

Legal Department

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Business Services Company

Direct Dial: 215.841.5358

February 16, 2010

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

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FEB 16 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: **Raymond Newstadt v. PECO Energy Company**
PUC Docket No. C-2010-2155100

Dear Mr. McNulty:

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

<u> X </u>	Answer (Original and 3 copies)
<u> </u>	Motion to Consolidate (original and 3 copies)
<u> </u>	Motion for Judgment on the Pleadings (original and 3 copies)
<u> X </u>	Preliminary Objection (original and 3 copies)
<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. 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.

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RAYMOND NEWSTADT

v.

PECO ENERGY COMPANY

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DOCKET NO. C-2010-2155100

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

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dated at Philadelphia, PA, February 16, 2010



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

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
PENNSYLVANIA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RAYMOND NEWSTADT

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DOCKET NO. C-2010-2155100

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: Complainant, a CAP customer, cannot receive an agreement

1. PECO Energy requests dismissal of the instant Complaint to the extent Complainant seeks a payment agreement under both 52 Pa. Code § 5.101(a)(1) & (a)(4). The Commission lacks jurisdiction to issue Complainant a payment agreement because Complainant has no statutory right to a payment agreement for his CAP balance.

2. Complainant has been enrolled in PECO's Customer Assistance Program ("CAP") since August 21, 2008. (See PECO Exhibit 2).

3. Complainant's current account balance of \$1,090.34 consists solely of CAP arrears. (See PECO Exhibit 1).

4. CAP customers, as a matter of law, cannot receive Commission-issued payment agreements. (See 66 Pa. C.S. 1405(c)).

5. Because Complainant's arrears consist solely of CAP balances, the Commission lacks jurisdiction to issue Complainant a payment agreement. Therefore, PECO Energy preliminarily objects to the Complaint under to 52 Pa. Code § 5.101(a)(1).

6. Additionally, the Complaint is legally insufficient because Complainant has no statutory right to receive an agreement on CAP balances from the PUC. Accordingly, PECO Energy preliminarily objects to the Complaint pursuant to 52 Pa. Code § 5.101(a)(4).

Preliminary Objection # 2: Complainant defaulted on a prior payment agreement

7. PECO Energy also requests dismissal of the instant Complaint to the extent Complainant seeks a payment agreement under both 52 Pa. Code § 5.101(a)(1) & (a)(4) because Complainant defaulted on a prior PECO payment agreement.

8. Complainant received a PECO agreement on March 30, 2009 to pay off his balance of \$356.53 in \$10.19 monthly installments.

9. Complainant failed to keep the agreement by making full and timely payments. Complainant defaulted on the agreement effective October 19, 2009. (*See* PECO Exhibit 3).

10. A utility customer that has defaulted on a company agreement cannot receive a subsequent agreement from the Commission absent a change in income. (*See* 66 Pa. C.S. 1405(d)).

11. Complainant does not allege a change in income.

12. PECO's records do not reflect a change in income.

13. The PUC lacks jurisdiction to issue Complainant a payment agreement because Complainant defaulted on a PECO payment agreement. Therefore, PECO Energy preliminarily objects to the Complaint under to 52 Pa. Code § 5.101(a)(1).

14. Additionally, the Complaint is legally insufficient because Complainant has no statutory right to receive an agreement from the PUC due to his prior default. Accordingly, PECO Energy preliminarily objects to the Complaint pursuant to 52 Pa. Code § 5.101(a)(4).

Preliminary Objection # 3: Complainant cannot submit additional medical certificates

15. PECO Energy also requests dismissal of the instant Complaint to the extent Complainant seeks to submit additional medical certificates to stay termination proceedings.

16. A utility customer may stay termination proceedings for up to thirty days by filing a medical certificate with the company. (*See* 52 Pa. Code 56.114).

17. The number of renewals is limited to two 30-day certifications. (*See id.*).

18. Complainant submitted a medical certificate to PECO Energy on October 12, 2009 and renewed the certificate on November 12, 2009 and December 22, 2009.

19. PECO Energy honored the 30-day stays for each of the three certificates or renewals.

20. Complainant has exhausted his statutory right to stay termination proceedings through medical certificates.

21. During a medical certificate stay, the customer is obligated to make equitable payments to the company. (*See* 52 Pa. Code 56.116).

22. Complainant failed his obligation to make equitable payments, as he has made no payments since October 12, 2009.

23. The Complaint is legally insufficient because Complainant has no statutory right to further stay termination proceedings through the submission of medical certificates.

Accordingly, PECO Energy preliminarily objects to the Complaint pursuant to 52 Pa. Code § 5.101(a)(4).

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,



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

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RAYMOND NEWSTADT

v.

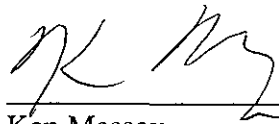
PECO ENERGY COMPANY

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DOCKET NO. C-2010-2155100

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: February 16, 2010

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DOCKET NO. C-2010-2155100

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:

Raymond Newstadt
2715 Dudley St.
Philadelphia, PA 19145

Dated at Philadelphia, Pennsylvania, February 16, 2010.



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

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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



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Philadelphia, PA 19101

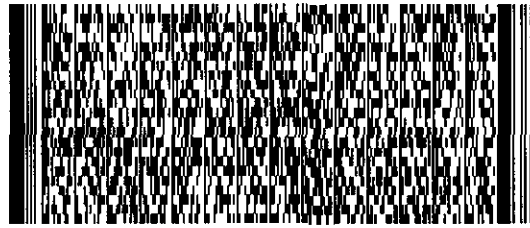
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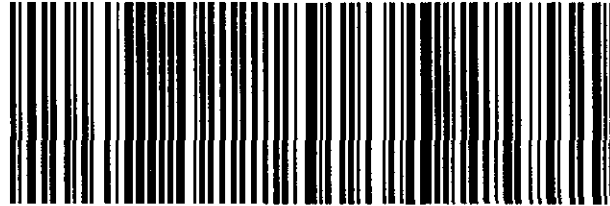
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