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April 19, 2009

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

RECEIVED

APR 19 2010

Re: Carolina B. Harris v. PECO Energy Company
PUC Docket No. C-2009-2101597

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 to Dismiss and for a Judgment on the Pleadings (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)
<u> X </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,



Michael Swerling
Counsel for PECO Energy Company

MS/mb
Enclosure

cc: Marlane R. Chestnut, Administrative Law Judge
John P. McBlain, Esquire

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CAROLINA B. HARRIS	:	
	:	
COMPLAINANT	:	
	:	
v.	:	DOCKET NO. C-2009-2101597
	:	
PECO ENERGY COMPANY	:	
	:	
RESPONDENT	:	

PECO ENERGY COMPANY’S REPLY BRIEF

HISTORY OF THE CASE

This case is a simple billing dispute about what the Complainant’s correct account balance was on October 25, 2006. The Complainant, Ms. Carolina Harris, filed three formal complaints against PECO Energy Company (“PECO”) between 2006 and 2009 related to the same facts and issues. The First Complaint was filed by Ms. Harris on June 29, 2006 at docket C-20066521. In that Complaint, she alleged that PECO did not properly credit her payments. In an attached letter, she claimed receipt of a PECO bill for \$3,191.23 and that she was trying to avoid termination of service.

A hearing was scheduled for October 25, 2006 before Administrative Law Judge, Ky Van Nguyen. On that date, PECO and Ms. Harris appeared for hearing. The judge provided an opportunity to discuss settlement prior to beginning the hearing. PECO and Ms. Harris reached an agreement and placed its terms on the record. (PECO Exhibit 4). According the transcript for that hearing, the settlement terms placed on the record by Ms. Tarpley were:

We have agreed to cancel the deposit on the customer's account in the amount of \$398, as well as have the electric service restored at 604 Rose Street. The customer will also continue on the agreement at \$40 installment plus the current billing, to begin with the November 2006 bill. (PECO Exhibit 4, page 4).

The judge asked if "that was okay" to both parties. Neither objected and the hearing was concluded. (PECO Exhibit 4, page 5).

Shortly after that 2006 hearing, PECO sent Ms. Harris settlement letters and an account summary. (N.T. 261, 266). Ms. Harris disagreed with her account balance and refused to have the payment agreement placed on that balance. (N.T. 268). Instead, she argued that PECO agreed to place her agreement on a lower balance. (N.T. 178).

As a result, Ms. Harris filed her Second Complaint on June 27, 2007 at docket C-2007-7884. In that Complaint, she generally alleged incorrect billing. A hearing was held on February 4, 2008, before Administrative Law Judge Angela T. Jones. Ms. Harris placed her entire case on the record, but time ran out before she could cross-examine PECO's witness, Ms. Tarpley. (N.T. 198 and PECO Exhibit 1, page 96).

At the hearing's end, Ms. Harris objected to the admittance of PECO's account statement exhibit because it differed from the account statement PECO provided to her at the October 25, 2006 settlement discussions. (PECO Exhibit 1, page 89). Ms. Harris objected because "when you came to the hearing the last time we did not go over these pages page by page." (Id.) To avoid losing her objection, Ms. Harris began to argue that she needed an attorney because she was unprepared. (PECO Exhibit 1, page 90-95). Her objection was overruled and a second hearing date was scheduled for her cross-examination of Ms. Tarpley. (PECO Exhibit 1, page 96). Ms. Harris ultimately withdrew that Complaint prior to the second hearing date. (N.T. 198).

Ms. Harris filed the current Complaint (“Third Complaint”) on April 6, 2009 at docket C-2009-2101597. In the instant proceeding, she generally alleges incorrect billing and requested that PECO justify its billing. She also claimed that PECO refused to keep an agreed upon contract. A hearing occurred before Administrative Law Judge Marlane R. Chestnut (“ALJ Chestnut”) on March 2, 2010. PECO and Ms. Harris both appeared with counsel and generated a 306-page transcript. PECO offered 10 exhibits, which were admitted into the record and Ms. Harris offered no exhibits. ALJ Chestnut instructed the parties to file briefs. Pursuant to her Post-Hearing Order #1, PECO is submitting its Rely Brief for consideration.

At the most recent hearing, part of the record generated was confusing because the Complainant’s testimony and memory were unclear. Therefore, ALJ Chestnut requested that both parties file briefs to clarify the confusing issues. (N.T. 303).

To that end, the Complainant’s attorney, argued in his Main Brief that Ms. Harris’ account was a confusing “Bird’s Nest”¹. During the March 2009 hearing, Attorney McBlain also argued that Ms. Harris’ billing was like a “ball of spaghetti.” (N.T. 64). Additionally, he stated that because “we’re missing the forest through the trees...I don’t know that you can ever untangle the bird’s nest.” (N.T. 209). PECO is not going to talk about birds’ nests, spaghetti balls or forests in its Reply Brief. PECO is prepared to discuss the issues in a clear manner based on the facts in record.

The confusion that Complainant’s attorney alludes to lies with the Complainant herself. In fact, Complainant’s counsel was unable to set forth all of his own client’s allegations. According to Mr. McBlain, “Ms. Harris indicates she’s got other bases for the account differences, but I’m not able to articulate those to you.” (N.T. 99).

¹ Complainant’s Main Brief, page 4.

PECO's Reply Brief will explain: 1) that Complainant did not make a \$1,164.66 payment in April 2004; 2) that both parties initially believed a settlement was reached on October 25, 2006; the date of the first hearing; 3) that after PECO sent Ms. Harris a settlement letter, she disagreed with the balance that the payment agreement would be subject to and therefore there was no meeting of the minds on that provision.

Since that time, Ms. Harris attempted to force PECO to enact her understanding of the 2006 failed settlement, including her belief of what her account balance was on October 25, 2006.

Complainant did not prove with a preponderance of evidence that she paid PECO \$1,164.66 on April 12, 2004. She also did not prove that PECO agreed her account balance was \$2,789.72 on October 25, 2006, which is the crux of her complaint. Therefore, there is no unresolved settlement term to enforce and her request to enforce a settlement provision is moot. There is also no justification for Complainant's requested relief of reducing her current balance from \$5,444.82 down to \$1,730.60 and that request should be denied.

STATEMENT OF FACTS

Ms. Harris' account history at 604 Rose Street began in 2003. (N.T. 241). She demonstrated a consistently poor payment history with sporadic payments from 2003 until the present time. (N.T. 241-244, 269-274). As of the hearing date, her total unpaid balance was \$5,444.82. (N.T. 274). Complainant violated four PECO payment agreements and one with the BCS. (PECO Exhibit 8).

By way of background, on April 12, 2004, a former address balance of \$1,164.66 from 922 Yeadon Street transferred into Complainant's current account. (N.T. 242, PECO Exhibit 1, and 6). That brought Complainant's account balance to \$2,151.48. (PECO Exhibit 1, page 1).

On May 3, 2005, the Complainant filed an informal complaint with the Bureau of Consumer Services ("BCS") at case number 1893204. (N.T. 245). This was the first time that Ms. Harris disputed a final bill balance transfer in the amount of \$1,164.66 from 922 Yeadon Street to her current account at 604 Rose Street. (N.T. 245).² On November 18, 2005, the BCS issued a payment arrangement to pay a \$202.00 budget plus a \$40.00 installment each month on a \$2,396.27 balance. (PECO Exhibit 3, N.T. 245-246).

PECO placed these terms on Complainant's account in December 2005 and Complainant failed to remit any payments between January 2006 and April 2006. (N.T. 246). PECO therefore terminated Complainant's electric service on April 10, 2006 for account delinquency in the amount of \$3,843.16. (N.T. 247 and PECO Exhibit 1, page 63).

On May 12, 2006, PECO issued a 72-hour notice to Complainant for the natural gas service. (N.T. 248-249). The notice contained a breakdown of the amounts Complainant needed to pay to avoid termination of her natural gas service. Ms. Harris needed to pay:

1. Past Due Amount	\$1,668.37
2. Deposit Past Due Amount	\$199.00
3. Agreement Unbilled Balance	\$1,975.79

² Although Ms. Harris testified at the March 2, 2010 hearing that she first disputed the \$1,164.66 balance transfer during the February 4, 2008 hearing, the BCS's public record states otherwise. (N.T. 199).

4. Reconnection Fee \$70.00³

After she received this termination notice, Ms. Harris paid PECO \$1,000.00 on May 15, 2006. Ms. Harris needed to pay her total past due amount of \$1,867.37⁴ to avoid termination of her natural gas service. Although Ms. Harris did not pay the full amount requested to avoid termination, her service remained on because she filed her First Complaint on June 20, 2006. (N.T. 147, 254).⁵ Between June and October 2006, Ms. Harris paid PECO \$1,533.14, inclusive of the \$1,000.00 payment made on May 15, 2006. (N.T. 255).

A hearing was scheduled for October 25, 2006 and both parties attended. Both sides appeared and discussed settlement prior to the hearing beginning. (N.T. 257-258). PECO's witness brought a detailed account statement and reviewed it with Ms. Harris. (N.T. 257-258). Ms. Harris' account balance at the time of the hearing was **\$3,602.45**. (PECO Exhibit 1, page 5, PECO Exhibit 6, page 2, N.T. 268).

Ms. Tarpley clearly indicated with her testimonies in the February 4, 2008 and the March 2, 2010 hearings that PECO and Ms. Harris agreed to the following settlement terms on October 25 2006:

1. PECO would cancel a \$398.00 deposit; (N.T. 259);
2. PECO would consider the payments Ms. Harris made after her electric service was terminated on April 10, 2006 until the October 25, 2006 hearing, which totaled to \$1,533.14, as a reduced restoration amount and would restore service to

³ N.T. 249-251 and PECO Exhibit 11.

⁴ The \$1,867.37 consisted of the Past Due Amount of \$1,688.37 and the Deposit Past Due Amount of \$199.00. (N.T. 250).

⁵ On June 12, 2006, a balance former address balance transferred into Complainant's current account from 157 Wildwood Avenue in the amount of \$1,077.78. (PECO Exhibit 2, page 4). Ms. Harris did not challenge this balance transfer.

604 Rose Street immediately; (N.T. 259-260 and PECO Exhibit 1, pages 65-66); and

3. Ms. Harris agreed to be placed back on her BCS agreement to pay her current bill plus a \$40.00 monthly installment on her existing balance. (N.T. 259, PECO Exhibit 1, pages 66-68).

This testimony was also clearly supported by record evidence including the court transcript from the October 25, 2006 hearing (PECO Exhibit 4) and two settlement letters submitted to the Complainant subsequent to the October 25, 2006 hearing (PECO Exhibit 5). At the March 2010 hearing, the Complainant offered no record evidence to support her understanding of the 2006 settlement.

After the 2006 hearing, PECO sent its first letter containing the settlement terms on October 25, 2006. The letter indicated that *PECO agreed to*: 1) cancel the \$398.00 deposit; and 2) restore electric service to 604 Rose Street. The letter also indicated that *Ms. Harris agreed to* continue paying her arrangement terms of current bill plus \$40.00 installments each month. (PECO Exhibit 5, page 1, N.T. 260-262). After receiving this letter, Ms. Harris contacted PECO to dispute the agreement as set forth in the letter (N.T. 263) and to request more detail about her account balance. (N.T. 263). Therefore, Ms. Tarpley created a spreadsheet (PECO Exhibit 6) to clearly detail Complainant's account information. (N.T. 263).

Counsel for PECO drafted a second settlement letter (PECO Exhibit 5, page 2) with more detail and both were sent to Ms. Harris on or about December 6, 2006. (N.T. 263). The second letter specifically stated that PECO would consider the \$1,533.14 in payments made between April and October 2006 as enough to satisfy Complainant's restoration requirement. (PECO Exhibit 5, page 2). Neither Ms. Tarpley's testimonies, nor the 2006 Commission transcript, nor the settlement letters mentioned an agreement

that Complainant's balance would be considered anything less than her existing balance on October 25, 2006 which was \$3,602.45, because that was not part of the agreement.

PECO implemented the two terms of the agreement that it promised to perform. (N.T. 267). PECO cancelled the \$398.00 deposit and restored service the next day. (N.T. 269.) PECO did not process the payment agreement because Complainant disagreed with placing the agreement on her then-existing balance of \$3,602.45. (N.T. 267-268).

Because she recanted and refused to perform her side of the settlement set forth in PECO Exhibit 5 – to pay \$40.00 each month on her existing balance – PECO did not place the agreement on Ms. Harris' account. (N.T. 267-268).

Although Ms. Harris did not offer any testimony as to why any late fees should be removed from her account, she requested that the Commission cancel late fees since October 2006. (N.T. 190). Ms. Harris also did not offer any evidence or testimony as to what specific amount of late fees she was challenging. She only testified that late fees since October 25, 2006 should be removed from her account without any justification to support that request. (N.T. 190). Ms. Harris also did not offer any evidence to state what she believes her true and correct current balance should be. PECO presented evidence to demonstrate that Ms. Harris has failed to pay significant amount of her bills since October 2006. (N.T. 273).

DISCUSSION

- 1. Ms. Harris did not pay PECO \$1,164.66 in April 2004 and there is no related billing discrepancy.**

The parties disagree as to whether a \$1,164.66 amount appearing on PECO Exhibit 2 is a former address balance transfer or a payment. Complainant pleads it was a

payment; while PECO pleads it is a former address balance that transferred into her current account from 922 Yeadon Avenue. Complainant claimed in her Main Brief that PECO's failure to properly credit her account with this alleged payment is the root of her billing problems. (M.B. 6). However, because Complainant did not pay PECO the \$1,164.66, there are no resulting billing problems, except for Complainant's consistent failure to pay her bills in full and on time.

The alleged discrepancy is due to Complainant's confusion with a balance transfer appearing in the Payment column of PECO's billing statement. Even though the balance transfer appeared in the Payment column of the billing statement, it contained an asterisk and comment explaining that it was a former address balance transferring into her current account. (PECO Exhibit 2, page 1 and N.T. 265-266). Complainant incorrectly believes that she paid that amount simply because it appeared in the Payment column. (N.T. 149).

However, Ms. Harris overlooks Renee Tarpley's testimony, which explained that although the \$1,164.66 figure appears in the Payment column, it appears with an asterisk referring to the Comment column on the exhibit. The Comment column explains that on April 12, 2004, PECO transferred the \$1,164.66 unpaid balance from 922 Yeadon Street into Complainant's 604 Rose Street account. (PECO Exhibit 2, page 1). The exhibit does not state that she paid \$1,164.66 to PECO. It is also apparent from looking at the account balance on April 12, 2004 that the \$1,164.66 amount was added into the account balance. (PECO Exhibit 2, page 1).

Ms. Tarpley also testified that on "approximately April the 12, 2004, we transferred a balance of \$1,164.66 from an address on Yeadon." (N.T. 242). PECO's

witness further testified that, “According to my investigation, I did not see an amount of \$1,164.66 paid on the account, a lump sum payment at all.” (N.T. 283). Ms. Tarpley clarified that the account statement (PECO Exhibit 2) documents that the \$1,164.66 figure was a transfer and not a payment when she testified that:

There seems to be some confusion as to PECO Exhibit Number Two in that Complainant believes that the \$1,164.66 amount is not a transfer but a payment...When we’ve used these billing statements prior to October 2006, that’s how we indicated any charges other than revenue on the account statement. And we also would make sure we have some sort of reference, either by asterisks or some other symbol so you could see in the comments area what it represented. In this particular case, this was a transfer, and as you see, the past – the balance increased due to the debit. (N.T. 265-266).

The BCS also found that PECO properly transferred the \$1,164.66 balance into Complainant’s current account at case 1893204. (N.T. 245). The BCS did not find that Ms. Harris paid the \$1,164.66. (PECO Exhibit 3). Page 1 of PECO Exhibit 6, a document sent to Ms. Harris after the October 2006 hearing to explain her balance, also substantiates that the \$1,164.66 amount was indeed a balance transfer and not a payment. (N.T. 265).

Ms. Harris even admitted that she did not have any evidence to prove that she made this payment, such as a cancelled check or a bank statement. (N.T. 158-162). She did not bring a copy of the alleged “cancelled check” for her alleged payment of \$1,164.66 to the hearing. (N.T. 159). However, she was so certain that she paid the \$1,164.66 by check on April 12, 2004 that she stated that she was going to obtain a copy of the cancelled check and submit it to the Commission. (N.T. 159). To date, Ms. Harris has not submitted a copy of the cancelled check, because it does not exist. Therefore, Ms. Harris did not prove that she paid PECO \$1,164.66 in one lump sum payment.

2. The parties never agreed that Ms. Harris' account balance was \$2,789.72.

Ms. Harris' Complaint depends on what her true and correct account balance was on October 25, 2006, the day she entered into a settlement agreement with PECO.

According to Ms. Harris, her account balance was \$2,789.72 on that date. (N.T. 178).

According to PECO, her account balance on that date was actually \$3,602.45. (PECO Exhibit 1, page 5; PECO Exhibit 6, page 2; and N.T. 268).

If Ms. Harris is successful in proving that her balance was \$2,789.72, then she believes she can argue that PECO should have placed the agreement on that amount and PECO's refusal to do was a violation of the 2006 settlement agreement. According to her Main Brief, late fees should not have been charged to the agreement balance. (M.B. 6). However, Ms. Harris did not successfully prove that her account balance was \$2,789.92, or that an agreement existed to set her balance at this amount.

When asked why Ms. Harris believed her account balance was \$2,789.72 on October 25, 2006, her responses were unclear. Ms. Harris first claimed that PECO failed to properly credit her account with an alleged payment of \$1,164.66 on April 12, 2004. (N.T. 155). Ms. Harris did not pay PECO \$1,164.66, but assuming she had, PECO is unsure how that proves that her balance, two years later (October 25, 2006), should have been \$2,789.72.

Second, Ms. Harris alleged that she and PECO agreed that her correct account balance on October 25, 2006 was \$2,789.92. (N.T. 172). No evidence or reasonable calculation was offered to conclude that such an agreement was reached. Instead, Ms. Harris expects the Commission to take that allegation on faith.

Third, Ms. Harris was later certain that her true and accurate account balance was \$2,789.92 on October 25, 2006 and that the parties did not compromise that her balance was this amount. (N.T. 172-173).

Fourth, Ms. Harris alleged that she had no idea what the correct account balance was on October 25, 2006, but that PECO told her it was \$2,789.92 and she went along with it. (N.T. 173, 178).

Fifth, Ms. Harris went back to her previous statement and claimed the \$2,789.92 was the “actual account balance” as of October 25, 2006. (N.T. 176). She claimed that it was her “position” or understanding going into the 2006 hearing - that the correct balance was \$2,789.92. (N.T. 176).

Finally, Ms. Harris returned to her allegation that she did not know what her account balance was before coming to the October 25, 2006 hearing but just accepted what PECO told her. (N.T. 177-178). If this last statement is Ms. Harris’ true position, it is complicated by the fact that she later testified that PECO did not bring an account statement to the 2006 hearing. (N.T. 217). That testimony is further confused by the fact that Ms. Harris seems to admit that PECO did bring an account statement to the 2006 hearing and showed it to her (N.T. 199-200) and definitely admitted that PECO brought the account statement to the 2006 hearing at the February 4, 2008 hearing. (PECO Exhibit 1, page 89).⁶

When Ms. Harris was specifically asked how the \$2,789.92 balance was reached, she claimed that PECO Exhibit 11 (a 72 hour notice, dated May 12, 2006) was used to

⁶ At the 2008 hearing, Ms. Harris objected to the admittance of PECO’s account statement exhibit because it differed from the account statement PECO provided to her at the October 25, 2006 settlement discussions. (PECO Exhibit 1, page 89). Ms Harris objected because “when you came to the hearing the last time we did not go over these pages page by page.” (Id.)

determine the balance. (N.T. 218). However, she did not state how the 72 hour shut off notice was used to arrive at the \$2,789.72 figure.

It is impossible to conclude from this testimony that an agreement was reached so that Ms. Harris' account balance was \$2,789.72 as of October 2006, especially with all of Ms. Harris' conflicting and confusing statements. Ms. Harris certainly did not prove that she paid PECO \$1,164.66 on April 12, 2004 and she did not prove that her account balance was \$2,789.72 on October 25, 2006. As such, she did not meet her burden of proof and her Complaint should be denied.

PECO, on the other hand, offered testimony in two proceedings, a transcript from the 2006 hearing and two settlement letters all of which told the same story – that PECO never agreed that Ms. Harris' balance was anything except \$3,602.45 on October 25, 2006.

Ms. Tarpley clearly indicated with her testimonies in the February 4, 2008 and the March 2, 2010 hearings that PECO and Ms. Harris agreed to the following settlement terms on October 25 2006:

4. PECO would cancel a \$398.00 deposit; (N.T. 259);
5. PECO would consider the payments Ms. Harris made after her electric service was terminated on April 10, 2006 until the October 25, 2006 hearing, which totaled to \$1,533.14, as a reduced restoration amount and would restore service to 604 Rose Street immediately; (N.T. 259-260); and
6. Ms. Harris agreed to be placed back on her BCS agreement to pay her current bill plus a \$40.00 monthly installment on her existing balance. (N.T. 259; PECO Exhibit 1, pages 66-68).

This testimony was also clearly supported by record evidence including the court transcript from the October 25, 2006 hearing (PECO Exhibit 4) and two settlement letters submitted to the Complainant subsequent to the October 25, 2006 hearing (PECO Exhibit

5). None of these documents state anything about Complainant's balance being \$2,789.92 on October 25, 2006 or any other date or an agreement between the parties that her balance was \$2,789.92. Instead, these documents, along with Ms. Tarpley's testimonies, all tell the same story, that Ms. Harris' true and correct account balance was \$3,602.45 on October 25, 2006 and there was no agreement otherwise.

After the 2006 hearing, PECO sent its first letter containing the settlement terms on October 25, 2006. The letter indicated that *PECO agreed to*: 1) cancel the \$398.00 deposit; and 2) restore electric service to 604 Rose Street. The letter also indicated that *Ms. Harris agreed to* continue paying her arrangement terms of current bill plus \$40.00 installments each month. (PECO Exhibit 5, page 1, N.T. 260-262). After receiving this letter, Ms. Harris contacted PECO to dispute the agreement as set forth in the letter (N.T. 263) and to request more detail about her account balance. (N.T. 263). Therefore, Ms. Tarpley created a spreadsheet (PECO Exhibit 6) to clearly detail Complainant's account information.

Counsel for PECO drafted a second settlement letter (PECO Exhibit 5, page 2) with more detail and both were sent to Ms. Harris on or about December 6, 2006. (N.T. 263). The second letter specifically stated that PECO would consider the \$1,533.14 in payments made between April and October 2006 as enough to satisfy Complainant's restoration requirement. (PECO Exhibit 5, page 2). Neither Ms. Tarpley's testimonies, nor the 2006 Commission transcript, nor the settlement letters mentioned an agreement about Complainant's account balance being \$2,789.92, because that was not part of the agreement. Therefore, Ms. Harris did not prove that PECO agreed that her account balance was \$2,789.92.

3. Complainant did not meet her legal burden of proof.

According to 66 Pa.C.S. § 332(a), the Complainant bears the burden of proving by a preponderance of evidence that PECO is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa PUC 196 (1990). Complainant must present evidence more convincing, by even the smallest amount, than presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, the Commission's decision must be supported by substantial evidence on the record - More than a mere trace of evidence or suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa PUC*, 489 Pa. 109, 413 A.2d 1037 (1980). Namely, Complainant must prove that PECO improperly billed her for services rendered and failed to implement a settlement term in violation of the applicable regulations.

The Complainant did not claim that PECO violated any section of the Commission's regulations. The Complainant also did not specify that PECO violated a section or rule of its Electric Service or Natural Gas Service Tariffs. Instead, Complainant relies on an argument, unsupported by law, that inherent in PECO's tariff is an obligation to provide correct and accurate billing to its customers. It seems that Complainant's attorney is trying to argue is that PECO provided unreasonable service in violation of 66 Pa. C.S. 1501. While Complainant may be making this argument, she must prove with a preponderance of evidence that PECO improperly billed her and disregarded a settlement term. Complainant did not offer a preponderance of evidence to prove either of these allegations.

\$1,167.66 payment v. transfer:

Complainant offered testimony that she paid PECO \$1,167.66 on April 12, 2004 without any supporting evidence. She also testified as to her belief that PECO's account statement showed that she paid \$1,167.66 on April 12, 2004. PECO rebutted this testimony with Ms. Tarpley's testimony. According to Ms. Tarpley, even though the balance transfer appeared in the Payment column of the billing statement, it contained an asterisk and comment explaining that it was a former address balance transferring into her current account. (PECO Exhibit 2, page 1 and N.T. 265-266). The exhibit does not state that she paid \$1,164.66 to PECO. Complainant incorrectly believes that she paid that amount simply because it appeared in the Payment column. The account statement also clearly demonstrates that on April 12, 2004 the \$1,164.66 amount was added into the account balance. (PECO Exhibit 2, page 1). The Complainant offered nothing further to rebut Ms. Tarpley's testimony and therefore, she failed to prove that she paid \$1,164.66 in April 2004. Therefore, this allegation should be denied.

Balance as of October 25, 2006:

Complainant also testified that PECO told her that her account balance was \$2,789.92 on October 25, 2006. As a result, she claims that PECO failed to implement a term of the 2006 settlement agreement -- to place Complainant on a payment agreement for this balance. However, Ms. Tarpley clearly rebutted these allegations with her testimonies in the February 4, 2008 and the March 2, 2010 hearings. Ms. Tarpley testified that PECO and Ms. Harris agreed to the following settlement terms on October 25 2006:

7. PECO would cancel a \$398.00 deposit; (N.T. 259);
8. PECO would consider the payments Ms. Harris made after her electric service was terminated on April 10, 2006 until the October 25, 2006 hearing, which totaled to \$1,533.14, as a reduced restoration amount and would restore service to 604 Rose Street immediately; (N.T. 259-260); and
9. Ms. Harris agreed to be placed back on her BCS agreement to pay her current bill plus a \$40.00 monthly installment on her existing balance. (N.T. 259; PECO Exhibit 1, pages 66-68).

Ms. Tarpley also testified that PECO never agreed that Complainant's account balance was \$2,789.92 on October 25, 2006. In fact, Ms. Tarpley testified that Ms. Harris' account statement was \$3,602.45 on October 25, 2006 and that Ms. Harris refused to accept a payment agreement on that balance. (N.T. 267-268).

In support of her testimony, PECO proffered multiple exhibits that proved the accurate balance was \$3,602.45. This testimony was clearly supported by record evidence including the court transcript from the October 25, 2006 hearing (PECO Exhibit 4) and two settlement letters submitted to the Complainant subsequent to the October 25, 2006 hearing (PECO Exhibit 5). None of these documents state anything about Complainant's balance being \$2,789.92 on October 25, 2006 or any other date. Instead, these documents, along with Ms. Tarpley's testimonies, all tell the same story, that Ms. Harris' true and correct account balance was \$3,602.45 on October 25, 2006 and there was no agreement stating otherwise.

Because the Complainant offered nothing further to rebut Ms. Tarpley's testimony and these exhibits, she failed to prove that her account balance was \$2,789.92 on October 25, 2006 or that the parties agreed to such. Because Complainant could not even prove that an agreement existed, there is no need for the Commission to consider

enforcing the allegedly disavowed contract term. Therefore, this allegation should be denied.

CONCLUSION

PECO Energy respectfully requests that the Complaint be dismissed because Complainant failed to prove with a preponderance of evidence that PECO improperly billed her or failed to implement an agreement term.

PROPOSED FINDINGS OF FACT

1. Ms. Harris' account history at 604 Rose Street began in 2003. (N.T. 241). She demonstrated a consistently poor payment history with sporadic payments from 2003 until the present time. (N.T. 241-244, 269-274).
2. As of the hearing date, her total unpaid balance was \$5,444.82. (N.T. 274). Complainant violated four PECO payment agreements and one with the BCS. (PECO Exhibit 8).
3. By way of background, on April 12, 2004, a former address balance of \$1,164.66 from 922 Yeadon Street transferred into Complainant's current account. (N.T. 242, PECO Exhibit 1, and 6). That brought Complainant's account balance to \$2,151.48. (PECO Exhibit 1, page 1).
4. On May 3, 2005, the Complainant filed an informal complaint with the Bureau of Consumer Services ("BCS") at case number 1893204. (N.T. 245). This was the first time that Ms. Harris disputed a final bill balance transfer in the amount of \$1,164.66 from 922 Yeadon Street to her current account at 604 Rose Street. (N.T. 245).⁷ On November 18, 2005, the BCS issued a payment arrangement to pay a \$202.00 budget plus a \$40.00 installment each month on a \$2,396.27 balance. (PECO Exhibit 3, N.T. 245-246).
5. On approximately April the 12, 2004, PECO transferred a balance of \$1,164.66 from an address on Yeadon" to Complainant's current account. (N.T. 242). PECO's witness testified that, "According to my investigation, I

⁷ Although Ms. Harris testified at the March 2, 2010 hearing that she first disputed the \$1,164.66 balance transfer during the February 4, 2008 hearing, the BCS's public record states otherwise. (N.T. 199).

did not see an amount of \$1,164.66 paid on the account, a lump sum payment at all.” (N.T. 283).

6. The account statement (PECO Exhibit 2) documents that the \$1,164.66 figure was a transfer and not a payment. PECO’s witness specifically explained that:

There seems to be some confusion as to PECO Exhibit Number Two in that Complainant believes that the \$1,164.66 amount is not a transfer but a payment... When we’ve used these billing statements prior to October 2006, that’s how we indicated any charges other than revenue on the account statement. And we also would make sure we have some sort of reference, either by asterisks or some other symbol so you could see in the comments area what it represented. In this particular case, this was a transfer, and as you see, the past – the balance increased due to the debit. (N.T. 265-266).

7. Ms. Harris even admitted that she did not have any evidence to prove that she made this payment, such as a cancelled check or a bank statement. (N.T. 158-162).
8. The BCS also found that PECO properly transferred the \$1,164.66 balance into Complainant’s current account at case 1893204. (N.T. 245). The BCS did not find that Ms. Harris paid the \$1,164.66. (PECO Exhibit 3).
9. PECO Exhibit 6, a document summarizing her account information that was sent to Ms. Harris after the October 2006, substantiates that the \$1,164.66 amount was indeed a balance transfer and not a payment. (N.T. 265).
10. PECO placed these terms on Complainant’s account in December 2005 and Complainant failed to remit any payments between January 2006 and April 2006. (N.T. 246).
11. PECO therefore terminated Complainant’s electric service on April 10, 2006 for account delinquency in the amount of \$3,843.16. (N.T. 247 and PECO Exhibit 1, page 63).
12. On May 12, 2006, PECO issued a 72-hour notice to Complainant for the natural gas service. (N.T. 248-249). The notice contained a breakdown of the amounts Complainant needed to pay to avoid termination of her natural gas service. Ms. Harris needed to pay:

5. Past Due Amount	\$1,668.37
6. Deposit Past Due Amount	\$199.00
7. Agreement Unbilled Balance	\$1,975.79

8. Reconnection Fee \$70.00⁸

13. After she received this termination notice, Ms. Harris paid PECO \$1,000.00 on May 15, 2006. Ms. Harris needed to pay her total past due amount of \$1,867.37⁹ to avoid termination of her natural gas service. Although Ms. Harris did not pay the full amount requested to avoid termination, her service remained on because she filed her First Complaint on June 20, 2006. (N.T. 147, 254).¹⁰
14. Between June and October 2006, Ms. Harris paid PECO \$1,533.14, inclusive of the \$1,000.00 payment made on May 15, 2006. (N.T. 255).
15. A hearing was scheduled for October 25, 2006 and both parties attended. Both sides appeared and discussed settlement prior to the hearing beginning. (N.T. 257-258). PECO's witness brought a detailed account statement and reviewed it with Ms. Harris. (N.T. 257-258). Ms. Harris' account balance at the time of the hearing was \$3,602.45. (PECO Exhibit 1, page 5, PECO Exhibit 6, page 2, N.T. 268).
16. Ms. Tarpley clearly indicated with her testimonies in the February 4, 2008 and the March 2, 2010 hearings that PECO and Ms. Harris agreed to the following settlement terms on October 25 2006:

PECO would cancel a \$398.00 deposit; (N.T. 259);

PECO would consider the payments Ms. Harris made after her electric service was terminated on April 10, 2006 until the October 25, 2006 hearing, which totaled to \$1,533.14, as a reduced restoration amount and would restore service to 604 Rose Street immediately; (N.T. 259-260); and

Ms. Harris agreed to be placed back on her BCS agreement to pay her current bill plus a \$40.00 monthly installment on her existing balance. (N.T. 259, PECO Exhibit 1, pages 66-68).

17. This testimony was also clearly supported by record evidence including the court transcript from the October 25, 2006 hearing (PECO Exhibit 4) and two settlement letters submitted to the Complainant subsequent to the October 25, 2006 hearing (PECO Exhibit 5). The Complainant, on the other hand, offered no record evidence to support her understanding of the 2006 settlement.

⁸ N.T. 249-251 and PECO Exhibit 11.

⁹ The \$1,867.37 consisted of the Past Due Amount of \$1,688.37 and the Deposit Past Due Amount of \$199.00. (N.T. 250).

¹⁰ On June 12, 2006, a balance former address balance transferred into Complainant's current account from 157 Wildwood Avenue in the amount of \$1,077.78. (PECO Exhibit 2, page 4). Ms. Harris did not challenge this balance transfer.

18. After the 2006 hearing, PECO sent its first letter containing the settlement terms on October 25, 2006. The letter indicated that *PECO agreed to*: 1) cancel the \$398.00 deposit; and 2) restore electric service to 604 Rose Street. The letter also indicated that *Ms. Harris agreed to* continue paying her arrangement terms of current bill plus \$40.00 installments each month. (PECO Exhibit 5, page 1, N.T. 260-262).
19. After receiving this letter, Ms. Harris contacted PECO to dispute the agreement as set forth in the letter (N.T. 263) and to request more detail about her account balance. (N.T. 263). Therefore, Ms. Tarpley created a spreadsheet (PECO Exhibit 6) to clearly detail Complainant's account information and sent it to Complainant. (N.T. 263).
20. Counsel for PECO drafted a second settlement letter (PECO Exhibit 5, page 2) with more detail and both were sent to Ms. Harris on or about December 6, 2006. (N.T. 263). The second letter specifically stated that PECO would consider the \$1,533.14 in payments made between April and October 2006 as enough to satisfy Complainant's restoration requirement. (PECO Exhibit 5, page 2).
21. Neither Ms. Tarpley's testimonies, nor the 2006 Commission transcript, nor the settlement letters mentioned an agreement that Complainant's balance would be considered anything less than her existing balance on October 25, 2006 which was \$3,602.45, because that was not part of the agreement.
22. PECO implemented the two terms of the agreement that it promised to perform. (N.T. 267). PECO cancelled the \$398.00 deposit and restored service the next day. (N.T. 269.) PECO did not process the payment agreement because Complainant disagreed with placing the agreement on her then-existing balance of \$3,602.45. (N.T. 267-268).
23. Because Complainant recanted and refused to perform her side of the settlement set forth in PECO Exhibit 5 – to pay \$40.00 each month on her existing balance – PECO did not place the agreement on Ms. Harris' account. (N.T. 267-268).
24. Although Ms. Harris did not offer any testimony as to why any late fees should be removed from her account, she requested that the Commission cancel late fees since October 2006. (N.T. 190). Ms. Harris also did not offer any evidence or testimony as to what specific amount of late fees she was challenging. She only testified that late fees since October 25, 2006 should be removed from her account without any justification to support that request. (N.T. 190).
25. Ms. Harris also did not offer any evidence to state what she believes her true and correct current balance should be. PECO presented evidence to

demonstrate that Ms. Harris has failed to pay significant amount of her bills since October 2006 and that her balance at the time of the 2010 hearing was \$5,444.82. (N.T. 273).

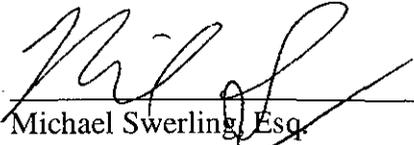
PROPOSED FINDINGS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Complainant did not meet her burden of proving by a preponderance of evidence that PECO is responsible or accountable for inaccurate billing or disavowing a settlement provision in accordance with 66 Pa.C.S. § 332(a); and *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa PUC 196 (1990).
3. Complainant also did not present evidence more convincing, by even the smallest amount, than presented by the other party to support any of her allegations. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).
4. Additionally, Complainant did not place any substantial evidence on the record - More than a mere trace of evidence or suspicion of the existence of a fact sought to be established to support her allegations. *Norfolk & Western Ry. Co. v. Pa PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).
5. As the Complainant has the burden of proof and failed to establish that PECO improperly billed her for services rendered and failed to implement a settlement provision in violation of the applicable regulations, she did not meet her burden of proof. 66 Pa.C.S. § 332(a).
6. As Complainant failed to meet her burden of proof, there is no agreement provision that the Commission should consider enforcing and the Complainant's account balance is correct and owed. The Commission therefore should dismiss the Complaint with prejudice.

RELIEF SOUGHT

1. The Commission should also find that: 1) Ms. Harris did not pay PECO \$1,164.66 in one lump sum payment in April 2004; and 2) that the parties did not agree that Complainant's balance was anything less than \$3,602.45 on October 25, 2006.

2. The Commission should therefore dismiss the Complaint of Carolina B. Harris with prejudice as she failed to meet her burden of proof.
3. The Commission should further find that Complainant's account balance is correct and that Complainant owes her entire unpaid account balance, currently \$5,616.24, within 30 days of the date of the Commission's Final Order.



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April 19, 2010

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CAROLINA B. HARRIS

COMPLAINANT

v.

PECO ENERGY COMPANY

RESPONDENT

DOCKET NO. C-2009-2101597

CERTIFICATE OF SERVICE

I, Michael S. Swerling, hereby certify that I have this day served a copy of PECO Energy Company's Answer in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

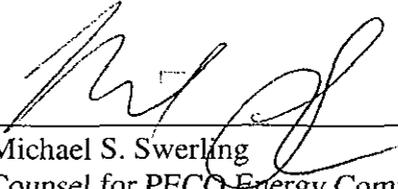
John P. McBlain, Esquire
Swartz Campbell LLC
115 North Jackson Street
Media, PA 19063

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dated at Philadelphia, Pennsylvania, April 19, 2010.


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