

PLEASE DOCKET

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joseph and Lisa DeGennaro

v.

Pennsylvania Electric Company

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C-20066055

DOCUMENT
FOLDER

INTERIM ORDER GRANTING,
IN PART, AND DENYING, IN PART,
MOTION TO COMPEL

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I. INTRODUCTION

On March 29, 2006, Joseph and Lisa DeGennaro (Complainants) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Penelec or Respondent). Penelec filed an Answer and New Matter on April 24, 2006. I was assigned as the presiding officer to hold hearings and issue a decision. An Initial In-Person Hearing is scheduled for Wednesday, August 30, 2006, at 10:00 a.m., in Hearing Room #4, Commonwealth Keystone Building, Harrisburg, PA.

On July 19, 2006, I received a copy of a Motion to Compel Responses to Discovery Requests (Motion to Compel) and Notice to Plead on behalf of Penelec. Penelec asserted that it had issued discovery requests to the Complainants on June 13, 2006 (attached hereto as Attachment "A"), and that, as of July 18, 2006, Complainants had not yet responded to any of the interrogatories. Penelec had previously sent a letter to the Complainants indicating that it would file a Motion to Compel if the responses were not received, but the letter was not responded to and did not result in responses to the discovery. Penelec requested that I direct the Complainants to provide responses to all requested discovery by July 31, 2006, and, if the answers are not supplied by that date, to apply sanctions which would preclude the Complainants from introducing any testimony on issues raised in the discovery requests.

BA

On July 21, 2006, I sent a letter to the Complainants, with a copy to Penelec and to the attorney listed on the Complaint as representing the DeGennaros. I indicated that while an attorney's name is mentioned on the Complaint, there was no entry of appearance, and that the attorney must enter his appearance if he is in fact representing the Complainants herein. I further noted that I must be served directly with any response to the Motion to Compel.

The Certificate of Service indicated that service of the Motion to Compel was made upon the Complainants and counsel listed in the Complaint by first class mail on July 18, 2006. Pursuant to 52 Pa. Code §§5.342(e)(1) and 1.56(b), Complainants had until July 26, 2006 (three extra days added due to first class mail service) to respond to the Motion to Compel. As of today, July 27, 2006, I have received no response to the Motion to Compel from the Complainants. The matter is ready for a ruling.

II. PENELEC MOTION TO COMPEL RESPONSES TO DISCOVERY

A. Scope of permissible discovery

The scope of permissible discovery is generally set forth in 52 Pa. Code §5.321(c). That provision states that a participant may obtain discovery of any matter, which is not privileged, and which is relevant to the subject matter involved in the pending action. This general statement of scope is subject to certain limitations as set forth in 52 Pa. Code §5.361. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Relevant evidence, as defined in Rule 401 of the Pennsylvania Rules of Evidence, means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. In Commonwealth v. Stewart, 461 A.2d 274, 336 A.2d 282 (1975), the Pa. Supreme Court described a two-part analysis for determining relevance: (1) the inference sought to be raised by the evidence must bear upon a matter at issue; and (2) the evidence must render the desired inference more probable than it would be without the evidence.

B. Complainants' Failure To Respond To Discovery

As a basis for its Motion to Compel, Respondent asserted that responses to the discovery propounded to Complainants was due within twenty (20) days, as provided by 52 Pa. Code §5.342(d), and that no responses had been received as of July 18, 2006. Respondent contended that it will be prejudiced in the preparation of its defense unless Complainants are directed to respond to the discovery requests promptly. It requests that the presiding officer direct the Complainants to answer its discovery by July 31, 2006, or be subject to sanctions.

I have reviewed the interrogatories propounded by Respondent and find them all to be relevant, except as noted below. Furthermore, there has been no assertion by the Complainants that any of the requested material is privileged communication, sought in bad faith, would be unduly burdensome to produce, or would involve an unreasonable investigation. I will therefore grant the Motion to Compel as to all interrogatories/document requests contained in Attachment A, attached to this Order, with the exception discussed below. Complainants must supply answers to the interrogatories as soon as they have been prepared, regardless of whether all responses are yet available.

Interrogatories (Set I) Nos. 3 and 8 requests telephone numbers of witnesses other than the Complainants. This information may be of a confidential nature and does not appear to be necessary or relevant to the case. Furthermore, 66 Pa. C.S. §333(c) requires disclosure of the witnesses' names and the subject matter of the testimony. There is no mention of telephone numbers. Also, 52 Pa. Code §5.324(a)(1)(i) provides for disclosure of the witnesses' identity and the subject matter of the testimony, and again there is no mention of other personal information. Accordingly, absent further support as to need for the requested telephone numbers, I am not going to compel it.

Also, I will not grant the Motion to Compel with respect the due date for all responses. Instead, I will allow Complainants until Friday, August 11, 2006, to provide all responses. I note that the Complaint was answered by the Respondent on April 24, 2006, and there has been no justification shown for the over six week delay in propounding the discovery. I note that parties are to endeavor to initiate discovery as early in the proceeding as reasonably

possible. 52 Pa. Code §5.331(b). If discovery had been initiated earlier and the Complainants had similarly failed to respond, a deadline of July 31, 2006, in an Order to Compel would have been more reasonable. Accordingly, I will direct that all responses be received by Respondent, no later than Friday, August 11, 2006. If a response to a particular interrogatory is not received by that date, I will, upon timely objection, refuse to allow Complainants to introduce evidence at the hearing which relates to the unanswered interrogatory. 52 Pa. Code §5.372(a)(2).

III. ORDERING PARAGRAPHS

THEREFORE,

IT IS ORDERED:

1. That the Motion to Compel Responses to Discovery Requests filed by Pennsylvania Electric Company on July 18, 2006, at Docket No. C-20066055 is hereby granted with respect to all interrogatories contained in Attachment "A", appended hereto, with the exception of the request for witness telephone numbers (other than the Complainants).

2. That Complainants supply answers to Respondent to the interrogatories contained in Attachment "A", as soon as they have been prepared, regardless of whether all responses are yet available. However, all responses must be received by Respondent, no later than Friday, August 11, 2006. If a response to a particular interrogatory is not received by that date, Complainants will, upon timely objection, be precluded from introducing evidence at the hearing which relates to the unanswered interrogatory. 52 Pa. Code §5.372(a)(2).

Date: July 27, 2006

Kandace F. Melillo
Kandace F. Melillo
Administrative Law Judge

ATTACHMENT "A"

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOSEPH & LISA DEGENNARO

v.

Docket No. C-20066055

PENNSYLVANIA ELECTRIC COMPANY:

**PENELEC'S INTERROGATORIES AND REQUEST FOR PRODUCTION
OF DOCUMENTS (SET I) TO THE COMPLAINANTS**

Penelec Electric Company ("Penelec"), by and through its counsel, Alan Michael Seltzer, Jeffrey A. Franklin, Bridgid M. Good and Ryan, Russell, Ogden & Seltzer LLP, hereby propound the following Interrogatories and Requests for Production of Documents (Set I) (hereinafter referred to as "Discovery Requests") to Joseph & Lisa DeGennaro ("Complainants"), to be answered separately and fully in writing and under oath within twenty (20) days of the service date shown on the Certificate of Service attached hereto, pursuant to 52 Pa. Code §§ 5.341 and 5.342.

DEFINITIONS

A. As used herein, "document" refers to any written, printed, recorded, taped, electronic, or graphic matter, including but not limited to, writings, agreements, licenses, contracts, books, pamphlets, periodicals, memoranda, correspondence, notes, diaries, calendars, appointment books, estimates, reports, intraoffice communications, work papers, canceled or uncanceled checks, records, filings, cost sheets, estimating sheets, studies, analyses, evaluations, purchase orders, bills, invoices, confirmations, bills of lading, receipts, ledgers, accounts, charts, graphs, indices, computer printouts, data sheets, data processing cards, tapes or discs, and any other data compilation from which information can be obtained or translated, if necessary, through detection devices into reasonably usable form, recordings, transcriptions thereof, minutes of meetings, and all other materials relating to any conversations, meetings and/or conferences, by telephone or otherwise, and any other

writing or recording, however produced or reproduced, of any kind or description, including originals, non-identical copies (whether different from the original because of notes made on or attached to such copy or otherwise) and drafts, regardless of origin, whether sent or received or made and/or used internally, in whatever form, and both sides thereof, that (a) are now or formerly in your possession, custody, or control or (b) are known or believed to be responsive to these interrogatories, regardless of who now has or formerly had possession, custody or control.

B. As used herein, the term "oral communication" means any words heard or spoken, including without limitation, words spoken during any meeting, discussion, speech, or conversation including any telephone conversation.

C. As used herein, "representatives" shall include directors, officers, employees, agents, attorneys or other persons acting on behalf of any of the Complainant(s).

D. As used herein, "identify" shall mean describe with particularity and provide the following information:

(a) When used with reference to a natural person, state his or her full name, address and present or last known business, his or her last known or present business affiliation, and his or her position and business affiliation (including a description of his or her duties and responsibilities) at the time of the transaction, occurrence, event, happening or matter in question;

(b) When used with reference to any entity other than a natural person (e.g., a corporation, partnership, joint venture, or unincorporated association), state:

- (1) Its full name and organization form;
- (2) The address of its principal place of business; and

(3) Its purpose, primary business, or activities.

(c) When used with reference to a document (as that term is defined in paragraph A, above), annex a legible copy thereof including all attachments thereto, or state:

(1) The nature of the document (e.g., letter, contract, chart, memorandum);

(2) Its date and the date of its preparation;

(3) Each author (and, if different, each signer) thereof, each addressee, and each other person to whom the document was distributed;

(4) Its subject matter and substance;

(5) Its present or last known location and custodian;

(6) The disposition if such document was but is no longer in your possession or subject to your control; and

(7) Any other information necessary to enable the custodian to locate the particular document and necessary for use in a request for production of documents under Pennsylvania Rule of Civil Procedure 4009.11.

(d) When used with reference to a meeting, state:

(1) The date, time, and location of the meeting;

(2) The identity of all persons involved in each and every meeting; and

(3) The substance of the meeting.

(e) When used with reference to a legal proceeding, state:

(1) The court, administrative agency, or other governmental body involved;

(2) The caption of the proceeding;

(3) All parties to the proceeding; and

(4) The docket number of the proceeding.

E. As used herein, "person" or "persons" include natural persons as well as firms, partnerships, associations, institutions, joint ventures, corporations, governmental entities, administrative agencies, professional associations, and every other organization of whatever sort.

F. As used herein, the term "date" means the exact day, month and year, if ascertainable, or, if not, your best approximation thereof. If an approximation is given, the responses should so indicate.

**INSTRUCTIONS FOR INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS**

A. Each interrogatory shall be accorded a separate answer, and each subpart of an interrogatory shall be accorded a separate answer. Interrogatories or subparts thereof should not be combined for the purpose of supplying a common answer. In accordance with 52 Pa. Code § 5.342, your response must be answered fully, in writing, under oath, and signed by the person answering. Please record your answer directly on the space provided under each interrogatory. If necessary, attach additional sheets of information to each interrogatory.

B. In answering these interrogatories, furnish all information, including documentation, that is available to you, including information in the possession of any of your agents, employees, or attorneys or otherwise subject to your custody and control. Under 52 Pa. Code § 5.332, you must supplement your responses to these discovery requests as additional or more accurate information becomes available and must also amend any response when it is discovered to no longer be true.

C. If you know of any document, communication, or information but cannot give the specific information or the full information called for by a particular interrogatory, provide all the information you have on the subject, and identify every person you believe to have the required document, communication or information.

D. No answer is to be left blank. If the answer to an interrogatory or subpart of an interrogatory is "none" or "unknown", such statement shall be written in the answer. If the answer is omitted because of a claim of privilege, the basis of the privilege is to be stated.

E. The conjunctions "and" and "or" shall each be individually interpreted in every instance as meaning "and/or" and shall not be interpreted disjunctively to exclude any information otherwise within the scope of any specification in any interrogatory.

F. The term "including" shall be interpreted to mean "including without limitation".

G. Unless otherwise specified, each answer shall cover the period through the date on which the answers are served.

H. As used herein, whenever an interrogatory calls for information with respect to "each" one of a particular type or class of matters, events, persons, or entities of which there is more than one, separately list, set forth, and identify for each thereof all of the information called for.

I. If, in an answer, reference is made to an oral communication, with respect to each such oral communication:

(1) State by whom and to whom such communication was made;

- (2) State the date and time such communication was made;
- (3) State the manner in which such communication was made (e.g., face-to-face conversation, telephone call);
- (4) State the subject matter and the substance of such communication; and
- (5) Identify all documents memorializing, referring, or relating to such communication.

**INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS**

1. Identify and describe when you first discovered that the underground electric service lines at 1909 N. 11th Avenue, Altoona, Pennsylvania 16601 ("Service Location") were located on property adjoining the Service Location not owned by you ("Adjoining Property), and provide any and all documents related thereto.

2. Identify and describe what actions, if any, you took to remedy the location of the underground electric service lines on the Adjoining Property including, without limitation, the date(s) of such action, and provide any and all documents related thereto.

3. Identify and describe the individual(s) who originally determined the location of the underground electric service lines to provide electric service to the Service Location including, without limitation, the following:

(a) the name, address, and telephone number of the individual(s) originally determining the location;

(b) his/her professional qualifications;

(c) the basis for the original location of the underground electric service lines;

(d) any and all documents in support of subparts (a) through (c) above.

4. Identify and describe when and how you were first advised by the City of Altoona that the exposed underground utility conduit providing service to the Service Location constituted a safety hazard, and provide any and all documents related thereto.

5. Identify and describe what actions, if any, you took in response to any communications/correspondence from the City of Altoona as described in response to Interrogatory No. 4 above including, without limitation, the date(s) of such action, and provide any and all documents related thereto.

6. Please identify and describe any and all issues you intend to raise in the hearing of your Formal Complaint.

7. Please identify and describe all persons, including yourself, other than expert witnesses, that you may or expect to call as a witness at the hearing of your Formal Complaint, including, but not limited to, their name, business address, personal or business affiliation, and the subject matter of their expected testimony.

8. Please identify and describe the name, address, telephone number, employer and job title of each person you expect to call as an expert witness at the hearing of your Formal Complaint.

9. For each expert identified in the preceding interrogatory, please identify, describe and provide the following.

(a) the qualifications of the expert, including, but not limited to, the schools attended, dates of attendance, degrees received, work experience, articles published and areas of expertise;

(b) the substance of the facts and opinions to which the expert is anticipated to testify and the grounds for such opinions;

(c) whether the facts and opinions to which the expert is expected to testify are contained in any written report, memorandum or other document. If so, please identify and describe the present custodian of the report, memorandum or other document; and

(d) if the answer to interrogatory 9(c) is in the affirmative, please provide a copy of the expert's written report, memorandum or other document.

10. Identify and describe all documents or other objects you expect to introduce as exhibits at the hearing of your Formal Complaint. Please provide copies of all identified documents.

Dated: June 13, 2006

Alan Michael Seltzer
Bridgid M. Good
RYAN, RUSSELL, OGDEN & SELTZER LLP
1150 Berkshire Boulevard, Suite 210
Wyomissing, Pennsylvania 19610-1208
(610) 372-4761

Attorneys for
Penelec Electric Company

LAW OFFICES
RYAN, RUSSELL, OGDEN & SELTZER LLP

SUITE 210
1150 BERKSHIRE BOULEVARD
WYOMISSING, PENNSYLVANIA 19610-1208
TELEPHONE: (610) 372-4761
FACSIMILE: (610) 372-4177
WWW.RYANRUSSELL.COM

HARRISBURG OFFICE
SUITE 101
800 NORTH THIRD STREET
HARRISBURG, PENNSYLVANIA
17102-2025
TELEPHONE: (717) 236-7714
FACSIMILE: (717) 236-7816

August 1, 2006

Via UPS Overnight

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

ORIGINAL RECEIVED

AUG 01 2006

PENNSYLVANIA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

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

Dear Secretary McNulty:

Enclosed please find an original and three (3) copies of the Application for Subpoena on behalf of Pennsylvania Electric Company in the above-referenced matter. This document has also been served on the parties of record as shown in the Certificate of Service.

If you have any questions, please contact me.

Very truly yours,

RYAN, RUSSELL, OGDEN & SELTZER LLP

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Bridgid M. Good /fzw
Bridgid M. Good

Enclosures
BGM:flw

c: As per Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOSEPH & LISA DEGENNANO

v.

PENNSYLVANIA ELECTRIC COMPANY:

Docket No. C-20066055

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Application for Subpoena 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:

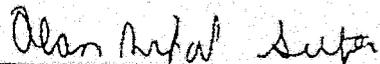
ALJ Kandance F. Melillo
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

John C. Peters, Esquire
1216 Eleventh Avenue
Altoona, PA 16601-3482

Carl Weyandt
City of Altoona
Department of Public Works
1301 12th Street, Suite 300
Altoona, PA 16601

Joseph and Lisa DeGennaro
1909 N. 11th Avenue
Altoona, PA 16601

Dated: August 1, 2006



Alan Michael Seltzer
Jeffrey A. Franklin
Bridgid M. Good
RYAN, RUSSELL, OGDEN & SELTZER LLP
1150 Berkshire Boulevard, Suite 210
Wyomissing, Pennsylvania 19610-1208
(610) 372-4761

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PENNSYLVANIA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

Attorneys for
Pennsylvania Electric Company

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOSEPH & LISA DEGENNARO

v.

PENNSYLVANIA ELECTRIC COMPANY:

Docket No. C-20066055

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Presiding Officer
John J. ...

APPLICATION FOR SUBPOENA

Pennsylvania Electric Company ("Penelec" or the "Company") hereby files the following Application for Subpoena ("Application") in accordance with this Commission's regulations at 52 Pa. Code § 5.421 and in connection therewith represents as follows:

I. INTRODUCTION

1. This Application seeks the issuance by the Presiding Officer of a subpoena to compel the attendance at the hearing of Carl Weyandt, Foreman/Electrical Inspector, for the City of Altoona, Pennsylvania ("Mr. Weyandt").

II. BACKGROUND

3. This case involves claims by the Complainants, Joseph and Lisa DeGennaro, that Penelec has improperly located an electric service pole to provide electric service to the Service Location causing the Complainants' electric service facilities to be located on it's neighbor's property which were subsequently exposed during excavation of the neighbor's property. Furthermore, the Complainants claim that the City of Altoona's Codes and Inspections Department ("City") deemed this condition unsafe requiring the relocation of the electric service facilities. The Complainants

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contend that Penelec should bear all of the costs to have the Complainants' electric service facilities relocated.

4. Pursuant to an Interim Order Setting Resolution Conference dated April 28, 2006, the parties to this proceeding engaged in settlement discussions in hopes of reaching a resolution to the Complaint.

5. When settlement discussions ended, without a resolution, at the beginning of June 2006, Penelec issued Interrogatories and Request for Production of Documents (Set I) and Requests for Admissions (Set I) to the Complainants (collectively "Discovery Requests"). Upon receiving no response from the Complainants within the twenty (20) days allotted by the Pennsylvania Public Utility Commission's ("Commission") rules, Penelec filed a Motion to Compel with the Presiding Officer on July 18, 2006. The Motion to Compel was granted in part and denied in part on July 27, 2006 ordering the Complainants to respond to the Discovery Requests by August 11, 2006.

6. Penelec anticipated reviewing the Complainants' responses to the Discovery Requests before deciding on its final list of witnesses including Mr. Weyandt so as not to unnecessarily burden the hearing process. However, since the Complainants' responses to the Discovery Requests are not due until August 11, 2006, Penelec, in order to meet the time constraints of issuance of a subpoena contained in the Commission's regulation's at 52 Pa. Code § 5.421, is filing this Application before receiving those responses.

7. A hearing is scheduled in this matter for August 30, 2006.

III. NATURE OF REQUEST

8. Penelec believes Mr. Weyandt is the City representative who first identified the Complainants' electric service facilities as being unsafe, notified the Complainants and Penelec of the unsafe condition, and had several discussions with the Complainants and Penelec regarding the unsafe condition and the possible remedies for the unsafe condition. Penelec desires to question Mr. Weyandt on all of these issues at the hearing as it deems appropriate.

9. At the hearing, the Company intends to inquire into, among other things, the following matters:

- The nature and basis for Mr. Weyandt's finding that the Complainants' electric service facilities were in an unsafe condition ;
- Mr. Weyandt's and/or the City's notification of both the Complainants and Penelec of this unsafe condition;
- The various meetings and conversations Mr. Weyandt had with the Complainants and Penelec; and
- Mr. Weyandt's opinion whether the location of Penelec's electric service pole contributed to the unsafe condition of the Complainants' electric service facilities.

10. All of the testimony and information sought by and from Mr. Weyandt are relevant and material to the Penelec's rebuttal to the Complainants' evidence.

11. Failure to grant this Application will severely prejudice Penelec's ability to present its case at the hearing and defend itself against the Complainants' allegations.

12. For the reasons specified in this Application, Penelec has demonstrated and shown good cause to support its request for the Presiding Officer's issuance of a subpoena for Carl Weyandt.

III. SERVICE UPON AND NOTICE ABOUT RESPONSE

13. In accordance with this Commission's regulations at 52 Pa. Code § 5.421(c), this Application will be served upon the Complainants, the Presiding Officer and Mr. Weyandt at the following address:

City of Altoona
Department of Public Works
1301-12th Street, Suite 300
Altoona, Pennsylvania 16601-3491

14. THE COMPLAINANTS AND MR. WEYANDT ARE HEREBY NOTIFIED, PURSUANT TO 52 PA. CODE § 5.421(b), THAT THEY MUST FILE WITH THE COMMISSION AND THE PRESIDING OFFICER (AND THE COMPANY) AN ANSWER OR OBJECTION TO THIS APPLICATION WITHIN TEN (10) OF SERVICE UPON THEM OF THIS APPLICATION. The Commission's address and address of the Presiding Officer are as follows:

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

AJL Kandace F. Melillo
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor L-M West
Harrisburg, Pennsylvania 17120

IV. REQUESTED RELIEF

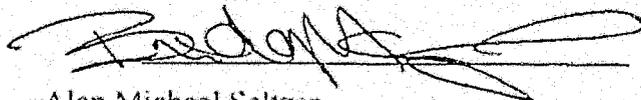
15. This Commission's regulations at 52 Pa. Code § 5.421 permit the Presiding Officer, upon application, to direct the issuance of subpoenas to compel testimony at a hearing.

16. For the reasons specified in this Application, Penelec requests that the Presiding Officer immediately issue a Commission subpoena to compel the attendance at hearing of Carl Weyandt.

WHEREFORE, Pennsylvania Electric Company requests that the Presiding Officer grant this Application for Subpoena and such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

Dated: August 1, 2006



Alan Michael Seltzer
Jeffrey A. Franklin
Bridgid M. Good
RYAN, RUSSELL, OGDEN & SELTZER LLP
1150 Berkshire Boulevard, Suite 210
Wyomissing, Pennsylvania 19610-1208
(610) 372-4761
Fax No.: (610)372-4177
BGood@RyanRussell.com

Attorneys for
Pennsylvania Electric Company

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AUG 3 2006

PENNSYLVANIA PUBLIC UTILITIES COMMISSION
HARRISBURG, PA

COMMONWEALTH OF PENNSYLVANIA

DATE: August 3, 2006

SUBJECT: C-20066055

TO: Office of Administrative Law Judge

FROM: James J. McNulty, Secretary *RB*

Joseph and Lisa DeGenarro
v.
Pennsylvania Electric Company

Attached is a copy of Pennsylvania Electric Company's Application for Issuance of Subpoena filed in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: OTS

ksb

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FOLDER

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