

Legal Department

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December 7, 2009

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

Re: Fred & Mary Buffaloe v. PECO Energy Company
PUC Docket No. F-2009-2142003

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 for Continuance (e-filed and 1 original)
___	Motion for Judgment on the Pleadings (original and 3 copies)
<u> X </u>	Preliminary Objection (E-filed and 1 original)
___	Exceptions (original and 9 copies)
___	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,



Ken Massey
Counsel for PECO Energy Company

KM/zyr

Enc.

Scheduling recommendation: ___ CALL OF THE DOCKET X NON-CALL OF THE DOCKET

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FRED & MARY BUFFALOE	:	
	:	
v.	:	DOCKET NO. F-2009-2142003
	:	
PECO ENERGY COMPANY	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objection of PECO Energy Company, within 10 days from service of this notice, and if you do not file a written response denying or correcting the enclosed New Matter within 20 days from service of this notice, the facts set forth by PECO Energy Company in the New Matter may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Preliminary Objection and Reply to New Matter, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Ken Massey, 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:
Ken Massey, Esq.
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, December 7, 2009



Ken Massey
Counsel for PECO Energy Company
2301 Market Street S-23
Philadelphia, PA 19101-8699
215-841-6841
Ken.Massey@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FRED & MARY BUFFALOE

v.

PECO ENERGY COMPANY

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DOCKET NO. F-2009-2142003

PRELIMINARY OBJECTIONS OF RESPONDENT, PECO ENERGY COMPANY

Respondent, PECO Energy Company (“PECO Energy”), pursuant to 52 Pa. Code § 5.101(a) respectfully petitions this Honorable Commission to dismiss this Complaint for the reasons described below.

Preliminary Objection # 1: The Complaint is Legally Insufficient

1. Complainant filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) on November 18, 2009. Complainant does not dispute the amounts billed for utility services or the reliability or safety of such service. Rather, Complainant requests that the Commission order PECO to re-bill two of its tenants because an independent electric contractor improperly installed electric meters at the Complainant’s property.

2. PECO Energy fulfilled its requirements to provide safe and reliable service to the customers and to provide accurate billings. PECO is obligated to “render bills based on actual meter readings.” (52 Pa. Code § 56.12). PECO Energy rendered bills based on actual readings from the meters installed by the customer’s electric contractor. PECO Energy met its billing requirement and cannot now retroactively allocate usage based upon how usage *should* have been directed had the meters been installed correctly.

3. PECO Energy cannot be held responsible for the acts of an independent contractor. PECO has no control over the contractor's improper installation of the electric meters at the property at issue.

4. The Commission is without the power or jurisdiction to re-bill end users due to the improper installation of meters by the Complainant's independent contractor. The Complaint is legally insufficient because it fails to state a claim upon which the Commission can grant relief. Accordingly, PECO Energy preliminarily objects to the Complaint pursuant to 52 Pa. Code § 5.101(a)(4).

Preliminary Objection #2: The Commission Lacks Jurisdiction

5. PECO Energy repeats paragraphs 1 through 4 and incorporates into this preliminary objection.

6. The Complaint should also be dismissed pursuant 52 Pa. Code § 5.101(a)(1) because it seeks relief which the Commission is not authorized to grant. The Commission is not authorized to order PECO to re-bill customers after PECO indisputably provided safe and reliable service and accurate billings based upon readings from the meters installed by the customer's electric contractor.

7. PECO is filing an Answer in conjunction with its Preliminary Objections.

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss the instant Complaint pursuant to 52 Pa. Code § 5.101(a) inasmuch as it requests damages, is legally insufficient, and includes scandalous and impertinent matter.

Respectfully Submitted,



Ken Massey
Counsel for PECO Energy Company
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Ken.Massey@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FRED & MARY BUFFALOE

v.

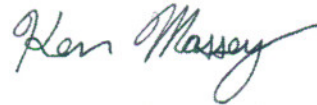
PECO ENERGY COMPANY

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DOCKET NO. F-2009-2142003

VERIFICATION

I, Ken Massey, 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.



Ken Massey

Date: December 7, 2009

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FRED & MARY BUFFALOE	:	
	:	
v.	:	DOCKET NO. F-2009-2142003
	:	
PECO ENERGY COMPANY	:	

CERTIFICATE OF SERVICE

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

Fred & Mary Buffaloe
5235 Beaumont Ave.
Philadelphia, PA 19143

Dated at Philadelphia, Pennsylvania, December 7, 2009.



Ken Massey
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