

Legal Department

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**Business Services
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August 30, 2010

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

**Re: Michael LeClaire v. PECO Energy Company
PUC Docket No. C-2010-2192754**

Dear Ms. Chiavetta:

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

- Answer and New Matter (1 original and three copies)
- Motion for Continuance (1 original)
- Motion for Judgment on the Pleadings (1 original)
- Preliminary Objection (1 original)
- Exceptions (1 original)
- Reply Exceptions (1 original)
- Brief (1 original)
- Reply Brief (1 original)

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,



Tishekia Williams
Counsel for PECO Energy Company

TW/adz
Enc.

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL LECLAIRE

:
:
:
:
:

v.

DOCKET NO. C-2010-2192754

PECO ENERGY COMPANY

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objection of PECO Energy Company, within 10 days from service of this notice, and if you do not file a written response denying or correcting the enclosed New Matter within 20 days from service of this notice, the facts set forth by PECO Energy Company in the New Matter may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Preliminary Objection and Reply to New Matter, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Tishekia Williams, and where applicable, the Administrative Law Judge presiding over the issue.

File with:

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

With a copy to:

Tishekia Williams, Esq.
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, August 30, 2010

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AUG 31 2010

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**



Tishekia Williams
Counsel for PECO Energy Company
2301 Market Street S-23
Philadelphia, PA 19101-8699
215-841-6841
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AUG 31 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

MICHAEL LECLAIRE

:

v.

:

DOCKET NO. C-2010-2192754

:

PECO ENERGY COMPANY

:

PRELIMINARY OBJECTION OF RESPONDENT, PECO ENERGY COMPANY

Respondent, PECO Energy Company ("PECO"), respectfully petitions this Honorable Commission to dismiss this Complaint inasmuch as it requests that: 1) the Commission make a determination of law under the Wiretapping and Electronic Surveillance Control Act - because the Commission lacks jurisdiction under 52 Pa. Code § 5.101(a)(1); 2) the Commission make a determination of criminal law stemming from the 5th Amendment - because the Commission lacks jurisdiction over criminal matters under 52 Pa. Code § 5.101(a)(1); 3) the Commission award damages - because it fails to state a claim upon which the Commission can grant relief, pursuant to 52 Pa. Code § 5.101(a)(1) and (4) - because the Commission lacks power to award damages and the Complaint is legally insufficient; and 4) the Commission determine that PECO did not restore service fast enough - because of the pendency of an ongoing criminal proceeding which is considering the same facts related to the length of time for service restoration and Complainant's resulting behavior pursuant to 52 Pa. Code § 5.101(a)(6).

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

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

2. In deciding preliminary objections, the Pennsylvania Public Utility Commission (“Commission) must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible.²

3. A Complainant must be able to seek the requested recovery under the law to survive a preliminary objection.³

4. Complainant filed a Formal Complaint with the Pennsylvania Public Utility Commission on August 9, 2010, wherein Complainant requested that the Commission: 1) find that PECO committed a felony under 18 Pa.C.S. §5703 of the Wiretapping and Electronic Surveillance Control Act; 2) force PECO to drop all criminal charges related to PECO’s release of phone call recordings, between PECO and Complainant, to the local police department in violation of his Privilege Against Self Incrimination; and 3) find that PECO did not restore Complainant’s service fast enough and reimburse him for displacement of his family while service was off.

5. PECO is filing an Answer and New Matter in conjunction with this Preliminary Objection.

6. To the extent that Complainant is seeking that the Commission find that PECO committed a felony by violating the Wiretapping and Electronic Surveillance Control Act, the request should be denied pursuant to 52 Pa. Code § 5.101(a)(1), because the Commission lacks power to enforce this criminal statute in a regulatory arena.

² 2006 Pa. P.U.C. 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”).

7. Mr. LeClaire claims that PECO, “recorded conversations without 2 party consent” and committed a felony when it released these recordings to the local authorities. Complainant is referring to the prohibition in 18 Pa.C.S. §5703 against wiretapping and electronic surveillance.

8. Chapter 57 of the Wiretapping and Electronic Surveillance Control Act is a criminal statute and its violation is considered a felony. Complainant seems to be referring to the Exceptions set forth in 18 Pa.C.S. §5704, which sets forth certain circumstances in which the use of recorded messages are allowed for use in criminal proceedings.

9. Whatever section of the statute, Mr. LeClaire is referring to does not matter because the Commission has no authority to make determinations as to whether PECO violated the Wiretapping and Electronic Surveillance Control Act according to *McClellan v. Pennsylvania Public Utility Com'n*, 159 Pa.Cmwlth. 675, 634 A.2d 686, Pa.Cmwlth., 1993. In that case, the Commission ruled that:

The Wiretapping and Electronic Surveillance Control Act (Act), 18 Pa.C.S. §§ 5701-5781, governs the issues raised by McClellan in his complaint...Section 5721 of the Act, 18 Pa.C.S. § 5721, states that all of the remedies provided for in the Act...are the exclusive judicial remedies and sanctions that are available for wiretap violations. Section 5721 of the Act gives the courts the exclusive power to determine the legality of electronic surveillance. The PUC does not have jurisdiction to authorize wiretaps, to hear criminal prosecutions involving illegal wiretaps or to provide...remedies for victims of illegal wiretaps. This lack of jurisdiction is predicated on the PUC's lack of authority to determine the legality of an instance of electronic surveillance.

Any request for a determination under the Wiretapping and Electronic Surveillance Control Act cannot be pursued at the Commission because the Commission lacks subject matter jurisdiction to hear such claims under 52 Pa. Code § 5.101(a)(1). Therefore, this request should be dismissed.

10. To the extent that the Complainant is seeking to force PECO to drop criminal charges against him because of an alleged violation of Complainant's 5th Amendment rights, that

claim should be denied pursuant to 52 Pa. Code § 5.101(a)(1) because the Commission lacks subject matter jurisdiction over criminal matters.

11. The Commission has held that criminal matters, including those stemming from the 5th Amendment are outside of its jurisdiction. See *Scheidly v. PECO Energy Co.*, 2006 WL 2620455, Penn.P.U.C., (2006), wherein the Commission held that “criminal matters that would entail the issue of double jeopardy are not within our jurisdiction...Because we cannot hear criminal charges, double jeopardy is not applicable.”

12. The Commission cannot hear criminal matters, including those stemming from the 5th Amendment, because it lacks subject matter jurisdiction under 52 Pa. Code § 5.101(a)(1). Therefore, this request should be dismissed.

13. To the extent that Complainant is seeking compensation for the alleged damages related to his claim this his family was displaced while service was off for approximately 2 days, the request should be denied pursuant to 52 Pa. Code § 5.101(a)(1) and (4) because the Commission lacks jurisdiction to award damages. Therefore, that request for relief is legally insufficient.

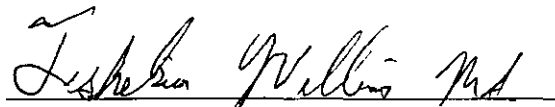
14. The Commission is without the power to award damages to Complainant. See *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977). Therefore, the Complaint is insufficient as to substance because it fails to state a claim upon which the Commission can grant relief. Accordingly, to the extent the Complaint seeks monetary damages it should be dismissed pursuant to 52 Pa. Code § 5.101(a)(4).

15. Finally, to the extent that Complainant seeks a determination that PECO failed to restore his service quickly enough, PECO avers that this claim should be dismissed under 52 Pa. Code § 5.101(a)(6) because of the pendency of an ongoing criminal complaint at docket M-J-

15301-NT-0000401-2010. A copy of this docket sheet is included as an Attachment to this Preliminary Objection. Because the criminal complaint is addressing the harassment related to Complainant's contacts to PECO while he was awaiting service restoration, this claim should be dismissed to allow the criminal court to exercise its jurisdiction over these facts.

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss this Complaint inasmuch as it requests that: 1) the Commission make a determination of law under the Wiretapping and Electronic Surveillance Control Act - because the Commission lacks jurisdiction under 52 Pa. Code § 5.101(a)(1); 2) the Commission make a determination of criminal law stemming from the 5th Amendment - because the Commission lacks jurisdiction over criminal matters under 52 Pa. Code § 5.101(a)(1); 3) the Commission award damages - because it fails to state a claim upon which the Commission can grant relief, pursuant to 52 Pa. Code § 5.101(a)(1) and (4) - because the Commission lacks power to award damages and the Complaint is legally insufficient; and 4) the Commission determine that PECO did not restore service fast enough - because of the pendency of an ongoing criminal proceeding which is considering the same facts related to the length of time for service restoration and Complainant's resulting behavior pursuant to 52 Pa. Code § 5.101(a)(6).

Respectfully Submitted,



Tishkia Williams
Counsel for PECO Energy Company
2301 Market Street, S23-1
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MICHAEL LECLAIRE :
v. : DOCKET NO. C-2010-2192754
PECO ENERGY COMPANY :

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: August 30, 2010


Tishekia Williams

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SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MICHAEL LECLAIRE :
 :
v. : DOCKET NO. C-2010-2192754
 :
PECO ENERGY COMPANY :

CERTIFICATE OF SERVICE

I, Tishkia 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:

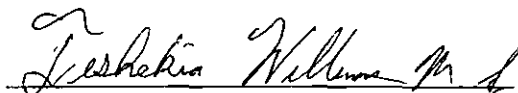
Michael LeClaire
30 Highgate Circle
Spring City, PA 19475

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Dated at Philadelphia, Pennsylvania, August 30, 2010.

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



Tishkia Williams
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Magisterial District Judge 15-3-01

DOCKET

Docket Number: MJ-15301-NT-0000401-2010

Non-Traffic Docket



Commonwealth of Pennsylvania
v.
Michael Leclaire

Page 1 of 2

CASE INFORMATION

| | | | |
|--------------------------|--|--------------------------|------------|
| <u>Judge Assigned:</u> | Magisterial District Judge James V. Deangelo | <u>Issue Date:</u> | 06/08/2010 |
| <u>OTN:</u> | | <u>File Date:</u> | 06/08/2010 |
| <u>Arresting Agency:</u> | E Vincent Township Police Dept | <u>Arrest Date:</u> | |
| <u>Citation #:</u> | P8 285424-0 | <u>Disposition:</u> | |
| <u>County:</u> | Chester | <u>Disposition Date:</u> | |
| <u>Township:</u> | East Vincent Township | <u>Case Status:</u> | Active |

STATUS INFORMATION

| | | | |
|--------------------|-----------------------|--------------------|--------------------------|
| <u>Case Status</u> | <u>Event Track</u> | <u>Status Date</u> | <u>Processing Status</u> |
| Active | Filed - Copy Attached | 06/08/2010 | Awaiting Plea |

DEFENDANT INFORMATION

| | | | |
|-----------------------|----------------------------------|--------------|-----------|
| <u>Name:</u> | Leclaire, Michael | <u>Sex:</u> | Male |
| <u>Date of Birth:</u> | 05/12/1966 | <u>Race:</u> | Caucasian |
| <u>Address(es):</u> | Primary Spring City, PA 19475 | | |

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AUG 31 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

CASE PARTICIPANTS

| | |
|-------------------------|-------------------------|
| <u>Participant Type</u> | <u>Participant Name</u> |
| Arresting Officer | Gammon, Joseph M |
| Defendant | Leclaire, Michael |

CHARGES

| # | Charge | Grade | Description | Offense Dt. | Disposition |
|---|-----------------|-------|---|-------------|-------------|
| 1 | 18 § 2709 §§ A3 | S | HARASSMENT - COURSE OF CONDUCT W/NO LEGIT PURPOSE | 05/25/2010 | |

REGISTRY ENTRY INFORMATION

| Filed Date | Entry | Filer | Applies To |
|------------|-----------------------------|------------------------------------|-----------------------------|
| 08/31/2010 | Certified Summons Scheduled | Magisterial District Court 15-3-01 | Michael Leclaire, Defendant |
| 08/12/2010 | Certified Summons Rejected | Magisterial District Court 15-3-01 | Michael Leclaire, Defendant |
| 07/06/2010 | Summons Issued | Magisterial District Court 15-3-01 | Michael Leclaire, Defendant |
| 07/06/2010 | Certified Summons Issued | Magisterial District Court 15-3-01 | Michael Leclaire, Defendant |
| 06/11/2010 | Summons Issued | Magisterial District Court 15-3-01 | Michael Leclaire, Defendant |
| 06/11/2010 | First Class Summons Issued | Magisterial District Court 15-3-01 | Michael Leclaire, Defendant |
| 06/08/2010 | Non-Traffic Citation Filed | Magisterial District Court 15-3-01 | Michael Leclaire, Defendant |

Recent entries made in the court filing offices may not be immediately reflected on these docket sheets. Neither the courts of the Unified Judicial System of the Commonwealth of Pennsylvania nor the Administrative Office of Pennsylvania Courts assumes any liability for inaccurate or delayed data, errors or omissions on these docket sheets. Docket sheet information should not be used in place of a criminal history background check, which can only be provided by the Pennsylvania State Police. Employers who do not comply with the provisions of the Criminal History Record Information Act (18 Pa.C.S. Section 9101 et seq.) may be subject to civil liability as set forth in 18 Pa.C.S. Section 9183.

Attachment D

Magisterial District Judge 15-3-01

DOCKET

Docket Number: MJ-15301-NT-0000401-2010

Non-Traffic Docket



Commonwealth of Pennsylvania

v.

Michael Leclair

Page 2 of 2

CASE FINANCIAL INFORMATION

Case Balance: \$5.54

Next Payment Amt:

Last Payment Amt:

Next Payment Due Dt:

| <u>Assessment Type</u> | <u>Assessment Amt</u> | <u>Adjustment Amt</u> | <u>Non-Monetary Payment Amt</u> | <u>Payment Amt</u> | <u>Balance</u> |
|------------------------|-----------------------|-----------------------|-------------------------------------|--------------------|----------------|
| Postage - Case | \$5.54 | \$0.00 | \$0.00 | \$0.00 | \$5.54 |