

Legal Department

Exelon Business Services Company
2301 Market Street/S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Telephone 215.841.4000
Fax 215.568.3389
www.exeloncorp.com

Direct Dial: 215.841.6841

July 8, 2010

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

RECEIVED

JUL - 8 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: **Beth Ann Fryer Torres v. PECO Energy Company**
PUC Docket No. C-2010-2181930

Dear Ms. Chiavetta:

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

<u> X </u>	Answer (original)
<u> </u>	Motion to Consolidate (original)
<u> </u>	Motion for Judgment on the Pleadings (original)
<u> X </u>	Preliminary Objection (original)
<u> </u>	Exceptions (original)
<u> </u>	Reply Exceptions (original)
<u> </u>	Brief (original)
<u> </u>	Reply Brief (original)

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,



Tishkia Williams
Counsel for PECO Energy Company
TW/adz
Enc.

Scheduling Recommendation: Call of the Docket Non Call of the Docket X

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BETH ANN FRYER-TORRES :
 :
v. : **DOCKET NO. C-2010-2181930**
 :
PECO ENERGY COMPANY :

PRELIMINARY OBJECTIONS OF RESPONDENT, PECO ENERGY COMPANY

1. Respondent, PECO Energy Company (“PECO Energy”), pursuant to 52 Pa. Code § 5.101(a) respectfully petitions this Honorable Commission to dismiss this action as legally insufficient. Complainant’s allegations have already been adjudicated and are barred by Res Judicata. Therefore, Complainant fails to state a claim upon which relief can be granted. 52 Pa. Code § 5.101(a)(4).

2. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.¹

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.²

4. A complaint must be able to recover under the law to survive a preliminary objection.³

5. Complainant has filed a minimum of 10 formal and informal complaints with Commission.

¹ *Equitable Small Transportation Interveners v. Equitable Gas Co.*, 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994)

² 2006 Pa. PUC Lexis 111, *7.

³ *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”).

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

JUL - 8 2010

RECEIVED

6. Most recently, Complainant filed a formal complaint against PECO Energy on April 8, 2009 alleging incorrect charges on her account and disputing her inability to receive additional medical certificates. A copy of the complaint is attached as Exhibit 1.

7. On April 30, 2009, Respondent PECO filed an answer to the complaint. A copy of the complaint is attached as Exhibit 2.

8. Complainant was provided with ample opportunity to be heard on her dispute. A hearing notice was issued on June 10, 2009, setting a hearing for September 25, 2009 at 10:00 am. A copy of the hearing notice is attached as Exhibit 3.

9. PECO Energy appeared for the telephonic hearing, ready to put on its case. Complainant did not appear.

10. The matter was relisted after Complainant contacted the presiding officer. A second hearing notice was issued on October 30, 2009 setting a hearing for December 15, 2009. A copy of the hearing notice is attached as Exhibit 4.

11. Complainant failed to appear. A hearing was conducted in her absence.

12. On January 25, 2010, an initial decision was rendered against complaint. A copy of the decision is attached as Exhibit 5.

13. Complainant filed exceptions to the initial decision on February 16, 2010. A copy of the exceptions are attached as Exhibit 6

14. PECO filed reply exception on February 24, 2010. A copy of the reply exceptions are attached as Exhibit 7.

15. On April 19, 2010, the Commission issued a Opinion and Order sustaining the initial decision issued by Special Agent Vero. A copy of the order is attached as Exhibit 8.

16. On June 9, 2010, Complainant filed another formal complaint, disputing the same issues and making the same arguments contained in her exception, namely that she did not receive the hearing notice. PECO avers that the complaint is barred by the doctrine of res judicata.


17. The doctrine of res judicata requires that the two actions possess the following common elements: (1) identity of the thing sued upon; (2) identity of the cause of action; (3) identity of the parties; and (4) identity of the capacity of the parties.⁴

18. All four elements are met. The identity of the thing sued is the same in both actions. Complainant disputes the accuracy of her PECO bills. The cause of action is also the same. In essence, Complainant alleges that PECO violated Commission regulations by providing inaccurate billing. The parties are also the same. Each case involved a suit between Complainant and PECO Energy. Finally, the parties are acting in the same capacity in each case. Complainant is a customer and PECO is a public utility.

⁴ Stevens Painton Corp. v. First State Ins. Co., 746 A.2d 649 (Pa.Super. 2000). The essential inquiry is whether the ultimate and controlling issues have been decided in a prior proceeding where the parties had an opportunity to appear and assert their rights. *Id.* at 654.

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss the instant Complaint pursuant to 52 Pa. Code § 5.101(a)(4), as Complainant fails to state a claim upon which relieve can be granted.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Tishekia Williams', is written over a horizontal line. The signature is fluid and cursive, with a large loop at the beginning.

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BETH ANN FRYER-TORRES

v.

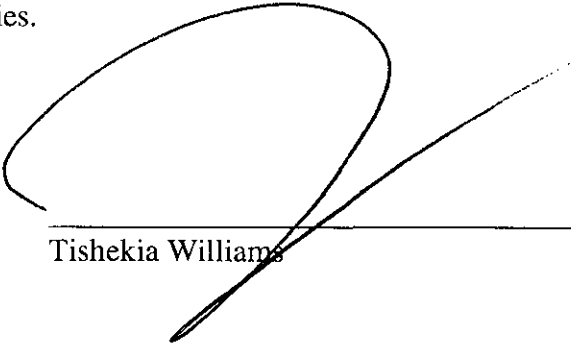
PECO ENERGY COMPANY

:
:
:
:
:

DOCKET NO. C-2010-2181930

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: July 8, 2010

RECEIVED
JUL - 8 2010
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



PECO exhibit 1

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

2009-353

ASST. SECRETARY WILLIAMS
IN REPLY PLEASE REFER TO OUR FILE

DATE SERVED: April 10, 2009

APR 15 2009

Due - 4/30

C-2009-2100220

PECO ENERGY COMPANY
C/O WARD L SMITH
ASSOCIATE GENERAL COUNSEL
PO BOX 8699
PHILADELPHIA PA 19101-8699

Targeted - 4/27

RECEIVED

JUL - 8 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

PAR

Dear Mr. Smith:

A complaint has been filed against you before the Pennsylvania Public Utility Commission by **BETH ANN FRYER-TORRES**. To defend yourself against the claims stated in the following pages, you must act within twenty (20) days by filing in writing with the Commission, either personally or through your attorney, your defenses or objections to the claims stated against you. Or, you may satisfy the complaint by settling the matter with the Complainant and submitting proof of settlement to the Commission within twenty (20) days.

IF YOU FAIL TO RESPOND WITHIN TWENTY (20) DAYS, THE CASE MAY GO FORWARD IN YOUR ABSENCE AND A JUDGEMENT MAY BE ENTERED AGAINST YOU BY THE COMMISSION WITHOUT FURTHER NOTICE.

CUSTOMER OF A UTILITY

A payment schedule may be prescribed or a termination of utility services may be authorized. You may lose money or property or other rights important to you.

COMPANY/UTILITY

An Administrative Law Judge may revoke or suspend any certificate or permit held by you, or impose a fine, or any other appropriate penalty or remedy authorized by the Public Utility Code. You may lose money or property or other rights important to you.

Detailed instructions on how to proceed are contained in the attached pages. You are advised to read them carefully.

4. **COMPLAINT** (check one)

A. **In general, what is your complaint?**

- I want to oppose the company's proposed rate increase.
- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.

Other (explain). — Incorrect charges + miscommunication - with medical cuts.

B. **State the facts of your complaint.**

Include any specific dates, times or places that may be important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

5. **RELIEF**

How do you want your complaint to be resolved? Use additional paper if you need more space.

I would like a reasonable payment arrangement no one has 5 or ten thousand dollars lying around to pay off a bill. I am going to be using paco until I die so why can't we come to some type of arrangement that is reasonable. I am aware I have a responsibility, I am just asking for some help & consideration that is reasonable. Thank you.

+11 1709 07 08 + had a med cert completed
due to my daughters epilepsy. She had Grand mal
Seizures in her sleep & panic, Anxiety Seizures a
well. Peco rejected ~~the~~ so was not complete. I go
Cert pg back to Dr to complete info. In the mean
time Peco had approved the cert I was told
was rejected. The Dr faxed over the compl
Cert ps - Thus Peco received two within
(*) 7-10 days & approved both. So that counted
(17) as two cuts. I have tried to fight this

In Feb 08 I received a 60 day notice -
I had until April 08 to pay \$797.29
to Peco. On 3/27/09 I called to get an
extention as I have just gotten back to
work. I spoke to Anne in cust serv. She
said my late charges were too high - like
\$112 for elec & \$60 something for Gas - She
sent my Acct to Resolution Services. She
then transferred me to Bianca in credit -
Bianca gave me til 4/1/08 and said
I could have another med cert completed,
she sent me it. I had my Dr complete. I
(*) called Peco 4/8 to see if received. I had
to speak to 4 different reps from 2 depts
to find out why rejected - I was told I
used all ~~three~~ cuts. & the arrangements
Bianca made was for the entire amount
(*) due on my Bill. - Peco has messed up
on my account

6. PROTECTION FROM ABUSE

Answer the following question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility **AND** your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NO

7. PRIOR UTILITY CONTACT

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations)

NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

8. LEGAL REPRESENTATION (IF ANY)

If you are represented by a lawyer in this matter you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Lawyer's Name _____

Street _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (If Known) _____

9. VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification:

I Beth Ann Fryer-Toffles hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Beth Ann Fryer-Toffles
(Signature)

4-8-09
(Date)

Title of authorized employee or officer

10. FILING

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 nd Floor Harrisburg, Pennsylvania 17120
---	--

Facsimiles and/or electronic filings of the complaint will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your complaint for your records.



August 22, 2008

BETHANN FRYER
764 FLINT HILL RD
SWEDELAND PA 19428

RE: 764 FLINT HILL RD
Account Number: 26807-01205

Dear Customer:

We are returning the enclosed Request for Medical Certification, which has been denied. The request will not be approved until:

- You complete the highlighted area(s) on the form.
- Your Medical Certificate Non-Renewal period has expired.
- Other:

To be valid, the Request must contain all of the following information:

- Name and address of the ratepayer
- Name and address of the person with the medical condition and his or her relationship to the ratepayer
- Nature and anticipated length of the illness
- Specific reason for which service is required to prevent aggravation of the medical condition; and
- Name, office address, and telephone number of the certifying doctor

You are responsible for paying your bill on time every month. If your account is past due, please make payment today to avoid further collection action.

We have enclosed another Request for Medical Certification for your convenience. Please call us at (888) 480-1533 with any questions.

Sincerely,
PECO Energy



REQUEST FOR MEDICAL CERTIFICATION (Solicitud De Un Certificado Medico)

TO BE COMPLETED BY THE COMPANY

Account No: 26807-01205

Mailing Date: August 20, 2008

Name and Service Address of Customer: BETHANN FRYER 764 FLINT HILL RD SWEDLAND PA 19428

Address: PECO Energy Company Medical Certificate Verification Dept. 4275 Bridge View Drive North Charleston SC, 29405

Mail to Customer (checked) Fax to Doctor apr/dr maroni nei for amber turtzo primary care dr referred to dr by neurologist Fax No: 215-955-0806

Phone No: 1-888-480-1533

Fax No: 1-800-690-2799

Is your service off? Yes (No) Switch scheduled for Tues. 8/26/08

Part A (To Be Completed By Customer)

Name of person who is seriously ill: Amber Turtzo

Relationship to the customer: daughter

CHECK THIS BOX IF THE SERVICE IS CURRENTLY OFF AT YOUR ADDRESS:

Part B (To Be Completed By Doctor)

Name of person who is seriously ill: Amber Turtzo Patient's DOB: 1/13/87

Relationship to the customer: daughter

Patient's Address (if other than above):

Nature of illness: Generalized tonic clonic + complex partial seizures

Specific reason utility service is required to prevent aggravation of the illness: Excess temperature can exacerbate her medical condition and increase her seizures.

How long do you expect the illness to last? chronic

Maroni Nei, MD

MD057140L

Please Print Doctor's Name

License Number

900 Walnut St. Ste 200, 19107

215 955 1222

Office Address

Office Phone Number

Doctor's Signature

8/22/08

Date Signed

This certificate is good for the expected length of the illness, up to a maximum of 30 days, unless you renew it.

REQUEST FOR MEDICAL CERTIFICATION
(Solicitud De Un Certificado Medico)



An Exelon Company

TO BE COMPLETED BY THE COMPANY

Account No: 26807-01205

Mailing Date: August 22, 2008

Name and Service Address of Customer:
BETHANN FRYER
764 FLINT HILL RD
SWEDELAND PA 19428

Address: PECO Energy Company
Medical Certificate Verification Dept.
4275 Bridge View Drive
North Charleston SC, 29405

Mail to Customer

Fax to Doctor

Fax No:

Phone No: 1-888-480-1533

Fax No: 1-800-590-2799

Is your service off? Yes

No

Part A (To Be Completed By Customer)

Name of person who is seriously ill:

Amber Tortzo

Relationship to the customer:

Daughter

CHECK THIS BOX IF THE SERVICE IS CURRENTLY OFF AT YOUR ADDRESS:

Part B (To Be Completed By Doctor)

Name of person who is seriously ill:

Amber Tortzo

Patient's DOB:

6/5/87

Relationship to the customer:

daughter

Patient's Address (if other than above):

same as above

Nature of illness:

generalized tonic-clonic seizure

Specific reason utility service is required to prevent aggravation of the illness:

Excess frequency can exacerbate her medical condition and increase her seizure

How long do you expect the illness to last?

chronic

Maxima Neg, MD

Please Print Doctor's Name

M0057140-C

License Number

900 Walnut St, Suite 200, Philadelphia PA 19107

Office Address

215-985-1222

Office Phone Number

Doctor's Signature

8/29/08

Date Signed

This certificate is good for the expected length of the illness, up to a maximum of 30 days, unless you renew it.

It is your duty as a customer to arrange to make payments on all bills



0137

TEN DAY SHUT OFF NOTICE
(AVISO DE SUSPENSION DE SERVICIO EN 10 DIAS)
FOR PECO ENERGY CHARGES ONLY.

3/27/09 ANNA
3/31

Account Number: 2680701205
For Service To: 764 FLINT HILL RD
Date Prepared: February 9, 2009

Past Due Amt: \$797.29
New Billing: \$564.41
Total Amount: \$1,361.70

\$505.69
late charge
feehigh
Bolan
rept

Your Gas/Electric Service May Be Shut Off!

Because your bill is past due, we will shut off the service to 764 FLINT HILL RD on or after 8:00 a.m. on April 1, 2009.

4/1/09

We will NOT shut off your gas/electric service if you do ONE of the following:

- Pay \$797.29 in full before April 1, 2009, this includes any amount you owe on your payment plan. This notice is effective for 60 days.
- Show us a paid receipt for the past due amount.
- You may qualify for a payment agreement or special assistance programs. Call 1-888-480-1533 right away to provide us with household income and occupant information to determine your eligibility.
- If you dispute this balance or have other billing questions, please call our office at 1-800-494-4000.

WE MUST RECEIVE YOUR PAYMENT BEFORE THE SHUT-OFF DATE. WE WILL NOT ACCEPT PAYMENTS AT YOUR PROPERTY.

If we shut off your gas/electric service, you may have to pay all of the following before we can turn service on:

- Past Due Amount of \$797.29
- Deposit Past Due Amount of \$0.00
- Agreement Unbilled Balance \$0.00
- Total \$797.29*

Bianca - credit rept.
4/1/09

*If your service is shut off, you may be required to pay any additional bills that have become past due to restore your service.

**If your service is shut off, you may have to make substantial payments in order to have your service restored. In addition to any balance owed, you will have to pay a Reconnection charge of between \$70.00 and \$1,700.00. This fee amount is set by PECO's tariff and based on how much work is needed to restore your service. You may also be required to pay a deposit equal to two times your average monthly usage.

\$5288.48

MEDICAL EMERGENCY NOTICE

Let us know if you or anyone presently and normally living in your home is seriously ill. WE WILL NOT SHUT OFF YOUR SERVICE during such an illness provided you:

1. Have your licensed physician or nurse practitioner certify by phone and in writing that such an illness exists and that it may be aggravated if your service is shut off, phone certification must be followed by written certification within 7 days.
2. Make arrangements to pay this bill. You must provide us with household income and occupant information to determine your payment terms while protected under the medical certification.

'AND'

IMPORTANT TO KNOW

Before we shut off your utility service please read the back of this notice. You may be eligible for certain protections from shut off.

Atencion ! Este es en mensaje muy importante. Si usted no lo entiende, favor de llama a 1-888-480-1533.

Send payment in the enclosed envelope or pay your bill at an authorized payment location or PECO Energy's Main Office (23rd & Market Streets Philadelphia). To pay by credit card or check by phone, call 1-877-432-9384. The service provider will charge a convenience fee of \$3.50.


See other side for more information

When paying in person, please bring the entire bill

Return only this portion with your check made payable to PECO. Please write your account number on your check.

Check here to enroll in Power Pay automatic

Monday through Friday 8:30 AM to 5:00 PM

Fax 610-260-0898  An Exelon Company

0103

PECO
Medical Certification Verification Dept.
4725 BRIDGE VIEW DR
NORTH CHARLESTON, SC 29405

Account Number: 2680701205
March 27, 2009

\$ 388.44
4/29

4/8/09 Natasha - credit rep
\$ 798.00

1767 2 AT 0.471 1767/001767/002671 006 01 GX8E4N 5 03282009
BETHANN FRYER
764 FLINT HILL RD
KING OF PRUSSIA, PA 19406-2724
|||||

For Service to:
764 FLINT HILL RD
SWEDELAND, PA 19479

resected - ?
doesn't know

REQUEST FOR MEDICAL CERTIFICATION
(Solicitud De Un Certificado Medico)

Dear PECO Customer:

We were recently notified that someone at your service address is seriously ill and that shutting off your PECO service could cause their condition to get worse. To ensure your service is not terminated, please complete the following:

- Have the doctor/nurse practitioner treating the person who is seriously ill complete and sign the attached form; and
- Return the completed, signed form to us within 5 days of the mailing date.

Please indicate on the medical certificate if your service has been shut off.

In order to guarantee same day processing, PECO must receive this completed application by 6:00 PM, Monday through Friday.

To talk to us, please call us at 1-888-480-1533 or visit our office at 2301 Market Street in Philadelphia.

If we do not receive the completed signed form within 5 days of the above mailing date, your PECO service may be shut off after we send you the required notices. Also, PECO retains the right to verify any information supplied. Please note, forms that are incomplete or contain information that cannot be verified may be rejected.

4/8/09 - Sharon - cust service - does not due cuts - why transp
4/8/09 - Bridget - credit dept - exhausted cut pss
4/8/09 Natasha - sup credit dept

ATENCION
Este es un mensaje muy importante. Si usted no lo entiende, favor de llamar al número de teléfono que en este documento.

→ 717-772-7777

4/8/09 - Tim / Docket # CA0043071

\$ 16,238.00

www.pvc.state.pa.us

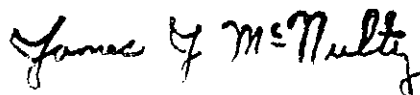
upheld see file

April 10, 2009

Unless you are a corporation or other organization, you may proceed without a lawyer. However, if you want a lawyer and do not have one or cannot afford one, the office listed below can tell you where you can get legal help:

Pennsylvania Lawyer Referral Service
Pennsylvania Bar Association
P.O. Box 186
Harrisburg, PA 17108
(800) 692-7375

Very truly yours,

A handwritten signature in black ink that reads "James J. McNulty". The signature is written in a cursive style with a large, stylized "M" and "N".

James J. McNulty
Secretary

wjz

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

DATE SERVED: April 10, 2009

BETH ANN FRYER-TORRES
Complainant

v.

PECO ENERGY COMPANY
Respondent

Complaint Docket
No: C-2009-2100220

FORMAL COMPLAINT NOTICE TO RESPONDENT TO ANSWER OR SATISFY

TO: PECO ENERGY COMPANY

TAKE NOTICE:

That a complaint in the above entitled matter, of which the attached is a true and correct copy, has been presented and filed of record with the Pennsylvania Public Utility Commission. Section 702 of the Public Utility Code, 66 Pa. C.S. Section 702, requires the Commission to serve on each party named in a complaint a copy of the complaint and notice calling upon each party to satisfy the complaint, or to answer the same in writing within a specified time; THEREFORE,

1. You have twenty (20) days from the date on which this complaint is served to either satisfy this complaint or to file with the **Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265**, an answer (original and three copies), in writing, under oath, which, as required by Section 5.61 of the Commission's Rules of Practice and Procedure, 52 Pa. Code Section 5.61, either affirms or specifically denies the allegations in this complaint. You must also serve a copy of the answer upon the complainant. The date of service is the mailing date as indicated by the date at the top of this Notice. Section 1.56(a) of the Commission's Rules of Practice and Procedure, 52 Pa. Code Section 1.56(a).

2. If you fail to either satisfy this complaint or to file answer or other responsive pleading within twenty (20) days, you will be deemed to have admitted all the allegations in this complaint in accordance with Section 5.61 of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code Section 5.61. In that event, the Commission may, without hearing, enter an order which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. Section 101, et seq.; and, if

you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

3. If you elect to satisfy this complaint you must file, within twenty (20) days from the date on which this complaint is served, affidavits executed by each complainant that this complaint has been satisfied. Such affidavits must describe the basis on which this complaint was satisfied; any settlement agreement between the parties must be reduced to writing and attached to the affidavit. Such affidavits are to be filed with the Secretary of the Commission at the address set forth in paragraph 1. Upon receipt of affidavits of satisfaction from all complainants, this complaint may be dismissed by the Commission in accordance with Section 703(a) of the Public Utility Code, 66 Pa. C.S. Section 703(a), unless the Commission determines that such dismissal would be contrary to the public interest, in which event the Commission may direct that hearings be held upon the complaint.

4. If you file an answer which admits the allegations in this complaint, or which fails to specifically deny the allegations in this complaint, the Commission may, without hearing, enter an order which either revokes or suspends any certificate held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

5. If you file a timely answer which specifically denies the allegations in this complaint, or which raises material questions of law or fact, this matter shall be referred to the Office of Administrative Law Judge for hearing and decision. If, after hearing on the issues raised by that answer, you are found to have committed any of the violations alleged in the complaint, the Administrative Law Judge may render a decision which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. In the imposition of a penalty after a hearing the Administrative Law Judge is not bound by the relief sought by the complainant in paragraph 4 of the attached complaint.



James J. McNulty
Secretary

(SEAL)

Certified Mail
Return Receipt Requested

PECO Exhibit 2

Exelon

Legal Department

Exelon Business Services Company
2301 Market Street/S23-1
PO. Box 3699
Philadelphia, PA 19101-8699

Telephone 215.841.1000
Fax 215.568.3389
www.exeloncorp.com

Business Services
Company

Direct Dial: 215 841-6841

April 30, 2009

Beth Ann Fryer-Torres
764 Flint Hill Road
King of Prussia, PA 19406

RECEIVED

JUL - 8 2010

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

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

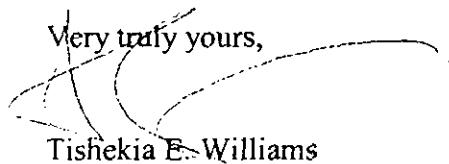
Dear Ms. Fryer-Torres:

Enclosed is a copy of PECO Energy Company's Answer to the complaint filed in the above-referenced docket. The law requires PECO Energy to file an answer to your Public Utility Commission complaint. Keep these papers for your records. This Answer is not a decision on your complaint. If there is a "Notice to Plead" attached to this Answer, you should review the Notice to Plead for information on how to respond to a New Matter (a paragraph at the end of the Answer) and/or Motion to Dismiss (a separate document after the Answer) that may have been included with the Answer. If there is not a New Matter or a Motion to Dismiss, you do not need to reply.

Soon, the Public Utility Commission will schedule either a settlement conference or a hearing on your complaint. The Commission will let you know by mail whether there will be a conference or a hearing and will include instructions on what to do next. If the matter is set for hearing, the notice will provide you with information about the date, time and place of the hearing. If we are unable to resolve your complaint and have to proceed with a hearing, a judge will be at the hearing and will decide your complaint. You must call the Public Utility Commission if you have any questions about the hearing or if you cannot attend the hearing.

If you have any questions or concerns at any time, please do not hesitate to contact me at the above listed number.

Very truly yours,



Tishekia E. Williams
Counsel for PECO Energy Company

Enc.

Legal Department

Exelon Business Services Company
2301 Market Street/S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Telephone 215.841.4000
Fax 215.568.3389
www.exeloncorp.com

Business Services
Company

Direct Dial: 215.841.6841

April 30, 2009

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

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

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 (Original and 3 copies)
<u> </u>	Motion to Consolidate Complaints (original and 3 copies)
<u> </u>	Motion For Judgment on the Pleadings (original and 3 copies)
<u> </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)

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. I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties.

Very truly yours,


Tishekia E. Williams
Counsel for PECO Energy Company

TEW/zyr

Enc.

SCHEDULING RECOMMENDATION: CALL OF THE DOCKET X NON-CALL OF THE DOCKET

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BETH ANN FRYER-TORRES

v.

PECO ENERGY COMPANY

:
:
:
:
:

DOCKET NO. C-2009-2100220

**ANSWER & NEW MATTER OF RESPONDENT,
PECO ENERGY COMPANY**

PECO Energy Company ("PECO Energy"), pursuant to 52 Pa. Code § 5.61, responds to the Complaint and states:

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied. PECO Energy denies that Complainant is unable to pay her electric bill and proof thereof is demanded at time of hearing. PECO avers that Complainant is not entitled to additional payment terms for two reasons: 1) Complainant has violated prior agreements and, 2) Complainant's balance includes substantial arrears billed at a discounted rate.

Complainant has filed ten (10) prior complaints with the Pennsylvania Public Utility Commission¹. Complainant has also had at least six (6) BCS payment agreements. See BCS inbound and outbound report for case number 1487563 attached hereto as Exhibit 1.

Complainant has violated company agreements and Commission agreements. PECO avers that pursuant to 66 Pa. C.S. §1405(D), Complainant has violated prior payment agreements and is not entitled to additional terms.

¹Complainant 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.

Likewise, Complainant was enrolled in PECO's Customer Assistance Program ("CAP") on June 5, 2005. On July 15, 2008, Complainant was removed from the CAP program because her income exceeded the income guidelines. Complainant's current account balance is \$16,253.89, of which \$13,798.81 was billed at CAP rates. PECO avers that pursuant to 66 Pa. C.S. §1405(C), customer rates shall be timely paid and shall not be subject to payment arrangements negotiated or approved by the Commission. Therefore, Complainant is not entitled to additional payment terms on her CAP arrears.

By way of further reply, Complainant also claims that there are incorrect charges on her account and that PECO has wrongfully refused to grant her medical extensions. PECO denies these allegations.

The claim that there are incorrect charges on Complainant's account

Complainant claims that there are incorrect charges on her account. Complainant claims that on March 27, 2009, she called PECO and was informed by "Anne" that her late charges were too high. PECO denies that Complainant's account includes improper late charges. Complainant's current account balance is \$16,253.89. Complainant's balance includes \$867.60 in late fees. Complainant has a history of many missed and late payments. Over the past two years, Complainant has made only two (2) payments. Complainant's account activity statement is attached hereto as Exhibit 2. PECO avers that in accordance with PECO's Commission approved tariff, Complainant has been properly charged late fees. PECO's tariff, Rule 17.5 provides:

17.5 LATE FEES AND COLLECTION COSTS. If payment is made at a Company office or authorized payment agency after the due date shown on the bill, a late fee will be added to the unpaid balance until the entire bill is paid. If payment is made by mail, the late fee will be added if the payment is received by the Company more than five days after the due date shown on the bill. For Rates

R, RT, R-H, R-S, OP, POL and GS this late fee will be 1-1/2 % per month; for all other rates the late fee will be 2% per month. If the Company files suit to collect a delinquent balance on an account (whether active or inactive) or to ensure payment of current bills, the customer will be required to pay the Company's out of pocket court costs (including filing, service, and witness fees) as ordered by the court and such costs will be added to commercial and industrial accounts.

The claims that PECO wrongfully refuses to grant Complainant medical extensions

PECO denies that Complainant has been wrongfully denied medical extensions. PECO granted 30-day medical extension to Complainant on August 25, 2008, September 9, 2008 and October 16, 2008. Complainant has failed to make the required good-faith equitable payment. No payments have been made on Complainant's account since August 2008. Therefore, PECO denies that Complainant has been wrongfully denied medical extensions.

5. This paragraph is a request for relief and no answer is required.
6. PECO Energy is without sufficient information to confirm or deny this statement.
7. Admitted.

NEW MATTER OF RESPONDENT, PECO ENERGY COMPANY

PECO Energy Company ("PECO Energy" or "PECO"), pursuant to 52 Pa. Code § 5.62(b), further responds to the Complaint and states:

1. Complainant has been granted a minimum of six (6) Commission payment agreements. Complainant has not adhered to any, and has violated at least one Commission agreement.
2. Most recently, the BCS determined that Complainant is not entitled to additional terms "due to prior PUC PARS not satisfied." The BCS decisions at case numbers 2461692 and 2348288 are attached hereto as Exhibit 3.
3. PECO avers that pursuant to 66 Pa. C.S. §1405(D), Complainant has violated prior payment agreements and is not entitled to additional Commission terms.
4. Additionally, Complainant was enrolled in PECO's Customer Assistance Program ("CAP") from June 5, 2005 until July 15, 2008. Complainant received a 50% discount on the first 500-kilowatt hours of electric service each month. Of Complainant's current \$16,253.89 unpaid balance, \$13,798.81 was billed at CAP rates.
5. PECO Energy avers that no further payment arrangements should be granted to Complainant. Section 1405(c) of the Public Utility Code provides that, "(c)ustomer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission."

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

Respectfully Submitted,



Tishkia Williams
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
Tishkia.Williams@exeloncorp.com

Date: 4/30/09

PA. Public Utility Commission
Bureau Of Consumer Services
Outbound Full Par Report

Page 1

PECO Rehab
1

Case Number: 1487563	Opened On: 9/15/03	Date Received: 9/15/03
Investigator: GAUMER, COLLEEN	Account Number: 400406174575	Utility Type: Electric Distributor
Company Name: PECO Energy	Assessor Name/Phone Number: Teresa Ferrier (215)841-6330 6330	
	Case Writer Name/Phone Number: Teresa Ferrier (215)841-6330 6330	

Customer Name And Service Address:

BETHANN FRYER
764 FLINT HILL ROAD
SWEDELAND PA 19479-0

Mailing Address:

764 FLINT HILL ROAD
KING OF PRUSSIA PA 19406-0

Heating: Y
Service On: Y
Type Of Account: Residential

Telephone: (Home) (610)279-8541

(Work) () -

Due Date: 9/15/03

Account Balance: \$4,540.76 **Budget:** \$191.00

Family Size: Adults: 1 **Children:** 1

Past Due Agmt Amt: \$935.23 **Srvc Term Dt:** 9/22/03

Referred To Universal Service Program: N

Did Customer State Company Position Accurately: N

Income: **Date Statement Obtained:** 1/31/03

Payment Information:

Amounts:	Sources:
\$2,113.00	Employment

Amounts:	Post Dates:	Payment Type:
\$250.00	6/19/03	
\$450.00	3/2/03	
\$500.00	12/22/02	
\$936.00	10/3/02	
\$530.00	2/16/02	
\$500.00	11/28/01	

Agreements:

Type:	Level:	Balance:	Agmt Date:	Beg Pymt Date:	Terms:
PUC - 1315048		\$3,732.86	3/12/03	4/2/03	60.00 + Budget
PUC - 1093083		\$3,624.30	10/4/02	10/29/02	60.00 + Budget
PUC - 07988133A		\$276.31	1/27/03	3/3/03	0.00 + CB
PUC - 0798813		\$2,998.21	4/30/01	5/30/01	60.00 + Budget
PUC - 066078		\$1,082.64	8/16/99	9/29/99	15.00 + Budget

1073

Date: 4/30/09

**PA. Public Utility Commission
Bureau Of Consumer Services
Outbound Full Par Report**

Page 2

Case Number: 1487563
Investigator: GAUMER, COLLEEN
Company Name: PECO Energy

Opened On: 9/15/03
Account Number: 400406174575
Assessor Name/Phone Number:
Case Writer Name/Phone Number:

Date Received: 9/15/03
Utility Type: Electric Distributor
Teresa Ferrier (215)841-6330 6330
Teresa Ferrier (215)841-6330 6330

Report Message Type	Date	Report Details
Case Type: Full PAR		
Final position to BCS		Pay \$1107.90 by 9/25/03, then continue to pay \$60.00 plus the current bill. This is the 5th PUC case. The customer may apply for cap rate - income must be verified 1-800-774-7040. Customer was removed from cap rate in 2000 (over income).
Last contact with customer	9/12/03	No recent contact.

2 13

Date: 4/30/09

PA. Public Utility Commission
Bureau Of Consumer Services
Inbound Closing Report

Case Number: 1487563
Customer Name: BETHANN FRYER
Address: 764 FLINT HILL ROAD
SWEDELAND PA 19479-0

Opened On: 9/15/03
Utility Type: Electric Distributor
Account Number: 400406174575
Company Name: PECO Energy

Prior Case: 1315048 Total Balance: \$4,540.76 Balance Date: 9/15/03

Compliance

Violation(Alleged, Actual, No): NO

Chap 56/64/Other:

Section/Rule:

Decision Issued: Y

Oral Written: W

Investigator: GAUMER, COLLEEN

PUC Decision Issued Dt: 11/5/03

PUC Case Closed Dt: 10/31/03

Decision Recvd Dt: 10/31/03 06:25PM

Letter Description: EGW REPEATER/NO LPCS/BUDGET +

To Restore Service Pay: \$0.00

To Continue Service Pay: \$450.00 By: 11/25/03

Terms: DECEMBER 2003

Special Budget Amount: \$201.00

Regular Budget Amount: \$191.00 Plus Arrears Payment: \$10.00

Final Bill Monthly Payment: \$0.00

Current Bill Monthly Payment: \$0.00

End Of Month Payment: \$0.00

Par Description:

YOU ARE ADVISED TO CONTACT THE DEPARTMENT OF PUBLIC WELFARE AND OTHER AVAILABLE SOCIAL AGENCIES FOR FINANCIAL ENERGY ASSISTANCE.

Resolution:

SEE CS17 FOR TERMS OF PAR.

592

*** Account Information ***

Account Number: 26807-01205
 Account Status: Active
 Requested By: BETHANN FRYER
 (484)681-5080 Extension:
 Mail To: BETHANN FRYER
 764 FLINT HILL RD
 KING OF PRUSSIA PA 19406

*** Current Account Status ***

Current Bill: \$388.44
 Billed Prior: \$15865.45
 Balance Due: \$16253.89
 Service Address: 764 FLINT HILL RD
 SWEDELAND PA 19479
 Credit Amount: \$0.00
 Deposit Requested: \$0.00
 Deposit On-Hand: \$0.00
 Meter Bill Grp: 04
 Rate: Gas Residential Heating Service
 Electric Residential Service

DATE	CHARGE TYPE	BILLING PERIOD	READ	METER #	CHARGE AMOUNT	CREDIT AMOUNT	üwcSS TOTAL BILL	BALANCE FORWARD	DUE DATE	KWH	CCF	KW
05/04/07	BUDGET BILLING	04/04/07 05/03/07			\$731.00							
	** Budget Bill Detail **	Actual Bill Amount: 143.13			BB Deferred Amount: 6098.51							
05/04/07	PUC AGREEMENT				\$15.00							
05/04/07	Regular Bill							\$-4126.93	05/29	877		
06/05/07	BUDGET BILLING	05/03/07 06/04/07			\$731.00							
	** Budget Bill Detail **	Actual Bill Amount: 116.00			BB Deferred Amount: 5483.51							
06/05/07	PUC AGREEMENT				\$15.00							
06/05/07	Regular Bill							\$-3380.93	06/26	1041		
07/05/07	BUDGET BILLING	06/04/07 07/04/07			\$731.00							
	** Budget Bill Detail **	Actual Bill Amount: 136.78			BB Deferred Amount: 4889.29							
07/05/07	PUC AGREEMENT				\$15.00							
07/05/07	Regular Bill							\$-2634.93	07/26	1198		
08/03/07	BUDGET BILLING	07/04/07 08/02/07			\$731.00							
	** Budget Bill Detail **	Actual Bill Amount: 175.55			BB Deferred Amount: 4333.84							
08/03/07	PUC AGREEMENT				\$15.00							
08/03/07	Regular Bill							\$-1888.93	08/27	1491		
09/04/07	BUDGET BILLING	08/02/07 09/03/07			\$537.00							
	** Budget Bill Detail **	Actual Bill Amount: 184.69			BB Deferred Amount: 3981.53							
09/04/07	PUC AGREEMENT				\$15.00							
09/04/07	Regular Bill							\$-1336.93	09/25	1560		
10/03/07	BUDGET BILLING	09/03/07 10/02/07			\$537.00							
	** Budget Bill Detail **	Actual Bill Amount: 137.71			BB Deferred Amount: 3582.24							
10/03/07	PUC AGREEMENT				\$15.00							
10/03/07	Regular Bill							\$-784.93	10/24	1205		
11/01/07	BUDGET BILLING	10/02/07 10/31/07			\$537.00							
	** Budget Bill Detail **	Actual Bill Amount: 119.82			BB Deferred Amount: 3165.06							
11/01/07	PUC AGREEMENT				\$15.00							
11/01/07	Regular Bill							\$-232.93	11/26	1035		
12/04/07	BUDGET BILLING	10/31/07 12/03/07			\$537.00							
	** Budget Bill Detail **	Actual Bill Amount: 201.80			BB Deferred Amount: 2829.86							
12/04/07	PUC AGREEMENT				\$15.00							
12/04/07	Regular Bill						\$319.07		12/26	1135		
01/07/08	BUDGET BILLING	12/03/07 01/06/08			\$3082.48							
	** Budget Bill Detail **	Actual Bill Amount: 252.62			BB Deferred Amount: 0.00							
01/07/08	PUC AGREEMENT				\$15.00							
01/07/08	Regular Bill						\$3416.55	\$319.07	01/28	1267		
02/04/08	Reinstate AR from DPA- Cr					\$9357.42						
02/04/08	Reinstate AR from DPA- Db				\$8902.15							
02/04/08	Reinstate AR from DPA- Db				\$455.27							
02/04/08	Bill Out DPA due to Default				\$9342.42							
02/04/08	Late Payment Charge				\$0.23							
02/06/08	GAS SERVICE	01/06/08 02/05/08	2382	016422295	\$121.07							
02/06/08	ELECTRIC SERVICE	01/06/08 02/05/08	81950	063127706	\$89.56							
02/06/08	Regular Bill						\$12969.83	\$12303.93	02/27	904	114	
03/06/08	GAS SERVICE	02/05/08 03/05/08	2496	016422295	\$123.13							
03/06/08	ELECTRIC SERVICE	02/05/08 03/05/08	82907	063127706	\$96.48							
03/06/08	Regular Bill						\$13189.44	\$12969.83	03/28	957	114	
04/04/08	Payment Agreement					\$219.61						
04/04/08	GAS SERVICE	03/05/08 04/03/08	2572	016422295	\$91.09							
04/04/08	ELECTRIC SERVICE	03/05/08 04/03/08	83650	063127706	\$68.51							
04/04/08	Regular Bill						\$13129.43	\$12969.83	04/28	743	76	
04/07/08	Payment					\$220.00						
05/05/08	GAS SERVICE	04/03/08 05/04/08	2599	016422295	\$36.97							

1500 Schmitt
3

Exelon.

April 30, 2009

BCS Decision Report

BCS Case #: 002461692
Customer Name: BETH ANN FRYER
Service Address: 764 FLINT HILL ROAD

Open Date: 2008-10-21

KING OF PRUSSIA, PA 19406
BCS Bill Account #: 2680701205
Violation Type: NO
Decision Type: O
Investigator Name: DENNIS SCATTON

Previous Case #: 2348274
Chapter Type:
Section / Rule:

RECEIVED

Decision Issued Date: 2009-02-04
Case Closed Date: 2009-02-02

JUL - 8 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Letter Description:
CAP REVIEWED / NO DECISION

Total Balance: \$14795.35
Amount to Restore Service: \$0.00
Date Payment Due:
Special Budget Payment: \$0.00
Plus Arrears Payment: \$0.00
Current Monthly Payment: \$0.00
Payment Terms:

Balance Date: 2008-11-10
Amount to Continue Service: \$0.00
Regular Budget Amount: \$0.00
Final Bill Monthly Payment: \$0.00
End of Month Payment: \$0.00

PAR Description:

Resolution Description:

LETTER SENT TO CUST ADVISING NO PAYMENTS WRE RECEIVED SINCE LAST PUC DEC ISSUED. ADV 10 OTHER INFORMAL COMPLAINTS WERE FILED AND NOT SATISFIED. ADV SHE FILED A FORMAL COMPLAINT. ADV SHE IS ON THE CAP PROGRAM. ADV A MED CERT WAS PROVIDED ON 10/16/08 AND A 30 DAY EXTENSION WAS PLACED ON THE ACCT. ADV 3 MED CERTS WERE FILED. ADV CU SHE WOULD NEED TO PAY OF THE ACCT BALANCE BEFORE AN ADDITIONAL CERTIICATE IS ACCEPTED. ADV TOTAL BALANCE IS 14,795.35 WAS DUE 1/29/09. ADV THE PUC BY LAW AND REGULATIONS CAN NOT SET UP PAR DUE TO PRIOR PUC PARS NOT SATISFIED AND FORMAL COMPLAINT AND CAP ARREARAGE BALANCE. CLOSING CASE INFORMALLY.

10/2



April 30, 2009

BCS Decision Report

BCS Case #: 002348288 Open Date: 2008-02-22
Customer Name: BETHANN FRYER
Service Address: 764 FLINT HILL ROAD

KING OF PRUSSIA, PA 19406
BCS Bill Account #: 2680701205 Previous Case #: 1629448
Violation Type: NO Chapter Type:
Decision Type: O Section / Rule:
Investigator Name: DONALD FULLERTON

Decision Issued Date:
Case Closed Date: 2008-08-28

Letter Description:

Total Balance:	\$13189.44	Balance Date:	
Amount to Restore Service:	\$0.00	Amount to Continue Service:	\$0.00
Date Payment Due:		Regular Budget Amount:	\$0.00
Special Budget Payment:	\$0.00	Final Bill Monthly Payment:	\$0.00
Plus Arrears Payment:	\$0.00	End of Month Payment:	\$0.00
Current Monthly Payment:	\$0.00		

Payment Terms:

PAR Description:

Resolution Description:

VERBAL CLOSE...SERVICE IS ON...CASE DISMISSED..INEL FOR NEW PUC PAR DISMISSSS PER 1405(D)...CU HAS CAP ARREARS DISMISS PER 1405(C)...CU IS ON CO P/A OF CB + 35...CU MADE PMT OF 315 TO BE BACK ON CO P/A...CU SATISFIED...

WJK 2/2

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BETH ANN FRYER-TORRES

v.

PECO ENERGY COMPANY

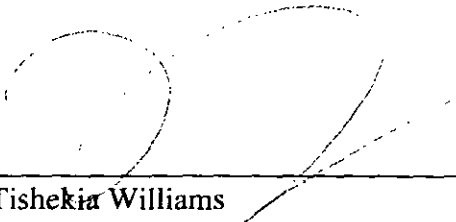
:
:
:
:
:

DOCKET NO. C-2009-2100220

VERIFICATION

I, Tishekia Williams, 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: April 30, 2009



Tishekia Williams

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BETH ANN FRYER-TORRES

v.

PECO ENERGY COMPANY

:
:
:
:
:

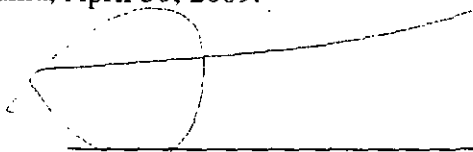
DOCKET NO. C-2009-2100220

CERTIFICATE OF SERVICE

I, Tishekia Williams, 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:

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

Dated at Philadelphia, Pennsylvania, April 30, 2009.



Tishekia Williams
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
Tishekia.Williams@exeloncorp.com



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Office of Administrative Law Judge
P.O. BOX 3265, HARRISBURG, PA 17105-3265
June 10, 2009

PECO exhibit 3 ✓

IN REPLY PLEASE
REFER TO OUR FILE

In Re: C-2009-2100220

TISHEKIA WILLIAMS COUNSEL
PECO ENERGY COMPANY
2301 MARKET STREET, S23-1
PO BOX 8699
PHILADELPHIA PA 19101

TISHEKIA WILLIAMS

JUN 19 2009

Beth Ann Fryer-Torres v. PECO Energy Company

Requests payment arrangements.

Telephone Hearing Notice

This is to inform you that a hearing by telephone on the above-captioned case will be held as follows:

Type: Initial telephonic hearing.
Date: Friday, September 25, 2009
Time: 10:00 AM
Presiding: Special Agent Eranda Vero
PO Box 3265
Harrisburg, PA 17105-3265
Phone: 717.783.5452
Fax: 717.787.0481

The special agent will be presiding as authorized by 52 Pa. Code §56.174.

If you have not provided a current telephone number where you can be reached for participation in the hearing OR YOUR AREA CODE HAS CHANGED, then you must contact the presiding officer at least 7 days before the actual hearing and provide the necessary information.

At the above date and time, the Presiding Officer will contact the parties as follows:

Beth Ann Fryer-Torres	484.681.5080
Tishekia E. Williams, Esquire	215.841.6841

If you have any hearing exhibits to which you will refer during the hearing, three (3) copies must be sent to the Special Agent and 1 copy each must be sent to every other party. All copies must be received at least 3 days before the hearing.

Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.

Except for those individuals representing themselves, the Commission's rules require that all parties have an attorney; therefore, you should have an attorney of your choice file an entry of appearance before the scheduled hearing.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission at least five (5) business days prior to your hearing to submit your request.

If you require an interpreter to participate in the hearings, we will make every reasonable effort to have an interpreter present. Please call the scheduling office at the Public Utility Commission at least ten (10) business days prior to your hearing to submit your request.

- Scheduling Office: 717.787.1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1.800.654.5988

C-2009-2100220 BETH ANN FRYER-TORRES v. PECO ENERGY COMPANY

BETH ANN FRYER-TORRES
764 FLINT HILL ROAD
KING OF PRUSSIA PA 19406
4846815080

TISHEKIA WILLIAMS COUNSEL
PECO ENERGY COMPANY
2301 MARKET STREET, S23-1
PO BOX 8699
PHILADELPHIA PA 19101
2158416841



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Office of Administrative Law Judge
P.O. BOX 3265, HARRISBURG, PA 17105-3265
October 30, 2009

PECO R. J. Faupley
Schubert
4
IN REPLY PLEASE
REFER TO OUR FILE

In Re: C-2009-2100220

TISHEKIA WILLIAMS COUNSEL
PECO ENERGY COMPANY
2301 MARKET STREET, S23-1
PO BOX 8699
PHILADELPHIA PA 19101

TISHEKIA WILLIAMS

NOV - 3 2009

Beth Ann Fryer-Torres v. PECO Energy Company

Requests payment arrangements.

Telephone Hearing Notice

This is to inform you that a hearing by telephone on the above-captioned case will be held as follows:

Type: Initial telephonic hearing.
Date: Tuesday, December 15, 2009
Time: 10:00 AM
Presiding: Special Agent Eranda Vero
PO Box 3265
Harrisburg, PA 17105-3265
Phone: 717.783.5452
Fax: 717.787.0481

RECEIVED

JUL - 8 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

The special agent will be presiding as authorized by 52 Pa. Code §56.174.

C-2009-2100220 BETH ANN FRYER-TORRES v. PECO ENERGY COMPANY

BETH ANN FRYER-TORRES
764 FLINT HILL ROAD
KING OF PRUSSIA PA 19406
4846815080

TISHEKIA WILLIAMS COUNSEL
PECO ENERGY COMPANY
2301 MARKET STREET, S23-1
PO BOX 8699
PHILADELPHIA PA 19101
2158416841



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

ISSUED: January 25, 2010

Return to Anita

IN REPLY PLEASE
REFER TO OUR FILE

for file

C-2009-2100220

KEN MASSEY ESQ
2301 MARKET STREET S23-1
PO BOX 8699
PHILADELPHIA PA 19101

except due: 2-14 ✓

TISHEKIA

JAN 28 2010

Beth Ann Fryers-Torres
v.
PECO Energy Company

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Special Agent Erando Vero. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days** of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within **ten (10) days** of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within **twenty (20) days**, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,

James J. McNulty
Secretary

RECEIVED

JUL -8 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

rlj
Encls.
Certified Mail
Receipt Requested

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Beth Ann Fryer-Torres

v.

PECO Energy Company

:
:
:
:
:

C-2009-2100220

INITIAL DECISION

Before
Eranda Vero
Special Agent

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

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.

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).

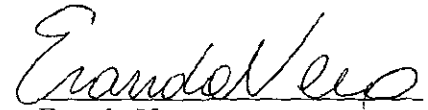
A Hearing Notice was mailed to the Complainant at the address listed on her Complaint approximately five (5) weeks prior to the scheduled hearing and was not returned to the Commission by the post office. Therefore, Complainant was deemed to have received this document and had sufficient notice of the 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.

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

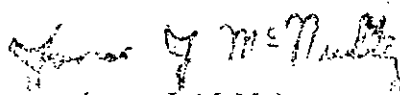
Re: C-2009- 2100220, Beth Ann Fryers-Torres v. PECO Energy Company

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

RECEIVED

JUL - 8 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

268070/205

February 12, 2010

C-2009-2100220

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.

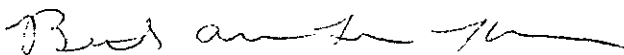
I have asked questions regarding my bill and the late fees, why so high, the rep I spoke to could not give me an answer; he kept on saying I must have been shut off or because of moving. I explained to him more than once I was never shut off and I have been at the same residence for over 13 years. He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



SECRETARY'S BUREAU

2010 FEB 16 AM 10:59

RECEIVED

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

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BETH ANN FRYER-TORRES

v.

PECO ENERGY COMPANY

:
:
:
:
:

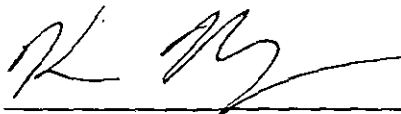
DOCKET NO. C-2009-2100220

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.



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

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

EXHIBIT

tabbles

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,

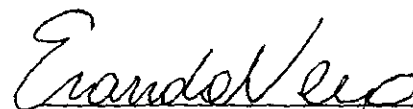
IT IS ORDERED:

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

TISHERICIA [unclear]

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

2680701205

EXHIBIT

2

February 12, 2010

C-2009-2100220

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.

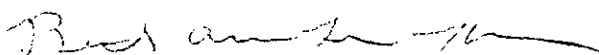
I have asked questions regarding my bill and the late fees, why so high, the rep I spoke to could not give me an answer; he kept on saying I must have been shut off or because of moving. I explained to him more than once I was never shut off and I have been at the same residence for over 13 years. He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



PA. PUB. UTILITIES
SECRETARY'S BUREAU

2010 FEB 16 AM 10:59

RECEIVED

Legal Department

Exelon Business Services Company
2301 Market Street/523-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Telephone 215.841.4000
Fax 215.568.3389
www.exeloncorp.com

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

EXHIBIT

3



PECO Energy

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

*CV
TV*

IN REPLY PLEASE
REFER TO OUR FILE

April 19, 2010

C-2009-2100220
TISHENIA

APR 21 2010

KEN MASSEY ESQUIRE
PECO ENERGY COMPANY
2301 MARKET STREET, S23-1
PO BOX 8699
PHILADELPHIA PA 19101

RECEIVED

JUL -8 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Beth Ann Fryer-Torres
v.
PECO Energy company

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on April 15, 2010 has adopted an Opinion and Order in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty
James J. McNulty
Secretary

Encls.
Cert. Mail
MH

FIN - ORD

~~ORD~~ ~~ORD~~

2680 701205

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held April 15, 2010

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
Wayne E. Gardner
Robert F. Powelson

Beth Ann Fryer-Torres

v.

C-2009-2100220

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Beth Ann Fryer-Torres, dated February 12, 2010, to the Initial Decision (I.D.) of Special Agent Eranda Vero, issued January 25, 2010.¹ Reply Exceptions dated February 24, 2010, were filed by PECO Energy Company (PECO).

¹ Ms Fryer-Torres' Exceptions were received by the Secretary's Bureau without a certificate of Service. The Secretary's Bureau sent a copy of the Exceptions to PECO on February 17, 2010, the date which was then deemed to be the filing date for the Exceptions in order to avoid prejudice to either Party.

History of the Proceeding

On April 8, 2009, Beth Ann Fryer-Torres filed a Formal Complaint against PECO with the Commission alleging that there were incorrect charges on her bill. She also alleged miscommunication on the part of PECO with regard to medical certificates. As relief, Ms. Fryer-Torres requested "a reasonable payment arrangement." Complaint at ¶ 5.

On April 30, 2009, PECO 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 AM. This case was assigned to Special Agent Erando Vero, pursuant to 52 Pa. Code § 56.174.

On August 11, 2009, the Special Agent issued a Prehearing Order advising 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 September 25, 2009. The Special Agent attempted to contact Ms. Fryer-Torres at her home telephone number listed in her Complaint. The call was picked up by an answering machine and the Special Agent left a voice message stating who she was, the reason for her call and that she would call back in approximately ten minutes at which time, if Ms. Fryer-Torres

remained unavailable, the hearing would proceed in her absence. After a ten-minute recess, the Special Agent dialed the same number one more time. Again, she 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. The Special Agent convened the hearing and PECO's attorney moved for dismissal of this case for failure to prosecute.

Later in the afternoon of September 25, 2009, Ms. Fryer-Torres informed the Special Agent that she had suffered a medical emergency the previous evening and had just been released from the hospital. As a result, the Special Agent continued the hearing for good cause shown and informed PECO accordingly.

On October 30, 2009, a second Telephone Hearing Notice was mailed to the Parties notifying them that the hearing was scheduled for December 15, 2009, at 10:00 AM. 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. This document has not been returned to the sender by the United States Postal Service as undeliverable.

PECO was represented by counsel on December 15, 2009. The Special Agent attempted, unsuccessfully, to contact Ms. Fryer-Torres at the telephone number listed in her Complaint and left a voice message on the answering machine stating, once again, who she was, the reason for her call and that she would call back in ten minutes. Following a ten-minute recess, the Special Agent dialed Ms. Fryer-Torres' number. When her call was intercepted by an answering machine, she left a message informing Ms. Fryer-Torres that the hearing would proceed in her absence.

The Special Agent reconvened the hearing and advised PECO's counsel that she was unable to contact Ms. Fryer-Torres. PECO's attorney moved for dismissal of this case for failure to prosecute. The record closed on December 15, 2009.

In her Initial Decision issued January 25, 2010, Special Agent Vero dismissed Ms. Fryer-Torres' Complaint for failure to meet her burden of proof. On February 12, 2010, Ms. Fryer-Torres filed Exceptions with the Commission. On February 24, 2010, PECO filed Reply Exceptions.

Discussion

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), which provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

As a preliminary matter, we note that any issue or Exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pennsylvania Public Utility Commission*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pennsylvania Public Utility Commission*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In her Exceptions, Ms. Fryer-Torres contends that she never received any notice of hearing for December 15, 2009, and that she never received any phone calls. She also notes that her phone was “acting up” and has since been replaced. The remainder of Ms. Fryer-Torres’ Exceptions consists of facts related to her Complaint, which will not be considered by us in making our decision.

In its Reply Exceptions, PECO argues that Ms. Fryer-Torres failed to appear for hearings despite proper notice. PECO states that, if Ms. Fryer-Torres’ phone was not working properly, she should have notified the Commission of the situation. However, no such notice was provided. PECO asserts that it should not be prejudiced by having to expend an inordinate amount of its resources repeatedly preparing for hearings at which Ms. Fryer-Torres does not appear.

In her Initial Decision, the Special Agent found that the Commission’s Hearing Notice and her Prehearing Order were not returned by the United States Postal Service. I.D. at 4. Accordingly, it is presumed that Ms. Fryer-Torres received the Commission’s Hearing Notices. *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974).

We agree with PECO that it would be unfair to require the Party that appears for the hearing to be inconvenienced when the other Party does not appear and does not show that her failure to appear was unavoidable. In this instance, Ms. Fryer-Torres was given a second opportunity to present her case, given the medical emergency that necessitated the re-scheduling of the hearing.

We find that the Special Agent correctly concluded that Ms. Fryer-Torres waived her opportunity to participate in the hearing by her unexcused failure to appear. I.D. at 4-5. Ms. Fryer-Torres was afforded the opportunity for administrative due process. As the Party bringing this Complaint, Ms. Fryer-Torres bears the burden of

proving, by a preponderance of the evidence, that she is entitled to relief. By failing to appear and present any evidence in support of her Complaint, Ms. Fryer-Torres has failed to meet her burden of proof. Under these circumstances, the Complaint must be dismissed with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995). See also *Charles Goodman v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00992833, 2000 Pa. PUC LEXIS 6 (March 15, 2000).

Conclusion

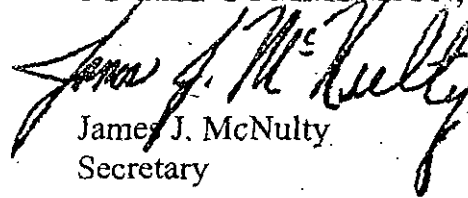
Upon review and consideration of the record of this proceeding, we find that Ms. Fryer-Torres has failed to meet her burden of proof; **THEREFORE**,

IT IS ORDERED:

1. That the Exceptions of Ms. Fryer-Torres are denied.
2. That the Initial Decision of Special Agent Eranda Vero is affirmed, consistent with this Opinion and Order.
3. That the Complaint of Ms. Fryer-Torres, docketed at C-2009-2100220 against PECO Energy Company is dismissed with prejudice.

4. That the proceeding docketed C-2009-2100220 shall be marked closed.

BY THE COMMISSION,


James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: April 15, 2010

ORDER ENTERED: April 19, 2010