

Legal Department

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Business Services
Company

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February 24, 2010

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

RECEIVED

FEB 24 2010

Re: **Beth Ann Fryer-Torres v. PECO Energy Company**
PUC Docket No. C-2009-2100220

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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)
—	Preliminary Objection (original and 3 copies)
—	Exceptions (original and 9 copies)
<u>X</u>	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: Beth Ann Fryer-Torres

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Beth Ann Fryer-Torres (“Complainant”).¹ On January 13, 2010, Special Agent Eranda Vero issued an Initial Decision in the matter of *Beth Ann Fryer-Torres v. PECO Energy Co.*, C-2009-2100220 (“Initial Decision”). The Initial Decision ordered dismissal of the formal complaint with prejudice for failure to prosecute. The Initial Decision is well-reasoned with ample support from the record. As detailed in the Initial Decision, the PUC mailed the parties a notice that the hearing for this matter would take place on December 15, 2009 at 10:00 a.m. PECO Energy appeared for the telephonic hearing, ready to put on its case. Complainant did not appear. PECO Energy respectfully requests that the Exceptions be dismissed because the Initial Decision properly dismissed Complainant’s formal complaint for her failure to appear for a telephonic hearing.

Complainant’s Failure to Appear for Hearings Despite Proper Notice

Administrative agencies of the Commonwealth of Pennsylvania, such as the Public Utility Commission (“PUC”), are required to provide due process to the parties appearing before them.² The due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard.³

¹ Complainant dated the Exceptions February 12, 2010 but did not serve PECO Energy a copy. The Pennsylvania Public Utility Commission (“PUC”) distributed a copy of the Exceptions to PECO Energy in a letter dated February 17, 2010. PECO Energy attaches the Initial Decision and Complainant’s Exceptions as Exhibits 1 and 2, respectively.

² See *Brown v. PECO Energy Co.*, no. C-2008-2060121, Initial Decision at 7 (Pa. P.U.C. May 18, 2009) (Chestnut, J.) (citing *Schneider v. Pa. P.U.C.*, 479 A.2d 10 (Pa. Cmwlth. 1984)).

³ See *id.*

Once the PUC meets its due process requirement, the burden falls upon the parties to appear and participate in the hearing.⁴ As mandated by the Pennsylvania Public Utility Code:

Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused, unless the presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting such reopening or further examination.⁵

The PUC satisfied its due process requirement by mailing Complainant the hearing notice on October 30, 2009. The hearing notice was not returned by the United States Postal Service as undeliverable. The notice is therefore presumed to have been received.⁶ Complainant also received notice when PECO Energy mailed Complainant its exhibits on December 7, 2009, attaching a cover letter listing the hearing date.⁷ By failing to appear at the December 15, 2009 telephonic hearing, Complainant waived her opportunity to participate in the hearing and cannot now reopen the record without proof that her failure to appear was unavoidable and that the interest of PECO Energy and the public interest will not be prejudiced.

Complainant's purported justification for failing to appear cannot satisfy this heightened standard. Complainant first states that she did not "receive[] any notice of a hearing for December 15, 2009." This is incorrect. As described above, Complainant received a formal

⁴ See, e.g., *Mumma v. PPL Elec. Util. Corp.*, No. C-00014869 (Jan. 24, 2002) ("It is well-established law that once timely notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to be present and participate in the hearing.").

⁵ 66 Pa. C.S. 332(f) (emphasis added).

⁶ See *Brown v. PECO Energy*, at 7 ("Notice mailed to a party's last known address and not returned by the post office is presumed to have been received.") (citing *Meierdierck v. Miller*, 394 Pa. 484 (Pa. 1959), among others).

⁷ PECO Energy's December 7, 2009 cover letter is attached as Exhibit 3.

hearing notice from the PUC and a cover letter attaching exhibits from PECO listing the hearing date. Plainly, Complainant's participation in the telephonic hearing was not "unavoidable."⁸

Complainant then states that she "never received any phone calls, but my phone was acting up (not ringing or picking up calls, taking messages) and has since been replaced." This is irreconcilably inconsistent with the attempts to reach Complainant for the December 15, 2009 hearing. As described in the Initial Decision, Special Agent Vero left a message on the Complainant's answering machine at the phone number provided in the Complaint. After a ten minute recess Special Agent Vero called the Complainant and again left a message on her answering machine. Even assuming *arguendo* that her telephone was not working properly, Complainant should have notified the Commission of her telephone's condition. No such notice was provided. Again, Complainant cannot establish that her failure to appear was "unavoidable."

Complainant also cannot establish that a reopening of the proceeding would not prejudice the public's or PECO Energy's interests. In addition to failing to appear for the December 15, 2009 hearing, Complainant also failed to appear for a prior telephonic hearing on September 25, 2009 at 10:00 a.m.⁹ PECO Energy should not be prejudiced by having to expend an inordinate amount of its resources repeatedly preparing for hearings in which the Complainant does not appear. Nor should the public be prejudiced by the Complainant's wasteful use of the PUC's and utility company's resources. Accordingly, the Initial Decision properly dismissed the formal complaint in this matter with prejudice.

⁸ 66 Pa. C.S. 332(f).

⁹ The hearing was then rescheduled to December 15, 2009 due to Complainant's reported medical condition. Complainant does not offer a medical justification for her failure to appear for the December 15, 2009 hearing.

Complainant's Prior PUC Complaints

To provide additional relevant context, PECO Energy responds that dismissal with prejudice is further justified given the Complainant's litigious history. Complainant has now filed ten (10) complaints with the PUC¹⁰ and has received at least six (6) BCS payment agreements. Complainant regrettably does not expend the same efforts into appearing for PUC-ordered hearings as she does in drafting complaints. Complainant should not be permitted to waste the time and resources of the PUC or PECO Energy any further on her claims.

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss the instant Complaint.

Respectfully Submitted,



Ken Massey
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
(215) 841-5358
Fax: 215.568.3389
Ken.Massey@exeloncorp.com

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SECRETARY'S BUREAU

¹⁰ Complainant has filed a prior formal complaint at Docket No. C-20043071 and 9 informal complaints at BCS numbers 1629448, 1487563, 1315048, 1093083, 1315048, 1093083, 0889496, 0798813 and 0660788.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BETH ANN FRYER-TORRES

v.

PECO ENERGY COMPANY

:
:
:
:
:

DOCKET NO. C-2009-2100220

VERIFICATION

I, Ken Massey, 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: February 24, 2010



Ken Massey

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FEB 24 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BETH ANN FRYER-TORRES

v.

PECO ENERGY COMPANY

:
:
:
:
:

DOCKET NO. C-2009-2100220

CERTIFICATE OF SERVICE

I, Ken Massey, hereby certify that I have this day served a copy of PECO Energy Company's Reply to Exceptions in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

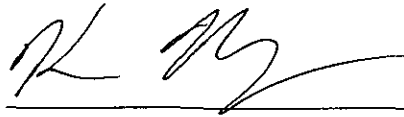
BETH ANN FRYER-TORRES
764 Flint Hill Road
Swedeland, PA 19479

Dated at Philadelphia, Pennsylvania, February 24, 2010.

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FEB 24 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



Ken Massey
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19103
(215) 841-5358
Fax: 215.568.3389
Ken.Massey@exeloncorp.com

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Beth Ann Fryer-Torres

v.

PECO Energy Company

C-2009-2100220

INITIAL DECISION

Before
Eranda Vero
Special Agent

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

HISTORY OF THE PROCEEDING

On April 8, 2009, Beth Ann Fryer-Torres (Ms. Fryer-Torres or Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission) alleging that there are incorrect charges on her bill. She also alleges miscommunication on the part of Respondent with regard to medical certificates. As relief, Complainant requests "a reasonable payment arrangement." Complaint ¶5.

On April 30, 2009, Respondent filed an Answer and New Matter addressing the material allegations of the Complaint.

A Telephone Hearing Notice dated June 10, 2009, notified the parties that an Initial Telephone Hearing was scheduled for Friday, September 25, 2009, at 10:00 a.m. This case was assigned to me pursuant to 52 Pa. Code §56.174.

On August 11, 2009, I issued a Prehearing Order directing the parties, among other things, that: (1) a request to change the scheduled hearing should be sent at least five days



prior to the hearing date, be in writing and state the agreement or opposition of the other party; (2) any party may lose the case if they do not take part in the hearing; and (3) if Complainant is to be contacted at a different telephone number than the one on the hearing notice, Complainant is to provide the correct telephone number to the presiding officer at least five business days before the scheduled telephone hearing.

The initial telephone hearing convened as scheduled on November 25, 2009. I attempted to contact Complainant at her home telephone number (484) 681-XXXX listed in her Complaint. The call was picked up by an answering machine. I left a voice message stating who I was, the reason for my call and that I would call back in approximately 10 minutes at which time, if Complainant remained unavailable, the hearing would proceed in her absence. I called a ten-minute recess and, at approximately 10:25 a.m., I dialed the (484) 681-XXXX number one more time. Again, I was not able to reach Ms. Fryer-Torres at that number and left a message informing the Complainant that the hearing would proceed in her absence. I advised Respondent's attorney that I was unable to contact the Complainant, and the hearing was held in her absence. No witnesses were presented and no exhibits were admitted into the record. Respondent's attorney moved for dismissal of this case for failure to prosecute.

Later in the afternoon of September 25, 2009, Ms. Fryer-Torres left a message in my answering machine informing me that she had suffered a medical emergency the previous evening and had just been released from the hospital. I called Ms. Fryer-Torres back and asked her to get in touch with me once she felt better so that we could reschedule the hearing at an opportune day for the parties involved. I informed Respondent that the hearing on Ms. Fryer-Torres' Complaint would be continued at a later date for good cause shown.

As I did not hear from Complainant, on October 30, 2009, a second Telephone Hearing Notice was mailed to the parties notifying them that the hearing was scheduled for Tuesday, December 15, 2009, at 10:00 a.m. Like the first Telephone Hearing Notice and the Prehearing Order, the Telephone Hearing Notice of October 30, 2009 was mailed to the address that Ms. Fryer-Torres had provided in her Complaint, 764 Flint Hill Road, King of Prussia, PA

19406. This document has not been returned to the sender by the United States Postal Service as undeliverable.

The Initial Telephone Hearing convened as scheduled on December 15, 2009. Ken Massey, Esq. appeared representing PECO Energy Company. I attempted to contact Complainant at the telephone number (484) 681-XXXX listed in her Complaint.¹ The call was picked up by an answering machine. I left a voice message stating who I was, the reason for my call and that I would call back in approximately 10 minutes at which time, if Complainant remained unavailable, the hearing would proceed in her absence. Following a ten-minute recess, I dialed the number one more time. Again, my call was intercepted by an answering machine where I left a message informing the Complainant that the hearing would proceed in her absence. To date, there is no further information about Beth Ann Fryer-Torres regarding this Complaint.

I advised Mr. Massey, that I was unable to contact the Complainant and the hearing was held in her absence. No witnesses were presented and no exhibits were admitted into the record. Respondent's attorney moved for dismissal of this case for failure to prosecute. That motion will be granted in the Ordering Paragraphs below. The record closed on December 15, 2009.

FINDINGS OF FACT

1. The Complainant is Beth Ann Fryer-Torres, who resides at 764 Flint Hill Road, King of Prussia, PA 19406.
2. Respondent is PECO Energy Company.
3. On April 8, 2009, Beth Ann Fryer-Torres filed a formal Complaint with the Commission alleging that there are incorrect charges on her bill. She also alleges

¹ The Company witness provided me with a second contact number for Complainant, (610) 992-XXXX. I dialed that number but was unsuccessful in reaching Ms. Fryer-Torres. The number belongs to Complainant's prior place of employment.

miscommunication on the part of Respondent with regard to medical certificates. As relief, Complainant requests “a reasonable payment arrangement.” Complaint ¶5.

4. A Telephone Hearing Notice dated October 30, 2009, advised the Complainant of the hearing date and time to be present and emphasized that the Complainant may lose the case if she was not present to present her formal Complaint.

5. A Prehearing Order was issued advising the parties of the proper procedure to obtain a continuance to reschedule the hearing date.

6. The Prehearing Order also stated that the parties are to contact the presiding officer if the telephone numbers to be contacted for the scheduled hearing are different than the numbers provided on the service list of the Prehearing Order.

7. None of the documents mailed to Complainant at the address provided on her Complaint were returned to the Commission by the United States Postal Service as undeliverable.

8. Complainant did not answer the telephone number designated to contact her for the hearing.

9. Complainant did not settle or withdraw this Complaint prior to the scheduled hearing date or obtain a continuance.

DISCUSSION

In this formal Complaint, Beth Ann Fryer-Torres alleges that there are incorrect charges on her bill. She also alleges miscommunication on the part of Respondent with regard to medical certificates. As relief, Complainant requests “a reasonable payment arrangement.” Complaint ¶5. As the party seeking affirmative relief from the Commission, the burden of proof rests on the Complainant. 66 Pa. C.S. § 332(a).

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. Schneider v. Pa. PUC, 479 A.2d 10 (Pa. Cmwlth. 1984). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review, 645 A.2d 944 (Pa. Cmwlth. 1994).

A Hearing Notice was mailed to the Complainant at the address listed on her Complaint approximately five (5) weeks prior to the scheduled hearing and was not returned to the Commission by the post office. Therefore, Complainant was deemed to have received this document and had sufficient notice of the day, date and time of the scheduled hearing. Neither Complainant nor a representative licensed to practice law in this Commonwealth answered the telephone call at the telephone number designated to contact the Complainant for this Telephone hearing. Neither the Complainant nor a representative licensed to practice law in this Commonwealth provided the presiding officer with a different telephone number than that indicated on the formal Complaint. Complainant did not appear at the hearing. To date, there is no further information about the Complainant regarding this hearing. Ms. Fryer-Torres' failure to appear is unexcused because, as her call to the presiding officer in the afternoon of September 25, 2009 showed, the Commission's records contain the correct mailing address for Ms. Fryer-Torres, and she is aware of the correct procedure for requesting a continuance.

Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. Craig Sentner v. Bell Telephone Co. of Pennsylvania, Docket No. F-00161106, Opinion and Order entered October 25, 1993. Complainant waived the opportunity to participate in the hearing by failing to appear. Ms. Fryer-Torres's Complaint will be dismissed with prejudice. 52 Pa. Code § 5.245(a); Martin W. Jefferson v. UGI Utilities, Inc., 1995 Pa. PUC LEXIS 159.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa. C.S. § 701.
2. As the Complainant, Beth Ann Fryer-Torres had the burden of proof and failed to carry that burden. 66 Pa. C.S. § 332(a).
3. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review, 645 A.2d 944 (Pa. Cmwlth. 1994).
4. By failing to appear and be heard on this Complaint, Complainant waived the opportunity to participate in the hearing by failing to appear. 52 Pa. Code § 5.245(a); Martin W. Jefferson v. UGI Utilities, Inc., 1995 Pa. PUC LEXIS 159.
5. Ms. Fryer-Torres has failed to meet her burden of proving that she is entitled to the relief she was seeking from the Commission.

ORDER

THEREFORE,

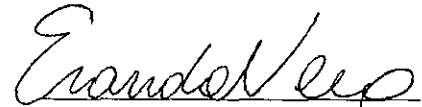
IT IS ORDERED:

1. That the motion of PECO Energy Company to dismiss the formal Complaint of Beth Ann Fryer-Torres at Docket No. C-2009-2100220 is granted.

2. That the complaint filed by Beth Ann Fryer-Torres against PECO Energy Company at Docket No. C-2009-2100220 is dismissed with prejudice for failure to prosecute.

3. That the Secretary's Bureau should mark this matter closed.

Date: January 13, 2010



Eranda Vero
Special Agent

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

IN REPLY PLEASE
REFER TO OUR FILE

February 17, 2010

TISHEKIA WILLIAMS

FEB 22 2010

Ken Massey Esq.
2301 Market Street S23-1
Po Box 8699
Philadelphia Pa 19101

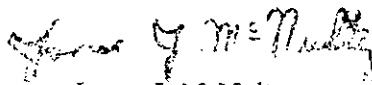
Re: C-2009- 2100220, Beth Ann Fryers-Torres v. PECO Energy Company

Dear Mr. Massey:

On February 16, 2010, Beth Ann Fryers-Torres filed Exceptions to the Initial Decision of Special Agent Erando Vero in the above captioned matter. Our review of the Exceptions revealed that no certificate of service or other indications of service accompanied that filing. Accordingly, we have enclosed a copy of the Exceptions for your use. This shall constitute service of the Exceptions for purposes of 52 Pa. Code §5.533.

Pursuant to 52 Pa. Code §5.535, you shall have ten (10) days from the date of service of the enclosed Exceptions to reply. The Exceptions were filed February 16, 2010. Although the Exceptions were timely filed, due to the failure of Beth Ann Fryers-Torres to note service on PECO Energy Company Inc and in order to avoid prejudice to either party, we shall deem the filing date to be the date of this letter for purposes of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), relating to the time for Commission consideration of Exceptions.

Sincerely,



James J. McNulty
Secretary

nvl
Enclosure

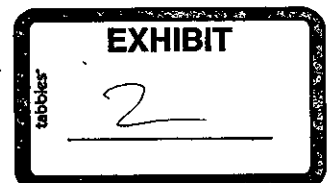
cc: Beth Ann Fryer-Torres
764 Flint Hill Road
King of Prussia Pa 19406
Office of Special Assistants
Document Folder

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

2680701205



February 12, 2010

COPY

C-2009-2100ZZO

To whom it may concern,

I am sending these written Exceptions in response to the decision made for my complaint regarding PECO.

I never received any notice of a hearing for December 15, 2009. I never received any phone calls, but my phone was acting up (not ringing or picking up calls, taking messages) and has since been replaced.

I have copies of PECO bills from I believe 2007 -2008 where I did not have to pay because of the errors on my bills. I have these bills stored away and will be retrieving them to make copies and send to you if requested.

I do have a complaint about the medical certificates as well. I was told one was not acceptable due to the lack of information (address) the doctor completed, but this certificate was accepted, after I received a letter stating it was rejected. My daughter's doctor resent the information a few days after I received the letter of rejection and Peco took it as another certificate.

I had a customer service rep comment on my charges being too high and she was sending my bill to I believe she said resolution services to be looked into.

I have had my gas meter replaced due to problems and my bill has been estimated several times.

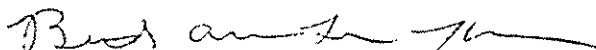
I have asked questions regarding my bill and the late fees, why so high, the rep I spoke to could not give me an answer; he kept on saying I must have been shut off or because of moving. I explained to him more than once I was never shut off and I have been at the same residence for over 13 years. He kept placing me on hold and coming back on the line with the same explanations.

I have sent paperwork or made comments to PECO and the PUC in regards to all this or will be making copies and sending at your request if needed.

I am responsible for my bill!! I am not looking for someone else to pay for it! All I ask is that my bill is looked into thoroughly to make sure the charges are correct and some type of reasonable agreement is made. I am not saying PECO did this intentionally; humans make mistakes and over look errors.

Thank you,

BethAnn Fryer-Torres



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SECRETARY'S BUREAU

2010 FEB 16 AM 10:59

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Legal Department

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Direct Dial: 215 841 6841

December 7, 2009

Special Agent Eranda Vero
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Fl.
Harrisburg, PA 17105-3265

RE: Beth Ann Fryer-Torres vs. PECO Energy Company
Docket No. C-2009-2100220
Date of Hearing: Tuesday, December 15, 2009

Dear Special Agent Eranda Vero:

Enclosed please find an original and two copies of PECO's proposed exhibits 1-7, which it plans to use at the above-referenced telephonic hearing. By copy of this letter, I am sending a copy of these documents to the Complainant.

Please call my direct dial number if you have any questions regarding this case.

Very truly yours,



Ken Massey
Counsel for PECO Energy Company

KM/zr

Enc.

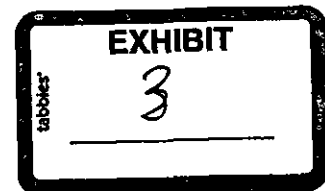
cc: Beth Ann Fryer-Torres
764 Flint Hill Road
King of Prussia, PA 19101

Renee Tarpley

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FEB 24 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



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



2301 Market Street
S23-1
Philadelphia, PA 19101

Ship Date: 24FEB10
ActWgt: 1.0 LB
CAD: 101422610/INET3010

SHIP TO: (717) 772-7777 **BILL SENDER**
James McNulty, Secretary
Public Utilities Commission
400 NORTH ST FL 2
COMMONWEALTH KEYSTONE BUILDING
HARRISBURG, PA 17120

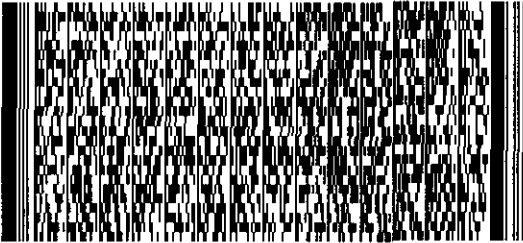
Delivery Address Bar Code



Ref # Beth Ann Fryer-Torres
Invoice #
PO #
Dept #

TRK# 7932 9702 0658
0201

THU - 25 FEB A1
STANDARD OVERNIGHT

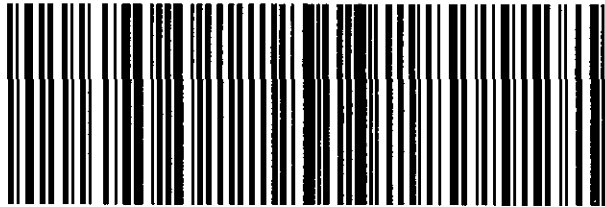


17120

PA-US

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5862/CTD30FE8

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