

Legal Department

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April 15, 2009

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

**Re: York Road Realty Co., LP, Ice Skating Rink v. PECO Energy Company
PUC Docket No. C-2009-2082365**

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,


Tishkia E. Williams
Counsel for PECO Energy Company

TEW/zyr

Enc.

cc: Phil Pully, Director of Operations
York Road Realty Co., LP, Ice Skating Rink

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

YORK ROAD REALTY Co., LP
ICE SKATING RINK

v.

PECO ENERGY COMPANY

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DOCKET NO. C-2009-2082365

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, Tishekia E. Williams, 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:

Tishekia E. Williams, Esq.
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, April 15, 2009



Tishekia E. Williams
Counsel for PECO Energy Company
2301 Market Street S-23
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215-841-6841
Tishekia.williams@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

YORK ROAD REALTY Co., LP
ICE SKATING RINK

v.

PECO ENERGY COMPANY

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DOCKET NO. C-2009-2082365

PECO ENERGY COMPANY’S MOTION FOR JUDGMENT ON THE PLEADINGS

PECO respectfully requests that this Honorable Commission dismiss the complaint at docket number C-2009-2082365 pursuant to 52 Pa. Code § 5.101(d)(2) because Complainant fails to state a genuine issue of material fact for which relief can be granted.

1. On January 5, 2009, Complainant filed a complaint challenging the commercial security deposit assessed to its account as a result of account delinquency.

2. On January 22, 2009, PECO Energy filed an Answer and New Matter to the complaint.

3. According to 52 Pa. Code § 5.63, Complainant had twenty days from the filing date of PECO’s New Matter to respond. More than two months have passed. To date, Complainant has failed to respond to the New Matter.

4. In it’s complaint, Complainant admits to paying its bills late, which is the reason why Complainant has been charged a deposit. In its complaint, Complainant states, “while we sometime are late, the bills are paid... .”

5. Complainant’s admission that it pays its bill late is outcome determinative of the relevant issue under 52 Pa. Code §56.41(1). Section 56.41(1) provides:

A utility may require an existing ratepayer to post a deposit to reestablish credit under the following circumstances:

(1) *Delinquent accounts.* Whenever a ratepayer has been delinquent in the payment of any two consecutive bills or three or more bills within the preceding 12 months.

6. Under 52 Pa. Code §56.2, delinquent account is defined as:

“Delinquent account—Charges for utility service which have not been paid in full by the due date stated on the bill or otherwise agreed upon...”

7. In PECO’s Answer and New Matter, it averred that Complainant failed to make any monthly payment in June and July 2008. PECO further averred that Complainant has consistently maintained an unpaid balance since 2004. Complainant did not deny any of these averments.

8. Complainant also does not dispute that it pays its bills late. Therefore, Complainant’s account is admittedly delinquent.

9. Complainant claims, “We can not afford to pay a deposit,” and should not be charged a deposit because its bills are eventually paid.

10. PECO avers that if all of Complainant’s averments are taken as true, this is not a valid basis for relief under the applicable law. Complainant cannot be granted its requested relief.

11. PECO avers that there is no genuine issue as to a material fact and that it is entitled to judgment as a matter of law on all outstanding issues.

WHEREFORE, PECO respectfully requests that this Honorable Commission dismiss Complainant's claim pursuant to 52 Pa. Code § 5.101(d)(2) because Complainant admits that it pays its bill late, which is the basis for the disputed security deposit. Therefore, Complainant fails to state a genuine issue as to a material fact.

Respectfully Submitted,



Tishekia E. Williams
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DOCKET NO. C-2009-2082365

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: April 15, 2009



Tishekia Williams

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

YORK ROAD REALTY Co., LP
ICE SKATING RINK

v.

PECO ENERGY COMPANY

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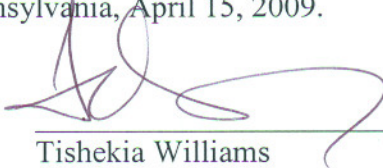
DOCKET NO. C-2009-2082365

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, properly addressed and postage prepaid to:

York Road Realty Co, LP
Ice Skating Rink
Phil Pully, Director of Operations
P.O. Box 549
Abington, PA 19001

Dated at Philadelphia, Pennsylvania, April 15, 2009.



Tishekia Williams
Counsel for PECO Energy Company
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