



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

ISSUED: September 16, 2005

C-20043921  
C-20043923  
C-20043925 ✓

DAVID J SAMICK  
PO BOX 3  
43 JULIA DRIVE  
LAKE CITY PA 16423

David J. Samick, Roger Van-Tassell, and Edward and Dolores Carr Sr.

v.  
Pennsylvania Electric Company

**DOCUMENT  
FOLDER**

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Robert P. Meehan. This decision is being issued and mailed to all parties on the above specified date.

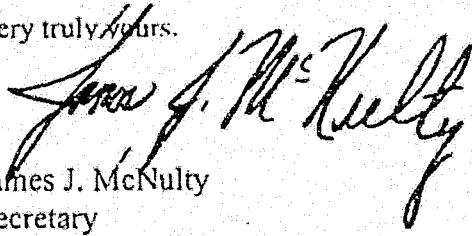
If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2<sup>ND</sup> FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days** of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within twenty (20) days, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours.

  
James J. McNulty  
Secretary

Encls.  
Certified Mail  
Receipt Requested  
MB  
See Attached List for Additional Parties

C-20043921, C-20043923, and C-20043925; David J. Samick, Roger Van Tassell, and Edward  
& Dolores Carr, Sr., v. Pennsylvania Electric Company  
SERVICE LIST

SERVICE LIST

David J. Samick  
P.O. Box 3  
43 Julia Drive  
Lake City, PA 16423

Roger Van Tassell  
26 Julia Drive  
Lake City, PA 16423

Edward and Dolores Carr, Sr.  
42 Julia Drive  
Lake City, PA 16423

Matthew A. Totino, Esq.  
Ryan, Russell, Ogden & Seltzer, LLP  
800 North Third Street, Suite 101  
Harrisburg, PA 17102-2025

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

David J. Samick;  
Roger Van Tassell; and  
Edward and Dolores Carr, Sr.

C-20043921  
C-20043923  
C-20043925

v.

Pennsylvania Electric Company

DOCUMENT  
FOLDER

INITIAL DECISION

**DOCKETED**  
SEP 16 2005

Before  
Robert P. Meehan  
Administrative Law Judge

This Initial Decision dismisses the complaints filed by David J. Samick, Roger Van Tassell, and Edward & Dolores Carr, Sr. (the Complainants) against the Pennsylvania Electric Company (Penelec), for the failure to comply with the Commission's discovery regulations and Interim Order #2, issued July 26, 2005.

HISTORY OF THE PROCEEDINGS

The complaints of David J. Samick, at Docket No. C-20043921, Roger Van Tassell, at Docket No. C-20043923 and Edward & Dolores Carr, Sr., at Docket No. C-20043925, were filed on November 3, 2004. The individual complainants each request an award of damages for food allegedly lost as the result of a power outage. Penelec filed answers and motions to dismiss each of these complaints. In each of these cases, the Chief Administrative Law Judge issued an Interim Order Setting Resolution Conference, pursuant to which reports were submitted to the Mediation Unit.

The cases were initially scheduled to be heard jointly in a hearing by telephone on June 23, 2005. However, on June 6, 2005, Penelec submitted a request for a continuance and for an in-person hearing in these cases. The continuance was requested to permit it to obtain and review the Complainant's answers to interrogatories Penelec had sent to them on May 27, 2005. By Interim Order issued June 20, 2005, Penelec's request for a continuance and an in-person hearing was granted. The hearing was then scheduled to be held on August 4, 2005, in Pittsburgh, PA.

On June 28, 2005, Penelec filed a motion to compel the Complainants to respond to the interrogatories that had been served upon each of them on May 27, 2005, and for a continuance of the scheduled August 4, 2005 hearing. No response or objection to that motion was received from any of the Complainants. Interim Order #2, issued July 26, 2005, granted the motion for a continuance of the scheduled hearing.

That Order also granted the motion to compel. Each of the Complainants was ordered to provide their answers to the outstanding interrogatories within 10 days of the date of that Order. At the same time, the Complainants were directed to file with the Secretary of the Commission a certificate that they served their respective answers to the interrogatories, and to provide a copy of that certificate to me. Finally, that Order also informed each of the Complainants that, if they failed to provide their responses to the interrogatories in accordance with that Order, their respective complaints would be dismissed without further proceeding.

The Complainants have not filed a certificate of service with the Secretary of the Commission, stating that they served their answers to the interrogatories on counsel for Penelec. Additionally, the Complainants have not submitted such a certificate, either the original or a copy, to me. Thus, as provided by Interim Order #2, these complaints should now be dismissed.

The Commission's regulations pertaining to discovery and sanctions, permit the dismissal of complaints, etc., when the complainant fails to answer discovery requests, such as interrogatories. 52. Pa. Code §§5.371 and 5.372. Dismissing complaints for the failure to respond to discovery, rather than prohibiting the introduction of evidence at a hearing is the


appropriate sanction to be imposed. *Thomas E. Merchant v. The Bell Telephone Company of Pennsylvania*, Docket No. C-00935253, entered June 20, 1994. *Cf., Application of Majesty Company, Inc.*, Docket No. A-00115254F0001Am-B, entered March 11, 2004; and *Application of Choice Cab Company*, Docket No. A-00120055, entered July 27, 2004.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of David J. Samick against the Pennsylvania Electric Company, at Docket No. C-20043921, is dismissed for the failure to answer the Respondent's interrogatories as required by the Commission's regulations, and as directed by Interim Order #2 of July 26, 2005.
2. That the complaint of Roger Van Tassell against the Pennsylvania Electric Company, at Docket No. C-20043923, is dismissed for the failure to answer the Respondent's interrogatories as required by the Commission's regulations, and as directed by Interim Order #2 of July 26, 2005.
3. That the complaint of Edward and Dolores Carr, Sr., against the Pennsylvania Electric Company, at Docket No. C-20043925, is dismissed for the failure to answer the Respondent's interrogatories as required by the Commission's regulations, and as directed by Interim Order #2 of July 26, 2005.

  
Robert P. Meehan  
Administrative Law Judge

Date: August 29, 2005

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

David J. Samick,	:	C-20043921
Roger Van Tassell, and	:	C-20043923
Edward and Dolores Carr, Sr.	:	C-20043925

v.

Pennsylvania Electric Company

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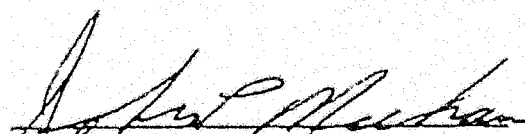
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3. That the complaint of Edward and Dolores Carr, Sr., against the Pennsylvania Electric Company, at Docket No. C-20043925, is dismissed for the failure to answer the Respondent's interrogatories as required by the Commission's regulations, and as directed by Interim Order #2 of July 26, 2005.

  
Robert P. Meehan  
Administrative Law Judge

Date: August 29, 2005

DOCUMENT  
FOLDER

DATE: October 13, 2005

SUBJECT: C-20043921  
C-20043923  
C-20043925

TO: Office of Administrative Law Judge  
Susan Hoffner

FROM: James J. McNulty  
Secretary  
nvl

**DOCKETED**  
OCT 18 2005

DAVID J. SAMICK, ROGER VAN TASSELL, AND EDWARD AND DOLORES CARR SR.

VS

PENNSYLVANIA ELECTRIC COMPANY

The Initial Decision has been served upon all parties of interest.

Neither exceptions nor requests for review from the Commissioners have been received by the Commission. This matter is referred to your office for whatever action you deem necessary.

cc: Office of Special Assistants

P.S. Please note that exceptions or reply exceptions may come in timely with certificates of mailings. A second memo will not be released for these exceptions.