

Legal Department

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September 10, 2009

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

Re: Charles Gallagher, Jr. v. PECO Energy Company
PUC Docket No. C-2008-2075240

Dear Mr. McNulty:

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

—	Answer (E-filed and 1 original)
—	Motion to Consolidate (original and 3 copies)
—	Motion for Judgment on the Pleadings (original and 3 copies)
—	Preliminary Objection (E-filed and 1 original)
<u>X</u>	Exceptions (E-filed and 1 original)
—	Reply Exceptions (original and 9 copies)
—	Brief (original and 9 copies)
—	Reply Brief (original and 9 copies)

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,



Tishkia E. Williams
Counsel for PECO Energy Company

TEW/zyr

Enc.

cc: ALJ Ky Van Nguyen
Charles Gallagher, Jr.

INTRODUCTION

On August 3, 2009, Administrative Law Judge, Ky Van Nguyen (the “ALJ” or “ALJ Nguyen”) issued an Initial Decision in the matter of *Charles Gallagher v. PECO Energy Company*, Docket Number C-2008-2075240. By this decision, ALJ Nguyen concluded that PECO violated 52 Pa. Code § 52.16 when it initiated service in another customers name at Complainant’s address. PECO respectfully disagrees with the ALJ’s conclusion that it violated 52 Pa. Code § 52.16 or 66 Pa.C.S §1501. The facts do not support such a finding.

To the contrary, the facts are clear that:

- Complainant has received service at 126 S. Lansdowne Avenue, Lansdowne PA since 1972.
- Complainant never requested service discontinuance.
- It is not uncommon for customers to move without notifying PECO.
- On October 20, 2009, a new service applicant requested electric service at 126 S. Lansdowne Avenue, Lansdowne Pennsylvania. It was later discovered the new applicant mistakenly provided the wrong address.
- On October 20, 2008, PECO contacted Complainant via letter to inform him that someone requested service at his address. The letter instructed Complainant to contact PECO if he had not vacated the property.
- As requested, service was placed in the new applicant’s name at 126 S. Lansdowne, Pennsylvania.
- Complainant’s account was finalized on October 21, 2009.
- On October 24, 2009, Complainant contacted PECO indicating that he had not vacated the residence.

- The same day, October 24, 2009, PECO re-established service in Complainant's name at 126 S. Lansdowne, Pennsylvania.

- Complainant's service was never interrupted as a result of the new applicant's mistake, but instead was "seamless."

- According to the ALJ, PECO's actions did not amount to "unreasonable service."

In his initial decision, the ALJ ordered PECO to cease and desist from further violations of 52 Pa. Code § 52.16 and 66 Pa.C.S §1501. No civil penalty was recommended. PECO respectfully excepts to the finding that it violated 52 Pa. Code §52.16 or 66 Pa.C.S. §1501 for reasons detailed below.

EXCEPTIONS

A. Title 52 Pa.Code § 56.16, related to “Transfer of Accounts” is not applicable to the facts of this case.

PECO respectfully disagrees with the ALJ’s conclusion that PECO violated 52 Pa.Code §56.16 by granting a new applicant’s request for service. The regulation provides:

§ 56.16. Transfer of accounts.

(a) A ratepayer who is about to vacate premises supplied with utility service or who wishes to have service discontinued shall give at least 7 days notice to the utility and a nonratepayer occupant, specifying the date on which it is desired that service be discontinued. In the absence of a notice, the ratepayer shall be responsible for services rendered.

(b) In the event of discontinuance or termination of service at a residence or dwelling in accordance with this chapter, a utility may transfer an unpaid balance to a new residential service account of the same ratepayer.

...

Section 56.16 was promulgated under Subchapter B, and deals squarely with the issue of “Billing and Payment Standards.” This case is not about a billing or payment dispute. There was no attempt to bill Complainant for services rendered in his name due to a failure to request discontinuance. Indeed, there was no request for discontinuance at all. Instead, the facts indicate that a new applicant requested service at Complainant’s address. Shortly thereafter it was determined that the applicant provided the wrong address. Service was re-established in Complainant’s name the same day. Section 56.16 does not address requests for new service by an applicant and therefore is not applicable to the facts of this case.

The plain language of §52.16 mandates that customers provide advance notice of discontinuance. In the absence of the required notice, it allows utilities to continue to bill a ratepayer when no discontinuance is requested. PECO is not required to wait 5-7 days prior to

granting a request for new service. Certainly, the provisions of §52.16 provide no such mandate. As §52.16 does not establish an affirmative obligation on public utilities, PECO did not violate any obligation contained therein.

When PECO receives a request for new service by an applicant, it strives to complete the application process in a timely manner, normally within three business days. The ALJ argues, “Commission regulations contemplate an orderly, and not a hasty, change of service holders.” Undoubtedly, Commission regulations contemplate an orderly change of service holders. PECO acted in an orderly manner. Indeed, Complainant indicated that he received “seamless service.” However, Commission regulations also contemplate a timely response to request for electric service that is without undue delay.

B. Title 52 Pa. Code. §56.37, related to “Procedures for New Applicants” is the controlling law because PECO was responding to a request for service by a new applicant.

Title 52 Pa. Code. §56.37 is promulgated under Subchapter C, related to “Credit and Deposit Standards.” This subchapter is further divided into three categories. Sections 56.31-56.38 all relate to “Procedures for New Applicants.”¹ Specifically, §56.37 provides:

§ 56.37. General rule.

If the investigation and determination of credit status is expected to take or in fact takes longer than **3 business days** commencing the date after the application is made, **the utility shall provide service** pending completion of the investigation.

All new service requests, including the request made in the instant case, are reviewed to determine if the service should be granted, whether the customer has unpaid balances, or if a deposit is required. The purpose of this review is not only to protect the

¹ Title 66, Chapter 14, has displaced many of the provisions of Subchapter C, related to Credit and Deposit Standards. However, the provisions of 56.37 remain in full force and effect.

utility, but also to protect good paying customers from rate increases associated with uncollectible accounts.

Section 56.37 provides that if an investigation takes more than three days; the utility is required to provide service pending completion of the investigation. Therefore, when a new applicant request service, a utility is required to provide service within three days, unless it is permitted to withhold service by some other provision of the law – for example 66 Pa.C.S. § 1407.

At hearing, PECO testified that initially there was no reason to delay the new applicant's service request. Therefore, service was provided as requested. When it was subsequently determined that Complainant still resided at the property, service was re-established in his name the very same day.

Electricity is an essential service. It is a fundamental Commission policy that electric service should be available to all customers on reasonable terms and conditions. 66 Pa. C.S. § 2802(9) (related to Competition). While Commission regulations contemplate that service is to be provided in an orderly manner, Commission regulations also contemplate that utilities should respond to new service applications in a timely manner without undue delay. Therefore, PECO's policy is to respond to requests for new service in a timely manner, normally within 3-days. This policy does not contravene Commission regulations.

C. A violation of 66 Pa.C.S §1501 requires a finding of unreasonable service, which the ALJ plainly states did not occur.

PECO did not violate 66 Pa.C.S.§1501 by granting a new applicant's request for service. Title 66 Pa.C.S.§1501 provides:

§ 1501. Character of service and facilities

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service....

The express language of the Code requires a public utility to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities..." 66 Pa.C.S. § 1501. In order to establish a sufficient case, the Complainant must show that the public utility is "responsible or accountable for the problem described in the complaint." *Patterson v. Bell Telephone Co. of Pennsylvania*, Docket No. F-8966524 (February 8, 1990); *Feinstein v. Philadelphia Suburban Water Co.*, Docket No. 20822 (October 6, 1976). In the present case, Complainant did not prove that PECO violated Commission regulations or is responsible for the problem described in the complaint.

In his decision, the ALJ noted that PECO apologized to the Complainant for the inconvenience. The ALJ further noted, "This inconvenience does not rise to the level of unreasonable service." Nonetheless the ALJ ordered, "Respondent cease and desist from further violations of Commission regulations, 52 Pa. Code § 52.16 or 66 Pa.C.S. § 1501."²

The facts of the case do not demonstrate that PECO caused the problem complained of; rather the facts indicate that the problem occurred because a new service applicant mistaken

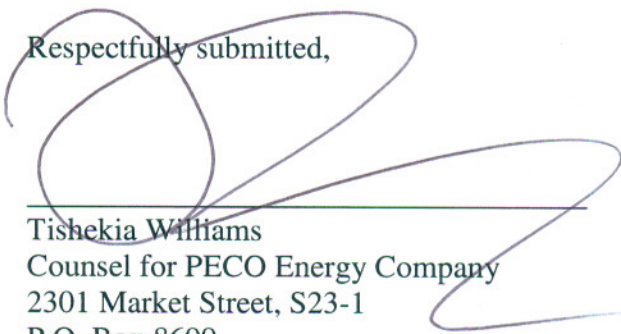
² It should be noted that PECO's apology to the customer was not an admission of wrongdoing on its part. Rather, it was simply an acknowledgement that the customer had been inconvenienced.

requested service at the wrong address. The problem – the inconvenience experienced by the customer - did not rise to the level of unreasonableness. Therefore, it is unclear why PECO was order to cease further violations of 66 Pa.C.S. § 1501. PECO did not act unreasonably, so presumably no violation of §1501 occurred. PECO respectfully requests that the Commission find that PECO did not violate 66 Pa.C.S. § 1501.

CONCLUSION

For the reasons set forth above, PECO requests that this Honorable Commission find that PECO did not violate 52 Pa. Code § 52.16 or 66 Pa.C.S. § 1501.

Respectfully submitted,



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Charles Gallagher, Jr.

COMPLAINANT

v.

PECO ENERGY COMPANY,

RESPONDENT

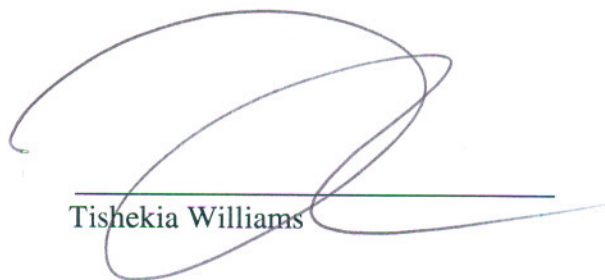
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Docket No. C-2008-2075240

VERIFICATION

I, Tishekia Williams, hereby declare that I am counsel for 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: September 10, 2009



Tishekia Williams

