

Legal Department

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March 9, 2010

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

**Re: American Credit Alliance, Inc. v. PECO Energy Company
PUC Docket No. C-2010-2157825**

Dear Mr. McNulty:

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

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

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.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**AMERICAN CREDIT
ALLIANCE, INC.**

v.

PECO ENERGY COMPANY

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DOCKET NO. C-2010-2157825

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, March 9, 2010



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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**AMERICAN CREDIT
ALLIANCE, INC.**

v.

PECO ENERGY COMPANY

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DOCKET NO. C-2010-2157825

**PRELIMINARY OBJECTIONS OF RESPONDENT,
PECO ENERGY COMPANY**

1. Pursuant to 52 Pa. Code § 5.101(a)(1), and § 5.101(a)(4) respectfully, PECO Energy Company respectfully request this Honorable Commission dismiss the instant case inasmuch as the complaint contains claims for which the Commission lacks subject matter jurisdiction and claims that are legally insufficient.

**COMPLAINANT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN
BE GRANTED**

2. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.⁵

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.⁶

4. A complaint must be able to recover under the law to survive a preliminary objection.⁷

⁵ *Equitable Small Transportation Interveners v. Equitable Gas Co.*, 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994)

⁶ 2006 Pa. PUC Lexis 111, *7.

4. A complaint must be able to recover under the law to survive a preliminary objection.⁷
5. All of the non-moving party's averments must be taken as true for the sake of deciding the preliminary objection.⁸
6. The court does not, however, need to accept, "unwarranted inferences from facts, argumentative allegations, or expressions of opinions."⁹
7. Complainant does not deny that it made late payments.
8. Complainant does not dispute the legality of PECO's actions, but instead asserts its 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 5.3.¹⁰
10. PECO Energy may also issue a notice of termination for unpaid charges.¹¹
11. The complaint is legally insufficient because it does not allege that PECO has violated the law. Instead, Complainant asserts it should not be assessed a deposit because it eventually pays its bills and that receiving the notice of termination "ruined his day"

⁷*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").

⁸*Id.* at 7-8.

⁹*Feingold v. McNulty*, 2009 Phila. Ct. Com. Pl LEXIS 167, *3.

¹⁰ "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."

¹¹ 66 Pa.C.S. §1406(a)(1)

because his employees were unaware that the company was experiencing cash flow problems.

12. Accordingly, PECO Energy preliminarily objects to the above referenced claims pursuant to 52 Pa. Code § 5.101(a)(4).

THE COMMISSION LACKS JURISDICTION AS TO PART OF THE COMPLAINT

13. PECO further objects to Complainant's claim because the Commission lacks jurisdiction to interpret the scope and validity of an easement.¹²

14. Complainant claims that "he doubts that PECO has an easement that allows it to run a 45" gas main on its property." Resolution of this claim requires the Commission to interpret the terms and validity of the easement that allows PECO to run a gas line under Complainant's property.

15. PECO avers that the Commission lacks jurisdiction to determine the scope and validity of an easement. Accordingly, PECO Energy preliminarily objects to the Complaint pursuant to 52 Pa. Code § 5.101(a)(1).

¹² Shedlosky v. PECO, 2007 Pa. PUC LEXIS 59, *15 ("the Commission has no jurisdiction to interpret the substantive provisions of an easement, but can merely determine if a right-of-way agreement exists").

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss the instant Complaint pursuant to 52 Pa. Code § 5.101(a)(4) and (a)(1).

Respectfully Submitted,



Tishkia Williams
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
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(215) 841-6841
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**AMERICAN CREDIT
ALLIANCE, INC.**

v.

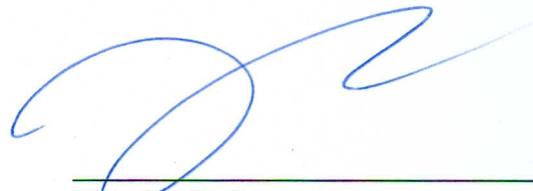
PECO ENERGY COMPANY

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DOCKET NO. C-2010-2157825

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: March 9, 2010



*** Account Information ***

Account Number: 11932-00803
 Account Status: Active
 Requested By: AMERICAN CREDIT
 (215)295-7195 Extension:
 Mail To: AMERICAN CREDIT
 2 S DELMORR AV
 3 PH
 MORRISVILLE PA 19067

*** Current Account Status ***

Current Bill: \$581.88
 Billed Prior: \$0.00
 Balance Due: \$581.88
 Service Address: 2 S DELMORR AV
 3 PH
 MORRISVILLE PA 19067
 Credit Amount: \$0.00
 Deposit Requested: \$2395.00
 Deposit On-Hand: \$2395.00
 Meter Bill Grp: 12
 Rate: Gas Commercial Heating Service
 Electric Commercial Service

DATE	CHARGE TYPE	BILLING PERIOD	READ	METER #	CHARGE AMOUNT	CREDIT AMOUNT	TOTAL BILL	BALANCE FORWARD	DUE DATE	KWH	CCF	KW
							\$1049.64					
03/07/08	Payment											
03/18/08	GAS SERVICE		6354	020855123	\$397.81							
03/18/08	ELECTRIC SERVICE		47275	031956864	\$519.09		\$916.90		04/09			
03/18/08	Regular Bill											
04/07/08	Payment						\$916.90					
04/16/08	GAS SERVICE		6479	020855123	\$205.31							
04/16/08	ELECTRIC SERVICE		50782	031956864	\$507.12		\$712.43		05/08			
04/16/08	Regular Bill											
05/13/08	Late Payment Charge				\$10.69							
05/15/08	Payment						\$712.43					
05/15/08	GAS SERVICE		6501	020855123	\$49.08							
05/15/08	ELECTRIC SERVICE		54323	031956864	\$599.08		\$658.85	\$10.69	06/06			
05/15/08	Regular Bill											
06/11/08	Late Payment Charge				\$9.73							
06/16/08	Payment						\$658.85					
06/16/08	GAS SERVICE		6511	020855123	\$31.39							
06/16/08	ELECTRIC SERVICE		58746	031956864	\$843.97		\$885.09	\$9.73	07/08			
06/16/08	Regular Bill											
07/15/08	Late Payment Charge				\$13.13							
07/16/08	Payment						\$885.09					
07/17/08	GAS SERVICE		6511	020855123	\$15.18							
07/17/08	ELECTRIC SERVICE		63802	031956864	\$812.74		\$841.05	\$13.13	08/08			
07/17/08	Regular Bill											
08/13/08	Late Payment Charge				\$12.42							
08/15/08	GAS SERVICE		6511	020855123	\$15.18							
08/15/08	ELECTRIC SERVICE		69004	031956864	\$875.45		\$1744.10	\$853.47	09/08			
08/15/08	Regular Bill											
08/20/08	Payment						\$841.05					
09/15/08	Late Payment Charge				\$13.36							
09/16/08	GAS SERVICE		6511	020855123	\$15.18							
09/16/08	ELECTRIC SERVICE		74004	031956864	\$834.93		\$1766.52	\$916.41	10/08			
09/16/08	Regular Bill											
10/14/08	Late Payment Charge				\$26.11							
10/15/08	GAS SERVICE		6514	020855123	\$20.26							
10/15/08	ELECTRIC SERVICE		77874	031956864	\$590.65		\$2403.54	\$1792.63	11/06			
10/15/08	Regular Bill											
10/29/08	Payment						\$2403.54					
11/13/08	GAS SERVICE		6562	020855123	\$98.02							
11/13/08	ELECTRIC SERVICE		81890	031956864	\$592.98		\$691.00		12/05			
11/13/08	Regular Bill											
12/10/08	Late Payment Charge				\$10.36							
12/16/08	GAS SERVICE		6810	020855123	\$409.28							
12/16/08	ELECTRIC SERVICE		85687	031956864	\$536.16		\$1646.80	\$701.36	01/07			
12/16/08	Regular Bill											
12/17/08	Payment						\$691.00					
01/13/09	Late Payment Charge				\$14.18							
01/20/09	GAS SERVICE		7288	020855123	\$724.04							
01/20/09	ELECTRIC SERVICE		89627	031956864	\$536.85		\$2230.87	\$969.98	02/11			
01/20/09	Regular Bill											
01/22/09	Payment						\$945.44					
02/17/09	Late Payment Charge				\$19.07							
02/18/09	GAS SERVICE		7690	020855123	\$637.67							
02/18/09	ELECTRIC SERVICE		93163	031956864	\$497.89							

DATE	CHARGE TYPE	BILLING PERIOD	READ	METER #	CHARGE AMOUNT	CREDIT AMOUNT	TOTAL BILL	BALANCE FORWARD	DUE DATE	KWH	CCF	KW
02/18/09	Regular Bill						\$2440.06	\$1304.50	03/12			
02/20/09	Payment					\$1285.43						
03/11/09	Payment					\$1154.63						
03/19/09	GAS SERVICE		7971	020855123	\$423.91							
03/19/09	ELECTRIC SERVICE		96625	031956864	\$503.53							
03/19/09	Regular Bill						\$927.44		04/13			
04/03/09	Payment						\$927.44					
04/17/09	GAS SERVICE		8104	020855123	\$206.43							
04/17/09	ELECTRIC SERVICE		28	031956864	\$494.02							
04/17/09	Regular Bill						\$700.45		05/11			
04/27/09	Payment						\$700.45					
05/18/09	GAS SERVICE		8114	020855123	\$39.67							
05/18/09	ELECTRIC SERVICE		3793	031956864	\$622.03							
05/18/09	Regular Bill						\$661.70		06/09			
06/04/09	Payment						\$661.70					
06/17/09	GAS SERVICE		8114	020855123	\$26.53							
06/17/09	ELECTRIC SERVICE		7927	031956864	\$773.20							
06/17/09	Regular Bill						\$799.73		07/09			
07/13/09	Payment						\$799.73					
07/17/09	GAS SERVICE		8114	020855123	\$26.53							
07/17/09	ELECTRIC SERVICE		12810	031956864	\$882.88							
07/17/09	Regular Bill						\$909.41		08/10			
08/17/09	GAS SERVICE		8114	020855123	\$26.53							
08/17/09	ELECTRIC SERVICE		17497	031956864	\$894.19							
08/17/09	Late Payment Charge				\$13.64							
08/17/09	Regular Bill						\$1843.77	\$923.05	09/08			
08/26/09	Payment						\$909.41					
09/15/09	Late Payment Charge				\$13.81							
09/16/09	GAS SERVICE		8114	020855123	\$26.53							
09/16/09	ELECTRIC SERVICE		21760	031956864	\$812.56							
09/16/09	Regular Bill						\$1787.26	\$948.17	10/08			
10/13/09	Late Payment Charge				\$26.40							
10/15/09	GAS SERVICE		8114	020855123	\$26.53							
10/15/09	ELECTRIC SERVICE		25745	031956864	\$646.38							
10/15/09	Regular Bill						\$2486.57	\$1813.66	11/06			
10/26/09	Payment						\$1787.26					
11/11/09	Late Payment Charge				\$10.10							
11/13/09	GAS SERVICE		8155	020855123	\$74.95							
11/13/09	ELECTRIC SERVICE		29387	031956864	\$598.55							
11/13/09	Regular Bill						\$1382.91	\$709.41	12/07			
11/20/09	DEPOSIT				\$2395.00							
12/14/09	Late Payment Charge				\$20.20							
12/16/09	GAS SERVICE		8249	020855123	\$141.90							
12/16/09	ELECTRIC SERVICE		33463	031956864	\$643.68							
12/16/09	Regular Bill						\$4583.69	\$1403.11	01/07			
12/31/09	Payment						\$1382.91					
01/12/10	Late Payment Charge				\$11.79							
01/19/10	GAS SERVICE		8547	020855123	\$405.28							
01/19/10	ELECTRIC SERVICE		37708	031956864	\$590.27							
01/19/10	DEPOSIT											
01/19/10	Regular Bill						\$4208.12	\$3212.57	02/10			
01/25/10	Payment						\$1007.34					
02/02/10	Payment						\$805.78					
02/16/10	Late Payment Charge				\$26.72							
02/17/10	GAS SERVICE		8800	020855123	\$348.64							
02/17/10	ELECTRIC SERVICE		41673	031956864	\$582.12							
02/17/10	DEPOSIT											
02/17/10	Regular Bill						\$3352.48	\$2421.72	03/11			
03/03/10	Payment						\$2770.60					