

January 6, 2020

**Via Electronic Filing**

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

**Re: Docket No. C-2019-3013582  
Deborah A. Redman v. Pennsylvania Electric Company  
Penelec's Answer to Motion for Summary Judgment**

Dear Secretary Chiavetta:

Attached for filing is the Answer of Pennsylvania Electric Company (Penelec) to the Motion for Summary Judgment filed by Deborah A. Redman (Complainant) in the above captioned proceeding.

A copy of the Answer has been provided to the Complainant in the manner indicated on the attached Certificate of Service.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP

  
Margaret A. Morris

MAM/lam  
Enclosure

cc: Mediator Matthew Homsher, PA Public Utility Commission [w/encl.]  
John L. Munsch, Esquire, FirstEnergy Service Company [w/encl.]  
Deborah A. Redman [w/encl.]

**Re: Docket No. C-2019-3013582  
Deborah A. Redman v. Pennsylvania Electric Company  
Penelec's Answer to Motion for Summary Judgment**

**CERTIFICATE OF SERVICE**

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

**Via Electronic and First Class Mail**

Deborah A. Redman  
414 Park Ave.  
Meadville, PA 16335  
daredman@verizon.net

Dated: January 6, 2020



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Margaret A. Morris, Esquire

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DEBORAH A. REDMAN :  
 :  
 v. : Docket No. C-2019-3013582  
 :  
 PENNSYLVANIA ELECTRIC COMPANY :

**ANSWER OF PENNSYLVANIA ELECTRIC COMPANY  
TO MOTION FOR SUMMARY JUDGMENT OF DEBORAH A. REDMAN**

Pennsylvania Electric Company (Respondent or Penelec), by and through its attorneys, Reger Rizzo & Darnall LLP, pursuant to 52 Pa. Code § 5.102(b), hereby submits its Answer to the pleading captioned “Complainant’s Opposition to Respondent’s Request for Mediation and Motion for Summary Judgment” filed by Deborah A. Redman (Complainant or Ms. Redman) on December 16, 2019, with the Pennsylvania Public Utility Commission (Commission). The pleading contains four numbered paragraphs in support of the Complainant’s position that mediation will not save time and “FirstEnergy did not appear, signaling that it concurs with the Complainant’s position.” The pleading does not conform to the Commission regulations, 52 Pa. Code § 5.102(a), since it lacks the requisite notice to plead. In the interest of administrative efficiency, Penelec is responding to the pleading within twenty days consistent with 52 Pa. Code § 5.102(b).

The pleading seeks, without an evidentiary hearing, a summary determination that “the law requires that the power companies, FirstEnergy and Penelec, must destroy wisteria because the state of Pennsylvania has designated wisteria as an invasive species that poses an ‘ecological threat’ and must be controlled, i.e., killed and removed.” Pleading at ¶ 2. As relief, the Complainant requests that “the Complaint be transferred to an impartial lay body” of “Meadville/Eire residents willing to hear it.” Pleading at ¶ 4.

Legal Standard

As most recently stated by the Commission in *Zack v. Service Electric Telephone LLC*, Docket No. C-2013-2388009, (Opinion and Order entered December 18, 2014), the Commission's Rules of Administrative Practice and Procedure permit parties to file preliminary motions. 52 Pa. Code §§ 5.101- 5.103. The Commission's Regulation, at 52 Pa. Code § 5.102(a), permits any party to move for summary judgment after the pleadings are closed, but within such time as not to delay a hearing. A motion for summary judgment must be based on the pleadings, depositions, answers to interrogatories, admissions and supporting affidavits. 52 Pa. Code § 5.102(c). The presiding officer will grant a motion for summary judgment if the pleadings, depositions, answers to interrogatories, admissions and supporting affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. *First Mortgage Co. of Pa., v. McCall*, 459 A.2d 406 (Pa. Super. 1983); *Mertz v. Lakatos*, 381 A.2d 497 (Pa. Cmwlth. 1976). All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Thomson Coal Co. v. Pike Coal Co.*, 412 A.2d 466 (Pa. 1979). Summary judgment will be granted only where the right is clear and free from doubt.

The Commission has interpreted 52 Pa. Code § 5.102(c) in conformity with Rule 1035 (now Rule 1035.1) of the Pennsylvania Rules of Civil Procedure. *South River Power Partners, L.P. v. West Penn Power Co.*, Docket No. C-00935287 (Opinion and Order entered November 6, 1996). Accordingly, a non-moving party may not rely solely upon denials in its pleadings, but must submit some materials to establish that a genuine issue of material fact exists. *Nicastro v. Cuyler*, 467 A.2d 1218 (Pa. Cmwlth. 1983); *Pennsylvania Gas & Water Co. v. Nenna & Frain, Inc.*, 467 A.2d 330 (Pa. Super. 1983); *Geriot v. Council of Borough of Darby*, 457 A.2d 202 (Pa. Cmwlth. 1983).

The provision at 52 Pa. Code § 5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa. C.S. § 703(a); *Lehigh Valley Power Comm. v. Pennsylvania Pub. Util. Comm'n.*, 563 A.2d 557 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. 54. Pennsylvania Pub. Util. Comm'n.*, A.2d 1006 (Pa. Cmwlth. 1988).

The Complainant's "Motion for Summary Judgment" does not meet the legal standards for summary relief and therefore should be denied. The Motion merely restates the Complainant's version of the facts regarding the removed vegetation. Penelec properly denied the material allegations in its responsive pleadings based on the information contained in its business records. The instant Motion should be denied because in her Formal Complaint, Ms. Redman alleges that Penelec has not removed the wisteria from its distribution lines. Penelec's Answer clearly raised a dispute as to material facts (i.e. did Penelec remove the wisteria from its lines?) that must be determined at a hearing. The Complainant cites to her pleading, "Complainant's Response to Respondent's Answer." Penelec notes that the Commission regulations do not permit such a pleading and therefore should not be relied in the disposition of the request for summary judgment.

As set forth in the Attachment 1, Affidavit of James Stetler and the recent photos taken, the Respondent disputes the facts alleged by the Complainant in her pleading. An evidentiary hearing is required to: (1) establish the underlying facts of the Complaint; (2) determine if Penelec violated the Pennsylvania Public Utility Code (Code), Commission regulations or orders; and (3) determine whether a civil penalty is warranted (and the amount of any such penalty) if the Commission determines that a violation occurred. Due process mandates that the Respondent be permitted, at a hearing, to present its defense to the Complainant's claims and to address the factors used by the Commission in assessing civil penalties pursuant to the Code, 66 Pa.C.S. § 3301.

The request for summary judgment does not meet the above legal standards and therefore must be denied. Based on the authorized pleadings, the attached Affidavit and recent photos, there are genuine material issues of fact in controversy and the Complainant is not entitled to judgment as a matter of law. As the right to relief is not clear and free from doubt, summary judgment cannot be granted. In addition, the Respondent has a due process right to a hearing to respond to the allegations.

In response to the specific numbered paragraphs in the pleading, Respondent avers and represents as follows:

1. Admitted. Penelec's Answer and New Matter requesting mediation speaks for itself. The Commission issued an Interim Order, dated December 6, 2019, directing the parties to speak. By email, dated January 6, 2020, counsel for Penelec advised Mediator Matthew Homsher, that the matter could not be resolved and an evidentiary hearing should be scheduled. A copy of the email is provided as Attachment 2.

2. Denied. The Complainant states the "parties involved in this matter are obliged to adhere to the law." However, she never identifies or explains what law she relies upon for her conclusion that her Motion for Summary Judgment is based on the "obvious and indisputable." Although footnote 1 states that a copy of the Commonwealth's Department of Conservation and National Resources was annexed as Attachment 1, nothing was attached to the copy sent to the undersigned counsel.

3. The Complainant states that "[t]his case is also over because First Energy [sic] did not appear, signaling that it concurs with Complainant's position. See Complainant's Response to Respondents' Answer, section II." This paragraph and allegation makes no sense. Penelec avers that the Commission has jurisdiction under the Code over Penelec, an electric distribution company, providing electric service in the Commonwealth. The Commission does not have jurisdiction over its parent, FirstEnergy, who is not a party to this matter. Furthermore, there has been no hearing or any in person

meeting that FirstEnergy was required to be present and failed to appear. The Respondent avers to the extent that the Complainant is referring to the underlying Informal Complaint, pursuant to 52 Pa. Code § 56.173(a), review of a BCS decision is *de novo*, meaning that the review is based on the evidentiary record created at the hearing. *Laurel Campbell v NFG*, Docket No. C-2016-2578371, (Final Order entered August 11, 2017).

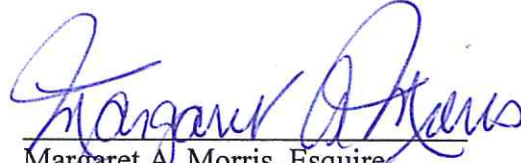
4. The Complainant merely restates her request that the Complaint be transferred to a “lay body of Meadville/Erie residents willing to hear it.” Penelec incorporates its response as set forth in Paragraph 5 of its Answer and New Matter that the Commission has exclusive jurisdiction to entertain the Formal Complaint.

The Complainant states a transfer is proper since Ricky Wijaya, identified in footnote 3 as a “power companies’ representative,” was “flagrantly biased.” By way of further answer, Penelec avers that Mr. Wijaya is the Commission employee who rendered the Decision of the Complainant’s Informal Complaint, a copy of which was provided as Attachment 1 to Penelec’s Answer.

In conclusion, the Affidavit and photos attached to this Answer make clear that this case contains genuine issues of contested material facts and the Complainant is not entitled to judgment as a matter of law. Contested material issues of fact may not to be summarily dismissed based on pleadings but rather must be developed on the record. Penelec has a due process right to a hearing at which the Complainant must sustain her burden of proof regarding the contested material facts. For these reasons, the Complainant’s right to summary judgment is not clear and free from doubt and the request to grant summary judgment must be denied.

**WHEREFORE**, for the foregoing reasons, Pennsylvania Electric Company, respectfully requests that the Motion for Summary Judgment filed by Deborah A. Redman be denied and an evidentiary hearing before an administrative law judge be scheduled.

Respectfully submitted,



Margaret A. Morris, Esquire  
Attorney I.D. # 75048  
Cira Centre, 13<sup>th</sup> Floor  
2929 Arch Street  
Philadelphia, PA 19104  
(215) 495-6524 (voice)  
(215) 495-6600 (fax)  
[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

Dated: January 6, 2020

*Counsel for Pennsylvania Electric Company*

Docket No. C-2019-3013582  
Deborah A. Redman v. Pennsylvania Electric Company

## Attachment 1

Affidavit of James Stetler

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DEBORAH A. REDMAN :  
 :  
 v. : Docket No. C-2019-3013582  
 :  
 PENNSYLVANIA ELECTRIC COMPANY :

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**AFFIDAVIT OF JAMES STELTER  
IN SUPPORT OF  
PENNSYLVANIA ELECTRIC COMPANY'S ANSWER TO  
MOTION FOR SUMMARY JUDGMENT**

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James Stelter, being duly sworn according to law, deposes and says the following:

1. My name is James Stetler and my business address is 1600 West First Street, Oil City, PA 16301.
  
2. I am employed by Pennsylvania Electric Company (Penelec) as a Manager for Penelec's Forestry Service Department.
  
3. As a Manager in the Forest Service Department, I am responsible for the Company's Vegetation Policy for Distribution Lines.
  
4. As part of my job responsibilities, I am familiar with Penelec's Vegetation Policy as well as the documents maintained by Penelec in connection with the Forestry Service Department.
  
5. Deborah A. Redman (Complainant) is the customer of record in Penelec's business records for Account No. 100126515640 for residential electric service to 414 Park Avenue, Meadville, Pennsylvania (Service Location).

6. On December 12, 2019, I visited the Service Location and confirmed there is no wisteria on Penelec's power lines interfering with the delivery of safe and reliable service to the Service Location. The attached photos, taken December 19, 2019 by Chuck Evanoff, a Penelec employee, accurately reflect my findings on December 12, 2019.

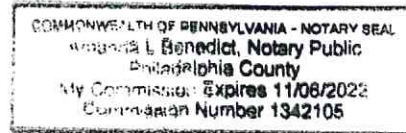
7. I am authorized to submit this affidavit for and on behalf of Penelec and represent that the facts set forth herein are true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsifications to authorities.

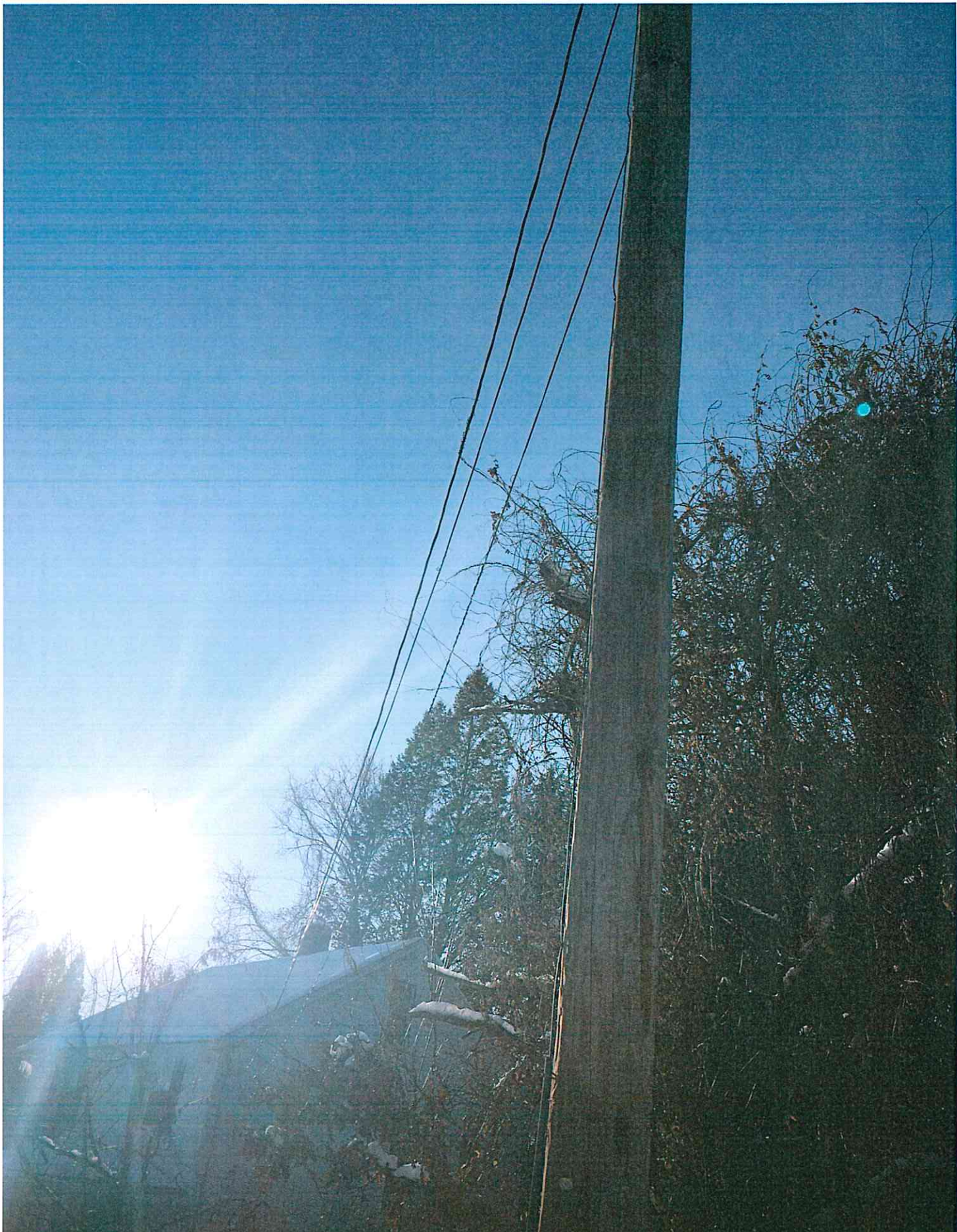


James Stelter

Sworn and subscribed before me this 4  
day of January, 2020.

Amade L. Benedict  
Notary Public  
My commission expires on: 11/06/2022





3:11 PM • DECEMBER 19, 2019

A photograph of a winter landscape. The scene is dominated by a clear, bright blue sky. In the foreground and middle ground, there are several trees and bushes covered in a layer of snow. Some trees are evergreen, while others are bare, showing their intricate branch structures. A tall, white utility pole stands prominently in the center, with several power lines stretching across the sky. The ground is also covered in snow, and the overall atmosphere is cold and clear.

3:13 PM • DECEMBER 19, 2019



3:12 PM • DECEMBER 19, 2019

Docket No. C-2019-3013582  
Deborah A. Redman v. Pennsylvania Electric Company

Attachment 2

Email to Mediator Homsher  
Dated: January 6, 2020

## Margaret A. Morris, Esquire

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**From:** Margaret A. Morris, Esquire  
**Sent:** Monday, January 06, 2020 8:18 AM  
**To:** 'matthew homsher (mahomsher@pa.gov)'  
**Cc:** daredman@verizon.net  
**Subject:** C-2019-3013582; Redman v Penelec; Resolution Report  
**Attachments:** RedmanOppositionToMediation.pdf

**Importance:** High

Dear Mediator Homsher:

I contacted the Complainant per the IO to schedule a call. In response, she filed the attached pleading wherein she emphatically states, *inter alia*, she is opposed to mediation.

Penelec is filing an Answer to her request for summary judgment this afternoon, Monday, 1/6/20. In its Answer, Penelec requests the matter be scheduled for hearing.

This matter cannot be resolved. The Complainant is copied on this email.

*Margie Morris*

<b>REGER   RIZZO   DARNALL LLP</b> Attorneys at Law	Cira Centre, 13th Floor 2929 Arch Street Philadelphia, Pa 19104 Phone: 215.495.6500 Fax: 215.495.6600 Web: <a href="http://www.regerlaw.com">www.regerlaw.com</a>	Margaret A. Morris, Esquire <a href="mailto:mmorris@regerlaw.com">mmorris@regerlaw.com</a> Direct: 215.495.6524 Cell: 215.870.5785
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**Margaret A. Morris, Esquire**

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**From:** Microsoft Outlook  
**To:** daredman@verizon.net  
**Sent:** Monday, January 06, 2020 8:19 AM  
**Subject:** Relayed: C-2019-3013582; Redman v Penelec; Resolution Report

**Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:**

daredman@verizon.net (daredman@verizon.net)

Subject: C-2019-3013582; Redman v Penelec; Resolution Report