

December 17, 2019

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Docket No. C-2018-3005331
Kenneth James Arthurs v. Pennsylvania Electric Company
Reply Brief of Pennsylvania Electric Company**

Dear Secretary Chiavetta:

Attached for filing is the Reply Brief of Respondent, Pennsylvania Electric Company (Penelec), in the above referenced proceeding.

A copy of the Reply Brief has been forwarded to Complainant's Counsel in the manner indicated on the attached Certificate of Service.

If there are any questions, please contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/lam
Enclosure

cc: The Hon. Elizabeth Barnes, Pennsylvania Public Utility Commission [w/encl.]
John L. Munsch, Esquire, FirstEnergy Service Company [w/encl.]
David C. Serene, Esquire, The Serene Law Firm PLLC [w/encl.]

**Re: Docket No. C-2018-3005331
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CERTIFICATE OF SERVICE

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

Via Electronic and First Class Mail

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Dated: December 17, 2019



Margaret A. Morris, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kenneth James Arthurs

v.

Pennsylvania Electric Company

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Docket No. C-2018-3005331

**REPLY BRIEF OF
PENNSYLVANIA ELECTRIC COMPANY**

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Date: December 17, 2019

Counsel for Pennsylvania Electric Company

I. INTRODUCTION

On November 27, 2019, pursuant to the schedule established by the Honorable Elizabeth H. Barnes (Judge Barnes), Pennsylvania Electric Company (Penelec or Company) and Kenneth James Arthurs (Complainant) filed their respective Briefs in the above-referenced complaint proceeding. The customer of record is Wolfendales which takes non-residential service under Rate Schedule GS (Customer). Penelec, in its Brief, explained its positions on the issues pending before Judge Barnes. In doing so, Penelec anticipated, and as a practical matter responded to, many of the arguments raised by the Complainant in his Brief. In responding to the Complainant, Penelec will minimize repetition of argument provided in its Brief.

Penelec notes, despite being advised of the requirements for a brief, Tr. 86-87, the Complainant's Brief does not conform to the requirement of 52 Pa. Code § 5.501(a). Rather than setting forth a concise statement of the case with reference to the transcript and admitted exhibits, the Complainant simply restates pleadings as "evidence." There is no summary, let alone argument, set forth in the Complainant's Brief.

II. SUMMARY OF ARGUMENT

The dispositive issue raised in the Complainant's Brief is whether the Commission has the authority to direct Penelec to enter into a PAR with the Complainant on the Customer's delinquent balance that exceeds \$49,000. The Complainant argues that he satisfies the definition of "customer" set forth in Section 1403 of the Code¹ which makes him eligible for a Commission directed PAR.

¹ 66 Pa.C.S. § 1403.

The Complainant's argument is without merit. The Code defines a "customer" as a natural person in whose name a residential service account is listed. Penelec provides non-residential service in the Customer's name, not the Complainant's name. Clearly, Chapter 14 of the Code does not apply to the Customer, who receives non-residential service. The record evidence supports a finding that the Complainant is not entitled to a Commission PAR for the Customer's delinquent balance.

The record evidence supports a finding that, at all times, Penelec's actions were reasonable and performed in accordance with all applicable laws, as well as the Company's Commission-approved tariff, Code and/or any regulation or order that the Commission has the authority to administer. The Complainant's Brief is nothing more than a summary of the pleadings and distortions of the record evidence. As more fully discussed below, the Complainant's position is not supported by the record evidence and draws unreasonable inferences that have no basis in fact or law.

In sharp contrast to Complainant's unsubstantiated, opinion testimony, Penelec's position is based on credible, admissible testimony and admitted exhibits. The record evidence clearly supports a finding that Chapter 14 does not apply to the Customer and that Penelec's termination process was reasonable and not in violation of the Code, Commission regulations or orders of Penelec's Commission-approved tariff. Mr. Arthurs's Complaint should be dismissed in its entirety.

III. ARGUMENT

In his 3-page Brief, the Complainant simply concludes that he is eligible for a PAR arguing that the Complainant “authenticated” the residential leases for the Service Location. The record evidence reflects that the Complainant offered conflicting testimony regarding the unsigned leases. Specifically the Complainant testified that the “signed leases obviously have the correct name in it,” yet he failed to produce the signed leases at the hearing. Tr. 33-38.

As set forth in Penelec’s Brief at pages 2-4, the Complainant must establish by a preponderance of the evidence that the Customer is entitled to the relief requested. The Complainant’s entire case is dependent on his opinion testimony. The Complainant presented no “evidence.” Assertions, personal opinions or perceptions do not constitute evidence. Penelec’s witness credibly explained why the Customer’s service, under the Code and Penelec’s Tariff, is non-residential service and therefore not eligible for a Commission directed PAR under the Code.

Contrary to the Complainant’s assertion, Judge Barnes admitted Complainant Exhibit 4 noting she would decide, what weight, if any, to give to the unsigned leases. Tr. 55. The Complainant’s assertions, personal opinions or perceptions, no matter how strongly held, do not constitute record evidence and cannot support a finding of fact that Penelec violated the Code. Pennsylvania Bureau of Corrections v. City of Pittsburgh, 532 A.2d 12 (Pa. 1987).

IV. CONCLUSION

The Complainant's position is based on irrelevant argument, unreasonable inferences, and self-serving opinion testimony. Penelec offered thorough, credible and reliable testimony and admitted exhibits that Chapter 14 does not apply to non-residential service and Section 1529.1 does not apply to a hotel situation. The Complainant has failed to carry his burden of proof and his Complaint should be denied in its entirety.

WHEREFORE, for the foregoing reasons, Pennsylvania Electric Company respectfully requests that this Honorable Court dismiss with prejudice the Formal Complaint of Kenneth James Arthurs, filed on behalf of Wolfendales, at Docket No. C-2018-3005331 in its entirety, for the reasons set forth in its Brief and Reply Brief in this proceeding.

Respectfully submitted,



Date: December 17, 2019

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