

Legal Department

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February 2, 2010

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

**Re: Shane Thomas v. PECO Energy Company
PUC Docket No. C-2010-2152588**

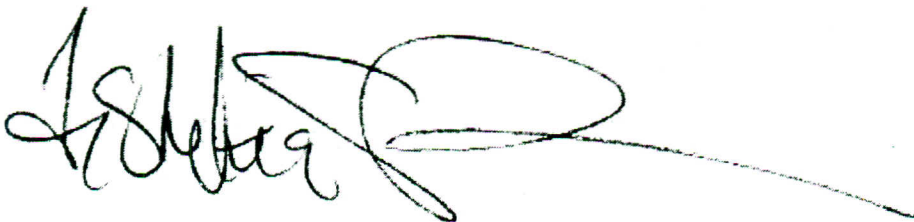
Dear Mr. McNulty:

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

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



Tishekia Williams
Counsel for PECO Energy Company

TW/adz
Enc.

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SHANE THOMAS :
 :
v. : **DOCKET NO. C-2010-2152588**
 :
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, Tishekia Williams, and where applicable, the Administrative Law Judge presiding over the issue.

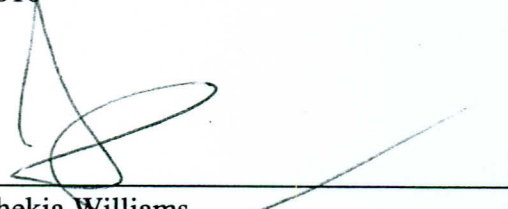
File with:

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

With a copy to:

Tishekia Williams
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Dated at Philadelphia, PA, February 2, 2010



Tishekia Williams
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19101-8699

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SHANE THOMAS	:	
	:	
v.	:	DOCKET NO. C-2010-2152588
	:	
PECO ENERGY COMPANY	:	

PRELIMINARY OBJECTIONS OF RESPONDENT, PECO ENERGY COMPANY

1. Respondent, PECO Energy Company (“PECO Energy”), pursuant to 52 Pa. Code § 5.101(a) respectfully petitions this Honorable Commission to dismiss this action as legally insufficient. Complainant fails to state a claim upon which relief can be granted. 52 Pa. Code § 5.101(a)(4).

2. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.²

3. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible.³

4. A complaint must be able to recover under the law to survive a preliminary objection.⁴

5. All of the non-moving party’s averments must be taken as true for the sake of deciding the preliminary objection.⁵

² *Equitable Small Transportation Interveners v. Equitable Gas Co.*, 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994)

³ 2006 Pa. PUC Lexis 111, *7.

⁴ *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. Ct. 1998) (“preliminary objection should be sustained only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover”).

6. The court does not, however, need to accept, “unwarranted inferences from facts, argumentative allegations, or expressions of opinions.”⁶

7. Complainant admits in his complaint that he made late payments, and that he was told that is why he was assessed a deposit. He also states that he knows that PECO can legally assess a deposit for late payments.⁷

8. Complainant does not dispute the legality of PECO’s actions, but instead asserts his opinion that, on principle, they are wrong.

9. PECO Energy, upon determining that a current customer has bad credit, may require a cash deposit from that customer. *See* Tariff Electric Pa. PUC 5.3.⁸

10. The complaint is legally insufficient because it does not allege that PECO has violated the law, only that Complainant believes that PECO’s actions are wrong on principle. Accordingly, PECO Energy preliminarily objects to the Complaint pursuant to 52 Pa. Code § 5.101(a)(4).

⁵ *Id.* at 7-8.

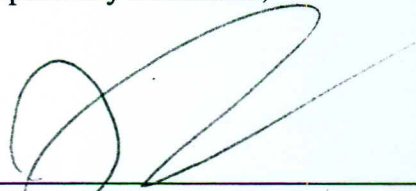
⁶ Feingold v. McNulty, 2009 Phila. Ct. Com. Pl LEXIS 167, *3.

⁷ Complainant states, “What is PECO trying to accomplish by a deposit charge, although they have the legal right to do it?”

⁸ “For customers for whom the Company provides Consolidated EDC Billing or Separate EDC Billing, before the Company will render service or continue to render service, the Company may require an applicant for service or a current customer that has bad credit or an applicant for service whose credit is not established, to provide a cash deposit, letter of credit, surety bond, or other guarantee, satisfactory to the Company. The Company will hold the deposit as security for the payment of final bills and compliance with the Company’s Rules and Regulations. Any residential customer, having secured the return of a deposit, shall not be required to make a new deposit unless the service has been discontinued or terminated, or unless the customer has bad credit. In addition, the Company may require industrial and commercial customers for which it provides Consolidated EDC Billing or Separate EDC Billing to post a deposit at any time if the Company determines that the customer is no longer creditworthy or has bad credit.”

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss the instant Complaint pursuant to 52 Pa. Code § 5.101(a)(4).

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Tishkia Williams', is written over a horizontal line. The signature is stylized with a large loop and a long tail.

Tishkia Williams
Counsel for PECO Energy Company
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Tishkia.williams@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SHANE THOMAS

v.

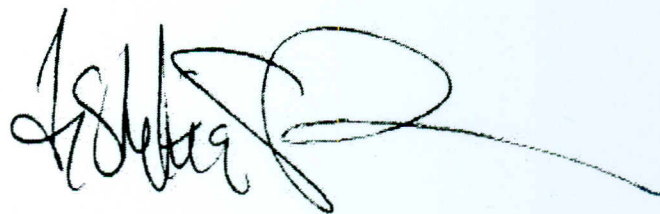
PECO ENERGY COMPANY

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DOCKET NO. C-2010-2152588

VERIFICATION

I, Tishekia 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.



Tishekia Williams

Date: February 2, 2010

