariff Rule 10 requires an Applicant/Customer to make all electric service installations in accordance with the National Electric Code. Electric Pa. P.U.C. No. 77, Original Pages 40-42, Effective: January 1, 1999. Although Penelec's tariff is a publicly available document, it is attached hereto for easy reference as Penelec Attachment 1.

the overall cost of the line extension to the customer in the amount of a \$319 credit. (Tr. 130). It is the customer's obligation to pay for any costs in excess of the span allowances, and in the situation of an underground electric service line provide all of the necessary trenching, backfilling, conduit, and excavating in accordance with the Company's Handbook. (Tr. 132-133, Penelec Exhibit 13).

Mr. Wehr opined that the Company correctly interpreted and applied the Line Extension Rule to the DeGennaros where it (i) received and processed the line extension request; (ii) provided, at no charge, all of the electric service facilities along the public right-of-way including the installation of the pole in question; (iii) charged the DeGennaros only the Company's direct material and labor costs, i.e., the cost of the wire and the labor associated with the installation thereof; (iv) included the \$319 credit for the one span on private right-of-way; and (v) constructed the project once the DeGennaros paid for the line extension. (Tr. 132-133)

Mr. Wehr also addressed the Company's tariff rule related to relocations of electric service facilities, Rule 7(c). Electric Pa. P.U.C. No. 77, Original Pages 38A – 38B, Effective: April 12, 2002 ("Relocation Rule"). In accordance with the Relocation Rule, the Company is obligated to (i) receive and evaluate the request to determine whether it can be done; (ii) engineer the relocation; (iii) obtain the proper rights-of-way, if any; (iv) provide the customer with the direct material and labor costs to complete the relocation; and (v) complete the relocation once the cost is paid by the customer. (Tr. 134, Penelec Exhibit 13). The customer is required to pay the direct material and labor costs associated with the relocation and provide all necessary rights-of-way. Id.

Again, Mr. Wehr testified that the Company properly followed its Relocation Rule. As stated above, Penelec did not require the DeGennaros to relocate their underground electric service so the request for the relocation came solely from them. Penelec engineered the relocation and provided the DeGennaros with a cost for the relocation in the amount of \$362.00 for the material and labor costs associated with the wire and labor to relocate the underground facilities not the Pole. (Tr. 135-136). Penelec then relocated the facilities once the relocation costs were paid. (Tr. 57-61, 71).

The DeGennaros have provided no evidence contradicting Mr. Wehr's testimony and thus, have failed to establish that Penelec did not properly interpret or apply its tariff to this situation.

E. The Commission has no Jurisdiction to Award Money Damages

It is well settled that the Commission has only the powers, and can only consider such matters, as are expressly, or by necessary implication, given it by the legislature. Behrend v. Bell Telephone Co., 363 A.2d 1152 (Pa. Super 1976); Brockway Glass Company, Inc. v. West Penn Power Co., 54 Pa. P.U.C. 509 (1980). The Public Utility Code, 66 Pa.C.S. § 101, et seq. ("Code"), gives the Commission supervisory and regulatory power over the rates, service and facilities of public utilities. Brockway Glass Company, Inc. at 514. The Code does not give the Commission jurisdiction over claims for damages. Bones v. Bates Taxi, Inc., 51 Pa. P.U.C. 346 (1977). The Courts of Common Pleas retain original jurisdiction over suits for damages. Behrend v. Bell Telephone Co., 363 A.2d at 1158.

The Complainants are requesting, as relief in this Complaint matter that they be reimbursed for all of their costs related to the relocation of their electric service – *even those costs not paid to Penelec* – in the amount of \$2,100.00. (Tr. 24-25, 158-160).

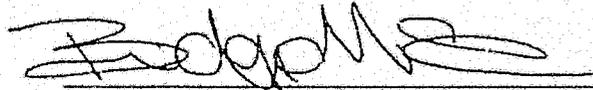
Clearly, the Complainants are seeking money damages for which, based on the above, the Commission has no jurisdiction to award.

V. CONCLUSION

Based upon the foregoing, it is respectfully requested that the Complaint of Joseph & Lisa DeGennaro be dismissed with prejudice.

Respectfully submitted.

Dated: October 25, 2006



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PENELEC ATTACHMENT I

GENERAL RULES AND REGULATIONS

Rule 9 - Insulation Requirements (continued)

Compliance certification copy - The part of the "notice of intent to construct" form returned to the builder or owner by the Pennsylvania Department of Community Affairs or municipality after receipt and processing of the notice of intent to construct, and which bears the identification number assigned to the notice of intent to construct by the Pennsylvania Department of Community Affairs or municipality.

Municipality - Any city, borough, incorporated town, township or home rule municipality.

Renovation - The rehabilitation of an existing building which requires more than twenty-five percent (25%) of the gross floor area or volume of the entire building to be rebuilt. Cosmetic work such as painting, wall covering, wall paneling, floor coverings, and suspended ceiling work shall not be included. 52 Pa. Code, §§ 69.101-69.107 (relating to building energy conservation standards for receipt of utility service) shall only apply to the portion of the building being renovated and not the entire building.

Residential building - Any building defined in the Conservation Act, 35 P.S. § 7201.103, and renovations and additions thereto, the actual construction of which commenced after March 19, 1986, and which is arranged for the use of one or two family dwelling units, and all townhouses and garden apartment construction not exceeding three stories in height used for residential purposes, whenever each unit has its own individual and self-supporting heating, ventilating or air conditioning system.

CHARACTERISTICS OF SERVICE

10. Wiring, Apparatus and Inspection**Company Obligations**

The Company shall furnish, install and maintain the meters, unless otherwise allowed by the Commission. In addition, the Company shall install and maintain the transformers and service lines it deems necessary to provide Secondary Service, unless specified otherwise in

GENERAL RULES AND REGULATIONS

Rule 10 - Wiring, Apparatus and Inspection (continued)

an applicable, valid and binding agreement. All equipment / facilities supplied by the Company shall remain its exclusive property and may be removed, in the Company's sole discretion, after termination of service for whatever cause.

The Company shall extend only one service lateral to a Customer's premises and install one (1) meter except where, in the Company's sole judgment, special conditions warrant the installation of additional facilities. Any type of service supplied by the Company to the same Customer at other points of delivery shall be metered and billed separately.

The Company shall repair and maintain any facilities / property it has installed on a Customer's premises. However, the Customer shall pay the full cost of inspection, repairs and/or replacement of all such facilities / property that may be damaged due to a Customer's negligence. No one shall break any seals or perform any work on any Company facilities including, but not limited to, meters without first receiving the Company's consent and approval.

Applicant / Customer

Electric service installations shall be in accordance with the National Electrical Code, and all applicable local, state and federal codes, statutes and regulations, except as modified by the Company's then-applicable handbooks, booklets or other documents covering such installations, as they may be amended by the Company from time to time. A copy of the Company's requirements for electric service installations shall be provided to an Applicant / Customer upon request.

In the event that the Company is required by any state, federal or local governmental or public authority to place or relocate all or any portion of its facilities (including, but not limited to,) mains, wires or services, poles or underground feeders, the Applicant / Customer shall, without cost or expense to the Company, change the location of the Applicant's / Customer's point of delivery to a point specified by the Company.

Upon the Company designating a point of delivery at which its service line will terminate, the Applicant / Customer shall provide, at its sole cost and expense, a place suitable to the

GENERAL RULES AND REGULATIONS

Rule 10 - Wiring, Apparatus and Inspection (continued)

Company for the installation of metering and all other electric facilities needed for the supply of electric energy by the Company or an EGS. Meters shall be located on the outside of a building as near as possible to the service entrance or under certain circumstances, when approved by the Company, inside of a building.

The Company may refuse to connect with any Applicant's / Customer's installation or to make additions or alterations to the Company's service connection when such installation is not in accordance with the National Electrical Code, and all applicable local, state and federal codes, statutes and regulations, and where a certificate approving such installations, additions or alterations has not been issued by (i) an electrical inspection authority contained on a list of such authorities maintained by the Company and updated from time to time or (ii) any city or county inspection entity having exclusive authority to make electrical inspections in that area.

When a Customer's use of equipment having operating characteristics which impose high instantaneous demand such as, but not limited to, welders, hoists, electric furnaces and x-ray equipment, adversely affects or has the potential to adversely affect, in the Company's sole judgment, the Company's electric system, the Customer shall install at its sole expense such corrective equipment as may be directed by the Company. The Company shall not serve or continue to serve Customer loads where, in the Company's sole judgment, such loads have or may have voltage and phase characteristics that result (or may result) in intolerable harmonic distortions.

Each Applicant / Customer shall provide to the Company such service information described in Rule 4. of this Tariff. The Applicant / Customer shall be responsible and liable to the Company for any damages resulting from the Customer's failure to provide such service information.

The Company shall have the right to require Customers to provide, at their sole expense, Power Factor corrective equipment which will maintain their average Power Factor at no less than eighty-five percent (85%) lagging. Unless corrective equipment is installed, the Company is under no obligation to serve or to continue to serve such Customers.

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October 30, 2006

ORIGINAL

Via UPS Overnight

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

Re: Joseph & Lisa DeGennaro v. Pennsylvania Electric Company
Docket No. C-20066055

Dear Secretary McNulty:

Enclosed for filing by Pennsylvania Electric Company ("Penelec") are an original and nine (9) copies of Amended Page 7 to the Main Brief of Penelec in the above-referenced matter. The enclosed Amended Page 7 has also been served on all parties of record per the attached Certificate of Service.

If you have any questions, please contact me.

Very truly yours,

RYAN, RUSSELL, OGDEN & SELTZER LLP


Bridgid M. Good

DOCUMENT
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Enclosures

c: Administrative Law Judge Kandace F. Melillo
Per Certificate of Service

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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102

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOSEPH & LISA DEGENNARO

v.

Docket No. C-20066055

PENNSYLVANIA ELECTRIC COMPANY:

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Amended Page 7 of the Main Brief of Pennsylvania Electric Company upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by UPS Overnight, postage prepaid, addressed as follows:

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

John C. Peters, Esquire
1216 Eleventh Avenue
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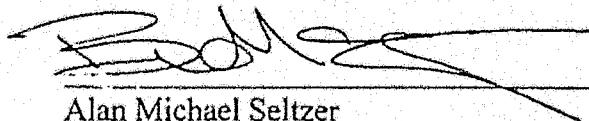
Carl Weyandt
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Service by electronic mail and UPS Overnight, postage prepaid, addressed as follows:

ALJ Kandace F. Melillo
Pennsylvania Public Utility Commission
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Joseph & Lisa DeGennaro
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Dated: October 30, 2006



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Pennsylvania Electric Company

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

II. STATEMENT OF THE QUESTIONS PRESENTED

Q. Have the Complainants met their burden of proof under Section 332(a) of the Public Utility Code by demonstrating by a preponderance of evidence that Penelec improperly sited an electric service pole at their Service Location?

A. Suggested Answer: No.

Q. Is Penelec responsible for all labor, materials, and costs associated with the relocation of the Complainants' underground conduit and electric service line when an unsafe condition resulted from the Complainants' failure to comply with Penelec's service and meter installation requirements and Section 300.5 of the National Electric Code?

A. Suggested Answer: No.

Q. Have the Complainants met their burden of proof under Section 332(a) of the Public Utility Code that Penelec has improperly interpreted and applied its Tariff Rule 7 in connection with extension and relocation of Company facilities?

A. Suggested Answer: No.

Q. Does the Pennsylvania Public Utility Commission have jurisdiction to award money damages to the Complainants in this proceeding?

A. Suggested Answer: No.

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ORIGINAL

October 31, 2006

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Joseph & Lisa DeGennaro v. Pennsylvania Electric Company
Docket No. C-20066055

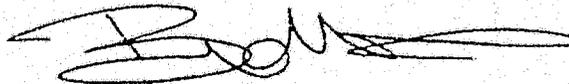
Dear Secretary McNulty:

Enclosed for filing by Pennsylvania Electric Company ("Penelec") are an original and three (3) copies of the Motion to Admit a Late-Filed Public Document on behalf of Penelec in the above-referenced matter. The enclosed document has also been served on all parties of record per the attached Certificate of Service.

If you have any questions, please contact me.

Very truly yours,

RYAN, RUSSELL, OGDEN & SELTZER LLP



Bridgid M. Good

Enclosures

c: Administrative Law Judge Kandace F. Melillo
Per Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOSEPH & LISA DEGENNARO

v.

Docket No. C-20066055

PENNSYLVANIA ELECTRIC COMPANY:

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Motion to Admit a Late-Filed Public Document on behalf of Pennsylvania Electric Company upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by UPS Overnight, postage prepaid, addressed as follows:

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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John C. Peters, Esquire
1216 Eleventh Avenue
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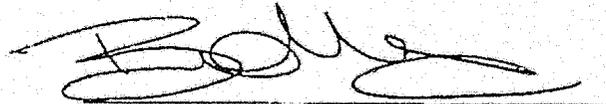
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

OCT 01 2006

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

JOSEPH & LISA DEGENNARO :
: v. :
PENNSYLVANIA ELECTRIC COMPANY:

Docket No. C-20066055

MOTION TO ADMIT A LATE-FILED PUBLIC DOCUMENT

TO ADMINISTRATIVE LAW JUDGE KANDACE F. MELILLO:

Pennsylvania Electric Company ("Penelec" or the "Company") hereby files the following Motion to Admit a Late-Filed Public Document as an Exhibit ("Motion") in accordance with the Commission's regulations at 52 Pa. Code §§ 5.402(b) and 5.406 and in connection therewith represents as follows:

I. Introduction

1. This Motion seeks to have Penelec's Tariff Rule 10, Electric Pa. P.U.C. No. 77, Original Pages 40-43, Effective: January 1, 1999 ("Tariff Rule 10"), admitted into the evidentiary record in the above-referenced proceeding as a late-filed public document.

II. Background

2. On or about March 17, 2006, Joseph and Lisa DeGennaro (the "Complainants") filed a Complaint against Penelec at the above-referenced docket number alleging that Penelec (i) improperly located an electric service pole to provide electric service to the Service Location and (ii) should bear all of the costs to have the Complainants' electric service facilities relocated since such facilities are allegedly

trespassing on the property of the Complainants' neighbors and were deemed to be in an unsafe condition.

3. On or about April 24, 2006, Penelec timely filed an Answer and New Matter denying the material allegations in the Complaint.

4. A hearing was held on August 30, 2006 at which Mr. DeGennaro and Penelec appeared and presented witnesses and exhibits.

5. During the hearing, the presiding ALJ questioned whether the Complainants should be responsible to remedy the unsafe condition of its underground electric service facilities serving its Service Location. (Hearing Transcript, p. 131).

6. At the hearing, Penelec responded to the ALJ's question by pointing to its Tariff Rule 7 that requires a customer to install the facilities in accordance with the Company's Service and Meter Installation Requirement Handbook. Tariff Rule 7(a)(2), Electric Pa. P.U.C. No. 77, First Revised Page 33, Effective: April 12, 2002 (Penelec Exhibit 13).

7. In its Main Brief, filed on October 25, 2006 per the ALJ's Order dated October 4, 2006, Penelec further argued that the requirement cited in Tariff Rule 7 is an ongoing obligation by the Complainants. In addition, Penelec cited in Footnote 9 of its Main Brief that Tariff Rule 10 requires a customer to make all electric service installations in accordance with the National Electric Code and attached Tariff Rule 10 to the Main Brief. (Penelec Main Brief, p. 17). However, Tariff Rule 10 has not been officially entered into the record of this proceeding as an exhibit.

8. As of the filing of this Motion, the record in this proceeding has not yet closed.

III. Argument

9. In accordance with 52 Pa. Code §5.406, a report or other document on file with the Pennsylvania Public Utility Commission ("Commission") need not be produced or marked for identification, but may be offered into evidence as a public document. 52 Pa. Code §5.406(a)(1). A participant may move an exhibit into evidence after the close of the hearing in a proceeding, if it is done writing and subject to the same objections as at the hearing. 52 Pa. Code § 5.402(b).

10. Penelec's Tariff Rule 10 is a document on file with the Commission and is available to the public.

11. Tariff Rule 10 is instructive and helpful to the ALJ to address her question as described above in paragraph 5 and should be admitted as part of the evidentiary record.

IV. Conclusion

12. Based on the above, Penelec requests that its Tariff Rule 10, attached hereto and marked as Penelec Exhibit 15, be admitted as part of the evidentiary record in this proceeding.

WHEREFORE, Pennsylvania Electric Company requests that the presiding ALJ grant this Motion to Admit a Late-Filed Public Document and admit into the evidentiary record Tariff Rule 10 as specified herein and grant Pennsylvania Electric Company such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

Dated: October 31, 2006



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Attorneys for Pennsylvania Electric Company

GENERAL RULES AND REGULATIONS

Rule 9 - Insulation Requirements (continued)

Compliance certification copy - The part of the "notice of intent to construct" form returned to the builder or owner by the Pennsylvania Department of Community Affairs or municipality after receipt and processing of the notice of intent to construct, and which bears the identification number assigned to the notice of intent to construct by the Pennsylvania Department of Community Affairs or municipality.

Municipality - Any city, borough, incorporated town, township or home rule municipality.

Renovation - The rehabilitation of an existing building which requires more than twenty-five percent (25%) of the gross floor area or volume of the entire building to be rebuilt. Cosmetic work such as painting, wall covering, wall paneling, floor coverings, and suspended ceiling work shall not be included. 52 Pa. Code, §§ 69.101-69.107 (relating to building energy conservation standards for receipt of utility service) shall only apply to the portion of the building being renovated and not the entire building.

Residential building - Any building defined in the Conservation Act, 35 P.S. § 7201.103, and renovations and additions thereto, the actual construction of which commenced after March 19, 1986, and which is arranged for the use of one or two family dwelling units, and all townhouses and garden apartment construction not exceeding three stories in height used for residential purposes, whenever each unit has its own individual and self-supporting heating, ventilating or air conditioning system.

CHARACTERISTICS OF SERVICE

10. Wiring, Apparatus and Inspection

Company Obligations

The Company shall furnish, install and maintain the meters, unless otherwise allowed by the Commission. In addition, the Company shall install and maintain the transformers and service lines it deems necessary to provide Secondary Service, unless specified otherwise in

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GENERAL RULES AND REGULATIONS

Rule 10 - Wiring, Apparatus and Inspection (continued)

an applicable, valid and binding agreement. All equipment / facilities supplied by the Company shall remain its exclusive property and may be removed, in the Company's sole discretion, after termination of service for whatever cause.

The Company shall extend only one service lateral to a Customer's premises and install one (1) meter except where, in the Company's sole judgment, special conditions warrant the installation of additional facilities. Any type of service supplied by the Company to the same Customer at other points of delivery shall be metered and billed separately.

The Company shall repair and maintain any facilities / property it has installed on a Customer's premises. However, the Customer shall pay the full cost of inspection, repairs and/or replacement of all such facilities / property that may be damaged due to a Customer's negligence. No one shall break any seals or perform any work on any Company facilities including, but not limited to, meters without first receiving the Company's consent and approval.

Applicant / Customer

Electric service installations shall be in accordance with the National Electrical Code, and all applicable local, state and federal codes, statutes and regulations, except as modified by the Company's then-applicable handbooks, booklets or other documents covering such installations, as they may be amended by the Company from time to time. A copy of the Company's requirements for electric service installations shall be provided to an Applicant / Customer upon request.

In the event that the Company is required by any state, federal or local governmental or public authority to place or relocate all or any portion of its facilities (including, but not limited to,) mains, wires or services, poles or underground feeders, the Applicant / Customer shall, without cost or expense to the Company, change the location of the Applicant's / Customer's point of delivery to a point specified by the Company.

Upon the Company designating a point of delivery at which its service line will terminate, the Applicant / Customer shall provide, at its sole cost and expense, a place suitable to the

GENERAL RULES AND REGULATIONS

Rule 10 - Wiring, Apparatus and Inspection (continued)

Company for the installation of metering and all other electric facilities needed for the supply of electric energy by the Company or an EGS. Meters shall be located on the outside of a building as near as possible to the service entrance or under certain circumstances, when approved by the Company, inside of a building.

The Company may refuse to connect with any Applicant's / Customer's installation or to make additions or alterations to the Company's service connection when such installation is not in accordance with the National Electrical Code, and all applicable local, state and federal codes, statutes and regulations, and where a certificate approving such installations, additions or alterations has not been issued by (i) an electrical inspection authority contained on a list of such authorities maintained by the Company and updated from time to time or (ii) any city or county inspection entity having exclusive authority to make electrical inspections in that area.

When a Customer's use of equipment having operating characteristics which impose high instantaneous demand such as, but not limited to, welders, hoists, electric furnaces and x-ray equipment, adversely affects or has the potential to adversely affect, in the Company's sole judgment, the Company's electric system, the Customer shall install at its sole expense such corrective equipment as may be directed by the Company. The Company shall not serve or continue to serve Customer loads where, in the Company's sole judgment, such loads have or may have voltage and phase characteristics that result (or may result) in intolerable harmonic distortions.

Each Applicant / Customer shall provide to the Company such service information described in Rule 4. of this Tariff. The Applicant / Customer shall be responsible and liable to the Company for any damages resulting from the Customer's failure to provide such service information.

The Company shall have the right to require Customers to provide, at their sole expense, Power Factor corrective equipment which will maintain their average Power Factor at no less than eighty-five percent (85%) lagging. Unless corrective equipment is installed, the Company is under no obligation to serve or to continue to serve such Customers.