

12 Wellesley Road  
Swarthmore, PA 19081

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street—Filing Room  
2<sup>nd</sup> Floor North  
Harrisburg, PA 17105

Sent by UPS

February 21, 2023

RE: Deppen v. PECO Energy Co  
Docket No. C-2023- 3037622

Dear Ms. Chiavetta:

Please find enclosed the original and one copy of the *Reply to New Matter* in the above-referenced case. I would greatly appreciate your filing the original, timestamping the copy and returning the copy to me in the envelope enclosed.

Thank you for your assistance!

Kind regards,



Mary Deppen

cc: Christopher A. Lewis, Esquire  
Frank L. Tamulonis, Esquire  
Stephen C. Zumbrun, Esquire.

Enclosures

DATE OF DEPOSIT

FEB 21 2023

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MARY DEPPEN,

Complainant

v.

PECO ENERGY COMPANY,

Respondent

Docket No. C- 2023-3037622

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**REPLY TO NEW MATTER**

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Pursuant to Pa. Code §5.63, Complainant, Mary Deppen, hereby replies to the *New Matter* of Respondent, PECO Energy Company, as follows:

11. Denied. Complainant lacks the knowledge or information sufficient to form a belief as to whether the proposed trimming and removal of trees in Swarthmore are related to “PECO’s Reliability & Resiliency Plan.” Complainant additionally lacks the knowledge or information sufficient to form a belief as to whether “PECO’s Reliability & Resiliency Plan” will produce the benefits listed. Strict proof thereof is demanded at time of trial.

12. Denied. Complainant lacks the knowledge or information sufficient to form a belief as to: (a) whether PECO will be retiring the Morton Substation; (b) the accuracy of the alleged reasons for retiring the Substation; and (c) whether the retirement of the Substation is contingent

upon upgrading the distribution system downstream. Strict proof thereof is demanded at time of trial.

13. Denied. Complainant lacks the knowledge or information sufficient to form a belief as to: (a) whether the Project “requires upgrading and installing new equipment;” (b) the accuracy of the allegations related to the taller poles; and (c) the accuracy of the allegations concerning the National Electric Safety Code. Strict proof thereof is demanded at time of trial.

14. Denied. The allegations of Paragraph 14 contain conclusions of law to which no reply is required. To the extent a response is required, Complainant denies all material allegations of fact.

15. Denied. The allegations of Paragraph 15 contain conclusions of law to which no reply is required. To the extent a response is required, Complainant denies all material allegations of fact. Complainant also lacks the knowledge or information sufficient to form a belief as to whether it is necessary to trim or remove certain trees and the alleged consequences of failing to do so. Strict proof thereof is demanded at time of trial.

16. Denied. Complainant lacks the knowledge or information sufficient to form a belief as to the manner in which PECO evaluates if a tree needs to be trimmed or removed, the bases for its evaluation, the manner in which its trimming or removals are performed, and PECO’s general practices. Strict proof thereof is demanded at time of trial.

By way of further answer, Complainant alleges that PECO refuses to identify which trees in the Borough of Swarthmore will be removed and which ones will be trimmed. As a result,

Complainant and other residents will not know the true impact of the Project until it is too late and the trees have been cut down.

17. Admitted in part and denied in part. It is admitted that Complainant is requesting that PECO “adjust the Project to minimize the effects on the tree canopy. It is also admitted that in some areas, PECO has stated that it will use a “spacer cable system” in order to reduce “the impact to trees.” The remaining allegations are denied. Complainant lacks the knowledge or information sufficient to form a belief as to whether PECO has designed a “route with consideration for the number of trees being removed.” Despite multiple requests by residents, PECO refuses to identify which trees will be removed. Strict proof thereof is demanded at time of trial.

18. Denied. Complainant lacks the knowledge or information sufficient to form a belief as to whether PECO “has continued to investigate within its vegetation and engineering departments;” or has “reviewed and considered the community feedback.” Strict proof thereof is demanded at time of trial.

It is further denied that PECO “advised the community that it would be notified prior to the commencement of the tree removals.” Exhibit 2 is addressed to an individual community member. PECO has consistently insisted that it will not reveal to the “community” the identities of all of the trees that will be removed. It has insisted that it will only tell the individual homeowner on whose property the tree is located. Because of this approach, the community will NOT be notified “prior to the commencement of the tree removals.”

It is further denied that PECO will be minimizing the community impact by working with “PHS, a local nonprofit, to provide one tree for every tree removed during this Project.” The replacement trees that PHS will allegedly provide are saplings. A sapling offers almost none of the health, environmental and aesthetic benefits that a mature tree provides. Moreover, PECO will simply provide the sapling. It will not assume responsibility for planting, nourishing and watering the new tree.

19. Admitted in part and denied in part. It is admitted that PECO has “determined that certain trees must be trimmed or removed in order to complete the electric infrastructure upgrade enhancement.” The remaining allegations are denied. Complainant lacks the knowledge or information sufficient to form a belief as to whether the infrastructure upgrade enhancement “will improve overall customer reliability.” Complainant also lacks the knowledge or information sufficient to form a belief as to whether PECO is sensitive to the concerns of individual property owners or the Swarthmore community or whether PECO “remains engaged in discussions.” Strict proof thereof is demanded at time of trial.

20. Admitted.

21. Denied. It is denied that installing new lines underground would “not necessarily mitigate the effects on trees within the community.” It is certain that if you cut a tree down, it is gone. If you risk damaging the root systems of a tree, that is a risk that you might lose the tree, but not a certainty.

It is denied that Complainant has suggested installing all new lines underground. To the contrary, Complainant suggested that the lines only be underground or on the other side of a street in order to avoid removing trees. Complainant also lacks the knowledge or information sufficient to form a belief as to the cost of installing, maintaining, and repairing the new lines underground over the long-term, the cost burden to consumers of losing trees and tree canopy, including but not limited to increased energy costs, landscaping costs, flooding remediation, paving repairs, home value depreciation, negative health effects, and adverse environmental-impact costs. Strict proof thereof is demanded at time of trial.

## **REPLY TO AFFIRMATIVE DEFENSES**

### **FIRST AFFIRMATIVE DEFENSE**

22. All allegations in the preceding paragraphs of the *Reply to New Matter* and the *Complaint* are incorporated as if fully set forth herein.

23. Denied. It is specifically denied that the Complaint fails to state a claim upon which relief can be granted and is legally insufficient. Paragraph 4 of the Complaint specifies the many ways that PECO will cause environmental degradation, negatively affect the Swarthmore community's watershed, wildlife and aesthetics, and harm the health of those who live in the Swarthmore community. PECO's actions violate the Pennsylvania Constitution Article I Section 27. It provides: "The people have the right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to com. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people."

### **SECOND AFFIRMATIVE DEFENSE**

24. All allegations in the preceding paragraphs of the *Reply to New Matter* and the *Complaint* are incorporated as if fully set forth herein.

25. Denied as a conclusion of law to which no reply is required.

### **THIRD AFFIRMATIVE DEFENSE**

26. All allegations in the preceding paragraphs of the *Reply to New Matter* and the *Complaint* are incorporated as if fully set forth herein.

27. Denied as a conclusion of law to which no reply is required.

**FOURTH AFFIRMATIVE DEFENSE**

28. All allegations in the preceding paragraphs of the *Reply to New Matter* and the *Complaint* are incorporated as if fully set forth herein.

29. Denied as a conclusion of law to which no reply is required.

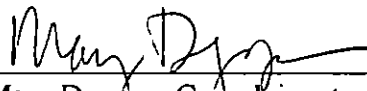
**FIFTH AFFIRMATIVE DEFENSE**

30. All allegations in the preceding paragraphs of the *Reply to New Matter* and the *Complaint* are incorporated as if fully set forth herein.

31. Denied as a conclusion of law to which no reply is required.

WHEREFORE, Complainant respectfully requests that the Pennsylvania Public Utility Commission grant the relief requested by Complainant.

Respectfully submitted,



Mary Deppen, Complainant  
12 Wellesley Road  
Swarthmore, PA 19081  
267-254-0579

Dated: 2/19/23

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**VERIFICATION**

I, Mary Deppen, verify that the facts set forth in the foregoing pleading are true to the best of my knowledge, information and belief. I make this verification subject to penalties of 18 Pa.C.S. § 4904 pertaining to false statements to authorities.

  
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Mary Deppen, Complainant  
12 Wellesley Road  
Swarthmore, PA 19081  
267-254-0579

Dated: 2/19/23

**CERTIFICATION**

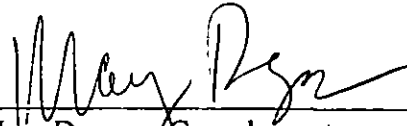
I, Mary Deppen, hereby certify that on February 22, 2023, I caused a true and correct copy of the foregoing to be served via United States first class mail, postage prepaid, upon counsel for the Respondent as follows:

Christopher A. Lewis, Esquire  
Frank L. Tamulonis, Esquire  
Stephen C. Zumbrun, Esquire  
Blank Rome LLP  
One Logan Square  
Philadelphia, PA 19103

**DATE OF DEPOSIT**

**FEB 21 2023**

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Mary Deppen, Complainant  
12 Wellesley Road  
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267-254-0579

Dated: 2/22/23