

### Legal Department

Exelon Business Services Company  
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February 10, 2008

James McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Second Floor  
Harrisburg, PA 17120

**Re: Audrey Booker v. PECO Energy Company  
PUC Docket No. C-2008-2080301**

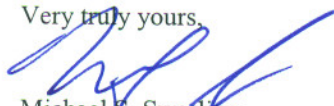
Dear Mr. McNulty:

Enclosed for filing with the Commission are the following documents and copies in the matter referenced above.

___	Answer (original and 3 copies)
___	Motion to Consolidate Complaints & Dismiss (original and 3 copies)
<u>X</u>	Motion For Judgment on the Pleadings (original and 3 copies)
___	Preliminary Objection (original and 3 copies)
___	Exceptions (original and 9 copies)
___	Reply Exceptions (original and 9 copies)
___	Brief (original and 9 copies)
___	Reply Brief (original and 9 copies)

Also enclosed is an extra copy of this letter, which I request that you date stamp and return to me in the envelope provided as proof of filing. I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties.

Very truly yours,



Michael S. Swerling  
Counsel for PECO Energy Company

M SS/zyr

Enc.

cc: Audrey Booker

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AUDREY BOOKER

v.

PECO ENERGY COMPANY

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DOCKET NO. C-2008-2080301

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.102(a) you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion of PECO Energy Company, within 20 days from service of this notice, the Commission may make a ruling not in your favor and your Complaint may be dismissed. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Michael S. Swerling, and where applicable, the Administrative Law Judge presiding over the issue.

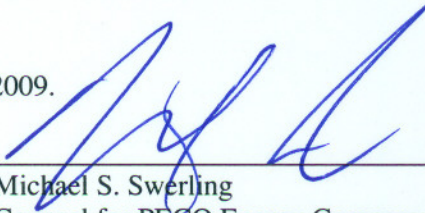
File with:

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

With a copy to:

Michael S. Swerling, Esq.  
PECO Energy Company  
2301 Market Street, S-23  
Philadelphia, PA 19103

Dated at Philadelphia, PA, February 10, 2009.



Michael S. Swerling  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
(215) 841-6841  
Michael.Swerling@exeloncorp.com

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AUDREY BOOKER

v.

PECO ENERGY COMPANY

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DOCKET NO. C-2008-2080301

**RESPONDENT, PECO ENERGY COMPANY'S MOTION FOR JUDGMENT ON THE PLEADINGS**

Respondent, PECO Energy Company ("PECO Energy"), pursuant to 52 Pa. Code § 5.102(a) respectfully petitions this Honorable Commission to dismiss the instant Complaint for the following reasons:

1. On or about December 12, 2009, Complainant filed a Complaint with the Pennsylvania Public Utility Commission ("PUC") only requesting a new payment agreement.
2. On or about December 23, 2009, PECO Energy was served the above-mentioned Formal Complaint.
3. Pursuant to 52 Pa. Code § 5.101(b), PECO Energy simultaneously filed an Answer & New Matter to this Complaint on January 12, 2009.
4. Pursuant to 52 Pa. Code § 5.63, Complainant had twenty days from the filing date of PECO's New Matter, January 12, 2009, to respond.
5. To date, twenty-nine days have passed since PECO filed its New Matter on January 10, 2009. As Complainant has failed to timely respond to the New Matter, PECO is filing this Motion seeking Judgment on the Pleadings.
6. On July 18, 2008, the Bureau of Consumer Services ("BCS") granted Complainant a payment arrangement to pay a \$251.00 monthly special budget amount, which

consisted of a \$202.00 regular budget plus a \$49.00 arrears installment. A copy of the BCS decision is attached as Exhibit A.

7. Complainant violated the terms of that arrangement by failing to remit the required special budget amount.

8. PECO removed Complainant from the BCS arrangement on August 18, 2008.

9. In this Formal Complaint, Complainant is requesting a new payment agreement from the Commission.

10. Complainant has admitted that in the past she had fallen on hard times, which led her to break the previous BCS arrangement. She specifically states, "We have fallen on hard times in the past having only one income for awhile and work hours being cut on my part. We have had to battle an eviction notice and while trying to resolve this, have fallen behind in other bills. *This is the only reason the last payment agreement was broken and it was not intentional.*"

11. Complainant admits that she has broken the prior BCS arrangement.

12. She also admits that her income has recently increased. She specifically states, "Now that the income situation in this household has improved, we are in a better position to meet the payments in a payment plan."

13. As Complainant's household income has increased, she is not entitled to new payments terms according to 66 Pa. C.S. §1405(d).

14. 66 Pa. C.S. §1405(d) states:

(d) NUMBER OF PAYMENT AGREEMENTS.-- Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. A public utility may, at its discretion, enter into a second or subsequent payment agreement with a customer.

15. Change of income is defined at 66 Pa. C.S. §1403 which states:


"Change in income." A decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level.

16. Complainant has not alleged a decrease in household income. To the contrary she has admitted that her total household monthly income has increased.

17. Therefore, Complainant is not entitled to Commission ordered payment terms according to 66 Pa. C.S. §1405(d).

**WHEREFORE**, PECO Energy Company respectfully requests pursuant to 66 Pa. C.S. § 1405 (d), that your Honorable Commission dismiss the Complaint because Complainant has violated a past BCS payment arrangement and has not alleged any change in income.

Respectfully Submitted,



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Michael S. Swerling  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
(215) 841-6841  
Michael.Swerling@exeloncorp.com

**BCS Decision Report**

**BCS Case #:** 002415480                      **Open Date:** 2008-07-14  
**Customer Name:** AUDREY BOOKER  
**Service Address:** 315 CHESTNUT ST

POTTSTOWN, PA 19464  
**BCS Bill Account #:** 6991898014                      **Previous Case #:**  
**Violation Type:** NO                                      **Chapter Type:**  
**Decision Type:** W                                        **Section / Rule:**  
**Investigator Name:** DONALD FULLERTON

**Decision Issued Date:** 2008-07-22  
**Case Closed Date:** 2008-07-18

**Letter Description:**  
EGW STRAIGHT PAR/NO LPCS/BUDGET + FOR LEVEL 1 HOUSEHOLDS

<b>Total Balance:</b>	\$3142.43	<b>Balance Date:</b>	2008-07-14
<b>Amount to Restore Service:</b>	\$0.00	<b>Amount to Continue Service:</b>	\$0.00
<b>Date Payment Due:</b>		<b>Regular Budget Amount:</b>	\$202.00
<b>Special Budget Payment:</b>	\$251.00	<b>Final Bill Monthly Payment:</b>	\$0.00
<b>Plus Arrears Payment:</b>	\$49.00	<b>End of Month Payment:</b>	\$0.00
<b>Current Monthly Payment:</b>	\$0.00		
<b>Payment Terms:</b>			

**PAR Description:**

**Resolution Description:**  
LEVEL 1 PAR ISSUED FOR RESTORATION...TO RESTORE: 250 (TO GO TOWARDS ACCT BAL) + 90 RF = 340..THEN PAY FIRST BILLING DUE DATE AFTER RESTORATION: 202 BB + 49 (TOW ARREARS) = 251...

Exh. B. + A

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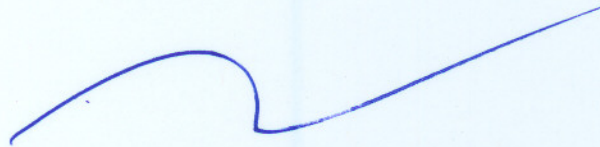
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DOCKET NO. C-2008-2080301

VERIFICATION

I, Michael S. Swerling, hereby declare that I am an attorney representing PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. §4904 pertaining to false statements to authorities.

Date: February 10, 2009



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Michael S. Swerling

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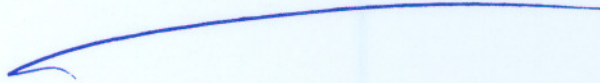
DOCKET NO. C-2008-2080301

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of PECO Energy Company's Motion to Dismiss in the above matter upon all interested parties by mailing a copy thereof Certified mail, properly addressed and postage prepaid to:

AUDREY BOOKER  
315 Chestnut Street  
Pottstown, PA 19464

Dated at Philadelphia, Pennsylvania, February 10, 2009.



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Michael S. Swerling  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
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Philadelphia, PA 19101-8699  
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Michael.Swerling@exeloncorp.com