

### Legal Department

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June 18, 2009

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

**Re: James Doherty v. PECO ENERGY Company**  
**PUC Docket No. C-2008-2040669**

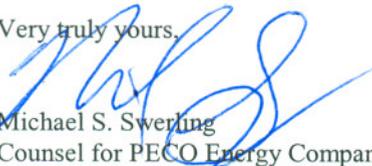
Dear Mr. McNulty:

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 (original and 3 copies)
<u>X</u>	Motion in Limine (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

MSS/zyr

Enc.

cc: ALJ Ky Van Nguyen (Via FedEx)  
James Doherty

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JAMES DOHERTY

v.

PECO ENERGY COMPANY

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DOCKET NO. C-2008-2040669

**RESPONDENT, PECO ENERGY COMPANY'S MOTION IN LIMINE**

Respondent, PECO Energy Company ("PECO Energy"), pursuant to 52 Pa. Code § 5.103, respectfully requests that this honorable Commission limit the issues to be developed at hearing to those listed in the Formal Complainant.

1. On May 8, 2008, Complainant, filed a Formal Complaint with the Pennsylvania Public Utility Commission ("PUC" or "Commission") against PECO Energy Company ("PECO") alleging incorrect charges on the following rental accounts in Complainant's name:

- a. **25 W. Wilmot Avenue**  
Account No. 55593-75071  
Service Period: 12/6/2006-3/7/2008
- b. **25 W. Wilmot Avenue**  
Account No. 55593-75062  
Service Period: 8/6/2007-Current
- c. **303 Grayling Avenue**  
Account No. 46238-56024  
Service Period: 2/28/2008-Current

2. Complainant is an attorney presently licensed to practice law in the Commonwealth of Pennsylvania. He was admitted to practice on June 2, 1986 and therefore has 23 years of legal experience.

3. Complainant was required to file his Formal Complaint in compliance with Commission regulations, which state the proper format for formal complaints.

4. The proper format for Formal Complaints is specified in 66 Pa. C.S. § 701, which states:

§ 701. Complaints

The commission, or any person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, *setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.* Any public utility, or other person, or corporation likewise may complain of any regulation or order of the commission, which the complainant is or has been required by the commission to observe or carry into effect. The Commonwealth through the Attorney General may be a complainant before the commission in any matter solely as an advocate for the Commonwealth as a consumer of public utility services. The commission may prescribe the form of complaints filed under this section.

5. Pursuant to section 701, Complainant is required to clearly set forth all actions or violations that PECO allegedly performed in the body of his Formal Complaint.

6. Even though Complainant attached some documentation to his Complaint, he plead very few supportive facts, only stating “PECO has transferred charges from accounts without notice.” Complainant only noted the above three utility accounts in his Complaint.

7. Complainant only alleged one wrongful act, that PECO transferred balances between three accounts without notice.

8. Numerous communications from Complainant indicate that he has many more accounts in his name than the three listed above. Complainant has as many as 15 rental accounts in his name – many more than the 3 listed in his Formal Complaint. From these communications, it is apparent that although Complainant may raise have raised issues about any of these 15 various accounts over time, many of these issues prove fleeting. Between the Formal

Complaint and these communications, PECO cannot know what issues Complainant intends to raise at hearing.

9. A hearing is presently scheduled to occur on July 23, 2009 before the Honorable Ky Van Nguyen (“Judge Nguyen”).

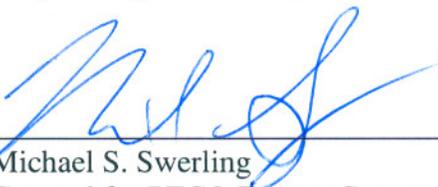
10. Complainant should not be allowed to raise whatever issues he wishes at hearing if he did not previously state them in his Formal Complaint.

11. Allowing Complainant to raise issues relevant to as many as 15 accounts at hearing is problematic for a number of reasons. First, it makes it difficult for PECO or Judge Nguyen to adequately prepare for the hearing if neither knows what additional issues Complainant may raise at hearing. Second, allowing Complainant to raise issues on more than the three accounts will also unfairly prejudice PECO. It may also confuse the record if Complainant raises an issue relative to an account that PECO had no prior knowledge. Both PECO and the Judge warrant knowing in advance of the hearing exactly what issues Complainant, an experienced attorney, will raise. The Formal Complaint was the proper mechanism for Complainant to do just that.

12. PECO therefore requests that the issues to be litigated at hearing be limited to the alleged wrongful transfer between the three accounts Complainant listed in his Formal Complaint.

**WHEREFORE**, PECO Energy Company respectfully requests that your Honor limit the scope of the July 23, 2009 hearing to only encompass the issue related to the three accounts listed in the Formal Complaint.

Respectfully Submitted,



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Michael S. Swerling  
Counsel for PECO Energy Company  
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JAMES DOHERTY

v.

PECO ENERGY COMPANY

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DOCKET NO. C-2008-2040669

**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: June 17, 2009

  
\_\_\_\_\_  
Michael S. Swerling

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JAMES DOHERTY	:	
	:	
v.	:	DOCKET NO. C-2008-2040669
	:	
PECO ENERGY COMPANY	:	

**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:

JAMES DOHERTY  
P.O. Box 12  
Haverford, PA 19041-0012

Dated at Philadelphia, Pennsylvania, June 17, 2009.

  
\_\_\_\_\_  
Michael S. Swerling  
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