

Legal Department

Exelon Business Services Company
2301 Market Street/S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Telephone 215.841.4000
Fax 215.568.3389
www.exeloncorp.com

Business Services
Company

Direct Dial: 215.841.6841

January 21, 2010

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

RECEIVED

JAN 21 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: **Albert H. Pannell v. PECO Energy Company**
PUC Docket No. C-2009-2126979

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 to Dismiss (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)

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

Very truly yours,



Ken Massey
Counsel for PECO Energy Company

KM/adz
Enc.

Cc: Albert H. Pannell

RECEIVED

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JAN 21 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ALBERT H. PANNELL

:
:
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:
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v.

DOCKET NO. C-2009-2126979

PECO ENERGY COMPANY

**PECO ENERGY COMPANY'S MOTION TO DISMISS
WITH PREJUDICE FOR FAILURE TO FILE A MORE SPECIFIC PLEADING**

Respondent, PECO Energy Company ("PECO Energy"), pursuant to 52 Pa. Code § 5.103 respectfully petitions this Honorable Commission to dismiss the above-captioned Complaint for failing to obey the October 6, 2009 Order compelling Complainant to file an amended complaint.

1. On or around August 27, 2009, Complainant filed a formal Complaint with the Pennsylvania Public Utility Commission (PUC) alleging a reliability, safety or quality problem with his utility service but failing to provide any description of his claims. (See Exhibit 1).

2. On September 16, 2009 PECO Energy filed Preliminary Objections under 52 Pa. Code § 5.101(3) to compel Complainant to file an Amended Complaint providing more specificity describing his claims. (See Exhibit 2).

3. On October 6, 2009, Administrative Law Judge Susan D. Colwell granted PECO Energy's Preliminary Objections and ordered that "the Complaint is directed to file an Amended Complaint within thirty days of the date of this Order" (See Exhibit 3).

4. The October 6, 2009 Order further held that failure to timely file an Amended Complaint "may result in the Complaint being dismissed upon motion of the Respondent."

5. Complainant has failed to file an Amended Complaint.

6. Over 100 days have elapsed since the October 6, 2009 Order.


7. By failing to provide any specificity in his formal Complaint, Complainant precludes PECO Energy from investigating any potential claims and drafting a meaningful, targeted Answer to the Complaint.

8. PECO has attempted to contact the customer to clarify the dispute without success.

9. PECO Energy moves to dismiss the Complaint with prejudice due to Complainant's failure to fulfill his obligations under ALJ Colwell's October 6, 2009 Order.

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss the above-captioned Complaint.

Respectfully Submitted,



Ken Massey
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
Ken.Massey@exeloncorp.com
(215) 841-5358

RECEIVED

JAN 21 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ALBERT H. PANNELL

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:
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v.

DOCKET NO. C-2009-2126979

PECO ENERGY COMPANY

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.

Dated at Philadelphia, PA, January 21, 2010.



Ken Massey

RECEIVED

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JAN 21 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ALBERT H. PANNELL

v.

PECO ENERGY COMPANY

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DOCKET NO. C-2009-2126979

CERTIFICATE OF SERVICE

I, Ken Massey, 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 properly addressed and postage prepaid to:

Albert H. Pannell
1519 N. Gratz Street, Apt B
Philadelphia, PA 19121

Dated at Philadelphia, Pennsylvania, January 21, 2010



Ken Massey
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
Ken.Massey@exeloncorp.com
(215) 841-5358



*Due - 9/14
Target - 9/11*

2009-810

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

DATE SERVED: August 27, 2009

TISHEKIA WATKINS

AUG 31 2009

C-2009-2126979

PECO ENERGY COMPANY
C/O WARD L SMITH
ASSOCIATE GENERAL COUNSEL
PO BOX 8699
PHILADELPHIA PA 19101-8699

Dear Mr. Smith:

A complaint has been filed against you before the Pennsylvania Public Utility Commission by Albert H. Pannell. To defend yourself against the claims stated in the following pages, you must act within twenty (20) days by filing in writing with the Commission, either personally or through your attorney, your defenses or objections to the claims stated against you. Or, you may satisfy the complaint by settling the matter with the Complainant and submitting proof of settlement to the Commission within twenty (20) days.

IF YOU FAIL TO RESPOND WITHIN TWENTY (20) DAYS, THE CASE MAY GO FORWARD IN YOUR ABSENCE AND A JUDGEMENT MAY BE ENTERED AGAINST YOU BY THE COMMISSION WITHOUT FURTHER NOTICE.

CUSTOMER OF A UTILITY

A payment schedule may be prescribed or a termination of utility services may be authorized. You may lose money or property or other rights important to you.

COMPANY/UTILITY

An Administrative Law Judge may revoke or suspend any certificate or permit held by you, or impose a fine, or any other appropriate penalty or remedy authorized by the Public Utility Code. You may lose money or property or other rights important to you.

Detailed instructions on how to proceed are contained in the attached pages. You are advised to read them carefully.

peco ex. 1

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

Please print or type.

COPY

C-2009-2126979

1. CUSTOMER NAME (COMPLAINANT)

Your name, mailing address, county, telephone number, utility account number and service address:

Name Albert H Pannell

Street/P.O. Box 1519 N. Gratz St Apt # B

City Phila State PA Zip 19121

County Philadelphia

Area Code/HOME Phone 215 235 0270

Area Code/WORK Phone

Utility Account Number (from your bill)

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name

Street/P.O. Box

City State Zip

2. UTILITY NAME (RESPONDENT)

Name of utility company your complaint concerns: Electric Peco

3. TYPE OF UTILITY (check one)

[X] ELECTRIC

[] STEAM HEAT

[] GAS

[] WASTE WATER

[] WATER

[] MOTOR CARRIER (taxi, moving company, limousine)

[] TELEPHONE (local, long distance)

SECRETARY BUREAU

2009 AUG 20 AM 9:22

RECEIVED

4. **COMPLAINT** (check one)

A. In general, what is your complaint?

- I want to oppose the company's proposed rate increase.
- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.
- Other.
(explain)

B. State the facts of your complaint.

Include any specific dates, times or places that are important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

5. **RELIEF**

What do you want the Public Utility Commission to do about your complaint? Use additional paper if you need more space.

I am disabled, I only received
SSI, SS -

6. PROTECTION FROM ABUSE

Answer the following question if your complaint is against a natural gas distribution company, an electric distribution company or a water company AND your complaint is about a billing problem, an application for service problem, a termination of service problem or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety?

YES

NO

7. PRIOR UTILITY CONTACT

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES

(includes appeals of BCS determinations)

NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

8. VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification:

I Albert Danwell, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Albert Danwell
(Signature)

8/14/09
(Date)

Legal Department

Exelon Business Services Company
2301 Market Street / 523-1
PO Box 8699
Philadelphia, PA 19101-8699

Telephone 215.841.5544
Fax 215.568.3389
www.exeloncorp.com

**Business Services
Company**

Direct Dial: 215.841.6841

September 16, 2009

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

**Re: Albert H. Pannell v. PECO Energy Company
PUC Docket No. C-2009-2126979**

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)
- ___ Motion for Judgment on the Pleadings (original and 3 copies)
- X 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)

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. 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. 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: Albert H. Pannell

peco ex. 2

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ALBERT H. PANNELL

v.

PECO ENERGY COMPANY

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DOCKET NO. C-2009-2126979

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101, 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, a decision may be entered against you. All pleadings, such as Reply to the Preliminary Objection, 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.

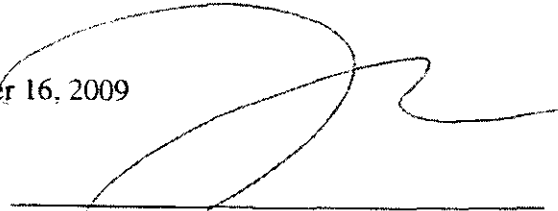
File with:

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, September 16, 2009



Tishekia E. Williams
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ALBERT H. PANNELL

v.

PECO ENERGY COMPANY

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:
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DOCKET NO. C-2009-2126979

PECO ENERGY COMPANY'S PRELIMINARY OBJECTION TO THE COMPLAINT

Respondent, PECO Energy Company ("PECO Energy"), pursuant to 52 Pa. Code § 5.101(3) respectfully petitions this Honorable Commission to order Complainant to amend his Complaint to provide more specificity.

1. On August 20, 2009, Complainant filed a formal Complaint with the Pennsylvania Public Utility Commission alleging a reliability, safety or quality problem with his utility service. A copy of the complaint is attached as Exhibit 1.

2. On or about August 17, 2009, PECO Energy was served the above-mentioned formal Complaint.

3. PECO avers that the Complaint does not conform to the requirements of 52 Pa.Code §5.22 (a)(5), which provides:

5.22. Content of formal complaint.

(a) A formal complaint must set forth the following:

...
(5) A clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal investigation.

4. In the instant matter, Complainant did not provide any facts or assertions to support his complaint. Instead, under option 4A or the Formal Complaint form, Complainant marked "There is a reliability, safety or quality problem with my utility service." No other information is

provided other than this statement. Therefore PECO is left to speculate as to what Commission regulation, order or provision of its tariff has allegedly been violated.

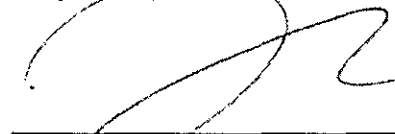
5. PECO has attempted to contact the customer to clarify the dispute without success.

6. Without additional information, PECO is unable to provide a meaningful Answer to the Complaint.

7. PECO therefore objects to this Complainant and requests the Complainant file a more specific pleading pursuant to 52 Pa. Code § 5.101 (a)(3) so that PECO may know the source of the allegations.

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission orders the Complainant to amend his Complaint with more specificity so that PECO may Answer accordingly.

Respectfully Submitted,



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



*Answer 9/14
Fugate 9/14*

2007-310
COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

DATE SERVED: August 27, 2009

TISHEMIA

AUG 31 2009

C-2009-2126979

PECO ENERGY COMPANY
C/O WARD L SMITH
ASSOCIATE GENERAL COUNSEL
PO BOX 8699
PHILADELPHIA PA 19101-8699

Dear Mr. Smith:

A complaint has been filed against you before the Pennsylvania Public Utility Commission by Albert H. Pannell. To defend yourself against the claims stated in the following pages, you must act within twenty (20) days by filing in writing with the Commission, either personally or through your attorney, your defenses or objections to the claims stated against you. Or, you may satisfy the complaint by settling the matter with the Complainant and submitting proof of settlement to the Commission within twenty (20) days.

IF YOU FAIL TO RESPOND WITHIN TWENTY (20) DAYS, THE CASE MAY GO FORWARD IN YOUR ABSENCE AND A JUDGEMENT MAY BE ENTERED AGAINST YOU BY THE COMMISSION WITHOUT FURTHER NOTICE.

CUSTOMER OF A UTILITY

A payment schedule may be prescribed or a termination of utility services may be authorized. You may lose money or property or other rights important to you.

COMPANY/UTILITY

An Administrative Law Judge may revoke or suspend any certificate or permit held by you, or impose a fine, or any other appropriate penalty or remedy authorized by the Public Utility Code. You may lose money or property or other rights important to you.

Detailed instructions on how to proceed are contained in the attached pages. You are advised to read them carefully.

*PECO Exhibit
I*

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

Please print or type.

DEBY C-2009-2126979

1. CUSTOMER NAME (COMPLAINANT)

Your name, mailing address, county, telephone number, utility account number and service address:

Name Albert H Pannell

Street/P.O. Box 1519 N. Gatz St Apt # B

City Phila State PA Zip 19121

County Philadelphia

Area Code/HOME Phone 215 235 0270

Area Code/WORK Phone

Utility Account Number (from your bill)

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name

Street/P.O. Box

City State Zip

2. UTILITY NAME (RESPONDENT)

Name of utility company your complaint concerns: Electric Reco

3. TYPE OF UTILITY (check one)

ELECTRIC

STEAM HEAT

GAS

WASTE WATER

WATER

MOTOR CARRIER (taxi, moving company, limousine)

TELEPHONE (local, long distance)

4. COMPLAINT (check one)

A. In general, what is your complaint?

- I want to oppose the company's proposed rate increase.
- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.
- Other.
(explain)

B. State the facts of your complaint.

Include any specific dates, times or places that are important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

5. RELIEF

What do you want the Public Utility Commission to do about your complaint? Use additional paper if you need more space.

I am disable, I only received
SSI, SS -

6. PROTECTION FROM ABUSE

Answer the following question if your complaint is against a natural gas distribution company, an electric distribution company or a water company **AND** your complaint is about a billing problem, an application for service problem, a termination of service problem or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety?

YES

NO

7. PRIOR UTILITY CONTACT

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES

(includes appeals of BCS determinations)

NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

8. VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification:
Albert Danwell, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Albert Danwell
(Signature)

8/14/09
(Date)

9. **LEGAL REPRESENTATION (IF ANY)**

If you are represented by a lawyer in this matter you must provide your lawyer's name, address and telephone number.

Lawyer's Name _____

Street _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

10. **FILING**

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 nd Floor Harrisburg, Pennsylvania 17120
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Facsimiles and/or electronic filings of the complaint form will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

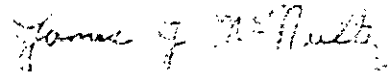
Keep a copy of your complaint for your records.

August 27, 2009

Unless you are a corporation or other organization, you may proceed without a lawyer. However, if you want a lawyer and do not have one or cannot afford one, the office listed below can tell you where you can get legal help:

Pennsylvania Lawyer Referral Service
Pennsylvania Bar Association
P.O. Box 186
Harrisburg, PA 17108
(800) 692-7375

Very truly yours,



James J. McNulty
Secretary

lam

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

DATE SERVED: August 27, 2009

ALBERT H. PANNELL
Complainant

v.

PECO ENERGY COMPANY
Respondent

Complaint Docket
No: C-2009-2126979

FORMAL COMPLAINT NOTICE TO RESPONDENT TO ANSWER OR SATISFY

TO: PECO ENERGY COMPANY

TAKE NOTICE:

That a complaint in the above entitled matter, of which the attached is a true and correct copy, has been presented and filed of record with the Pennsylvania Public Utility Commission. Section 702 of the Public Utility Code, 66 Pa. C.S. Section 702, requires the Commission to serve on each party named in a complaint a copy of the complaint and notice calling upon each party to satisfy the complaint, or to answer the same in writing within a specified time; THEREFORE,

1. You have twenty (20) days from the date on which this complaint is served to either satisfy this complaint or to file with the **Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265**, an answer (original and three copies), in writing, under oath, which, as required by Section 5.61 of the Commission's Rules of Practice and Procedure, 52 Pa. Code Section 5.61, either affirms or specifically denies the allegations in this complaint. You must also serve a copy of the answer upon the complainant. The date of service is the mailing date as indicated by the date at the top of this Notice. Section 1.56(a) of the Commission's Rules of Practice and Procedure, 52 Pa. Code Section 1.56(a):

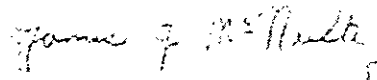
2. If you fail to either satisfy this complaint or to file answer or other responsive pleading within twenty (20) days, you will be deemed to have admitted all the allegations in this complaint in accordance with Section 5.61 of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code Section 5.61. In that event, the Commission may, without hearing, enter an order which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. Section 101. et seq.; and, if

you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

3. If you elect to satisfy this complaint you must file, within twenty (20) days from the date on which this complaint is served, affidavits executed by each complainant that this complaint has been satisfied. Such affidavits must describe the basis on which this complaint was satisfied; any settlement agreement between the parties must be reduced to writing and attached to the affidavit. Such affidavits are to be filed with the Secretary of the Commission at the address set forth in paragraph 1. Upon receipt of affidavits of satisfaction from all complainants, this complaint may be dismissed by the Commission in accordance with Section 703(a) of the Public Utility Code, 66 Pa. C.S. Section 703(a), unless the Commission determines that such dismissal would be contrary to the public interest, in which event the Commission may direct that hearings be held upon the complaint.

4. If you file an answer which admits the allegations in this complaint, or which fails to specifically deny the allegations in this complaint, the Commission may, without hearing, enter an order which either revokes or suspends any certificate held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

5. If you file a timely answer which specifically denies the allegations in this complaint, or which raises material questions of law or fact, this matter shall be referred to the Office of Administrative Law Judge for hearing and decision. If, after hearing on the issues raised by that answer, you are found to have committed any of the violations alleged in the complaint, the Administrative Law Judge may render a decision which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. In the imposition of a penalty after a hearing the Administrative Law Judge is not bound by the relief sought by the complainant in paragraph 4 of the attached complaint.



James J. McNulty
Secretary

(SEAL)

Certified Mail
Return Receipt Requested

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ALBERT H. PANNELL

v.

PECO ENERGY COMPANY

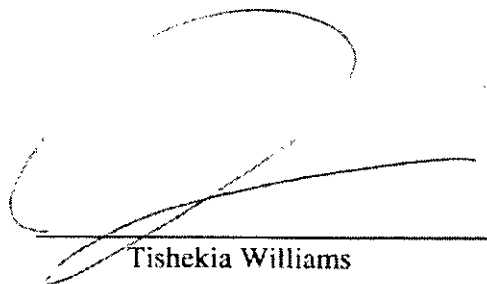
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DOCKET NO. C-2009-2126979

VERIFICATION

I, Tishekia E. Williams, 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.

Dated at Philadelphia, PA, September 16, 2009.



Tishekia Williams

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ALBERT H. PANNELL

v.

PECO ENERGY COMPANY

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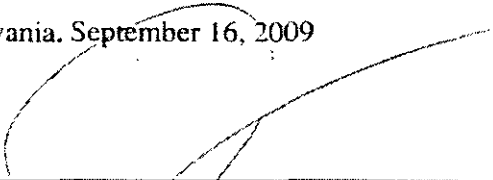
DOCKET NO. C-2009-2126979

CERTIFICATE OF SERVICE

I, Michael S. Swerling, 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 properly addressed and postage prepaid to:

Albert H. Pannell
1519 N. Gratz Street, Apt B
Philadelphia, PA 19121

Dated at Philadelphia, Pennsylvania, September 16, 2009



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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Albert H. Pannell

v.

PECO Energy Company

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TISHEKIA WILLIAMS

C-2009-2126979

OCT 14 2009

**ORDER GRANTING PRELIMINARY OBJECTIONS AND DIRECTING
COMPLAINANT TO FILE A MORE SPECIFIC PLEADING**

HISTORY OF THE PROCEEDING

On August 20, 2009, Albert H. Pannell (Complainant) filed a formal Complaint against PECO Energy Company (PECO or Respondent), which checks the preprinted box next to "There is a reliability, safety or quality problem with my utility service," but gives no facts in the space provided or otherwise. In addition, the Relief sought states: "I am disable, I only received SSI, SS."

On September 16, 2009, PECO filed Preliminary Objections (POs) averring that the Complaint does not conform to the regulatory requirements for a formal complaint and seeking an order directing a more specific pleading. The Complaint does not provide information which is sufficient to permit PECO to formulate an Answer.

On October 6, 2009, a Motion Judge Assignment Notice was issued which assigned the case to the undersigned for purposes of addressing the Preliminary Objections. The time for filing a response to the Preliminary Objections has run and no response has been filed. Therefore, the Preliminary Objections are ready for decision.

peco ex-3

FINDINGS OF FACT

1. Complainant is Albert H. Pannell, 1519 N. Gratz Street, Apartment B, Philadelphia PA 19121.

2. Respondent is PECO Energy Company, a jurisdictional electric distribution company providing residential and commercial electric service in the Commonwealth of Pennsylvania.

3. On August 20, 2009, Complainant filed a Formal Complaint alleging that there was a reliability, safety or quality problem with his utility service.

4. The Complaint does not provide any facts or allegations to support the claim.

5. On September 16, 2009, PECO filed its Preliminary Objections seeking an order directing Complainant to file a more specific pleading.

6. No response was filed to the Preliminary Objections.

DISCUSSION

Commission regulations permit the filing of preliminary objections. 52 Pa. Code §§ 5.101(a)(1)-(6). Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

Commission regulations provide:

§ 5.101. Preliminary objections.

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

52 Pa. Code § 5.101(a).

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the Petitioners, recovery or relief is possible. *Dept. of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003), 2003 Pa. Commw. LEXIS 849; *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996) 1996 Pa. Commw. LEXIS 11. Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002) 2002 Pa. Commw. LEXIS 580. All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa. Cmwlth. 1997) 1997 Pa. Commw. LEXIS 148.

Therefore, the POs can be granted only if recovery or relief is not possible after all of the Complainants' averments in the complaint are viewed as true for purposes of deciding the preliminary objections, using only those facts specifically admitted.

The averments in the Complaint are limited to a check mark in a box next to the statement: "There is a reliability, safety or quality problem with my utility service." In the "Relief" section, Complainant has written that he is disabled and only receives SSI and SS.

This level of specificity does not permit PECO to formulate and provide a meaningful answer to the Complaint. PECO cannot determine the nature of the alleged problem with its service from a check mark, and they cannot discern what relief the Complainant seeks by his statement that he is disabled and on a limited income. More detail will also permit PECO to address the perceived problem and pursue a possible settlement of the matter.

This Order will direct the Complainant to file and service an Amended Complaint. The Amended Complaint may be on a Commission Complaint form but must provide a clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal investigation sufficient to permit Respondent to formulate a meaningful answer. In other words, what does the Complainant believe that PECO did or did not do which constitutes a reliability, safety or quality of service problem?

The Preliminary Objections are granted and Complainant will be directed to provide additional information in an amended complaint. Failure to file an amended complaint in a timely manner will result in dismissal of the Complaint itself.

CONCLUSIONS OF LAW

1. Commission regulations permit the filing of preliminary objections. 52 Pa. Code §§ 5.101(a)(1)-(6).

2. Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

3. In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the Petitioners, recovery or relief is possible. *Dept. of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003), 2003 Pa. Commw. LEXIS 849; *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996), 1996 Pa. Commw. LEXIS 11.

4. Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002), 2002 Pa. Commw. LEXIS 580.

5. All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa. Cmwlth. 1997), 1997 Pa. Commw. LEXIS 148.

6. The averments in the Complaint are insufficient to enable Respondent to formulate a meaningful response.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by PECO Energy Company in the case captioned Albert H. Pannell v. PECO Energy Company at PUC Docket No. C-2009-2126979 are granted.


2. That the Complainant is directed to file an Amended Complaint within thirty days of the date of this Order with the Commission's Secretary and serve a copy upon Respondent and the undersigned administrative law judge at the following addresses:

Tishekia E. Williams, Esq.
Exelon Business Services Company
2301 Market Street/S23-1
PO Box 8699
Philadelphia PA 19101-8699

Administrative Law Judge Susan D. Colwell
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg PA 17105-3265

3. Failure to file a timely amended complaint may result in the Complaint being dismissed upon motion of the Respondent.

Dated: October 6, 2009


Susan D. Colwell
Administrative Law Judge

C-2009-2126979 ALBERT H. PANNELL V PECO

TISHEKIA E. WILLIAMS ESQ.
EXELON BUSINESS SERVICES COMPANY
2301 MARKET STREET S23-1
PO BOX 8699
PHILADELPHIA PA 19101-8699

ALBERT H. PANNELL
1519 N. GRATZ STREET
APARTMENT B
PHILADELPHIA PA 19121

RECEIVED

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JAN 21 2010

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

ALBERT H. PANNELL

:
:
:
:
:

v.

DOCKET NO. C-2009-2126979

PECO ENERGY COMPANY

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.101, 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, a decision may be entered against you. All pleadings, such as Reply to the Preliminary Objection, 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, January 21, 2010



Ken Massey
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-5358

From: Origin ID: PSQA (215) 841-5353
Anita Zaketa

2301 Market Street
S23-1
Philadelphia, PA 19101



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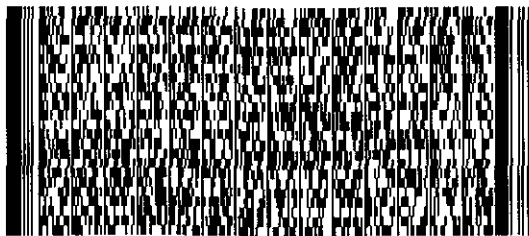
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Invoice #
PO #
Dept #

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James McNulty, Secretary
Public Utilities Commission
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COMMONWEALTH KEYSTONE BUILDING
HARRISBURG, PA 17120

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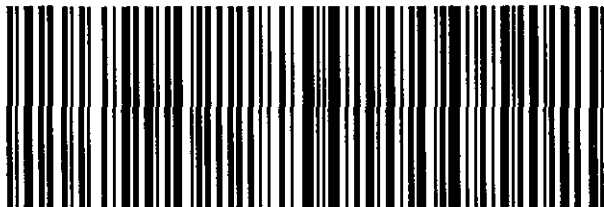


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