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October 27, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Gray v. PECO Energy Company
Docket No. C-2010-2203085

Dear Secretary Chiavetta:

Enclosed for filing on behalf of PECO is an original of its Preliminary Objection to the above-referenced Complaint. This document has been e-filed at the Pennsylvania Public Utility Commission's website. A copy has been served on the Complainant in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact me.

Best Regards,

STEVENS & LEE


Michael A. Grun

Encl.

cc: Certificate of Service

Philadelphia • Reading • Valley Forge • Lehigh Valley • Harrisburg • Lancaster • Scranton
Williamsport • Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BARRY GRAY	:	
Complainant	:	
	:	
v.	:	Docket No. C-2010-2203085
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

NOTICE TO PLEAD


To: Barry Gray

You are hereby notified to file a written response to the attached Preliminary Objection of PECO within ten (10) days from the date of service of this notice. If you do not file a written response denying or correcting the enclosed Preliminary Objection within ten(10) days of service, the facts set forth by PECO may be deemed to be true, thereby requiring no other proof, and judgment may be entered against you. All pleadings, such as responses to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

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

You must also serve a copy of your response on the undersigned counsel for PECO. Failure to respond to this Preliminary Objection could result in the dismissal of your case.

STEVENS & LEE



Michael A. Gruin (I.D. No. 78625)
17 N. 2nd St., 16th Floor
Harrisburg, PA 17101
Tel. (717) 255-7365
Fax (610) 988-0852
COUNSEL FOR
PECO ENERGY COMPANY

DATE: October 27, 2010

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**PECO ENERGY COMPANY’S PRELIMINARY OBJECTION TO THE
COMPLAINT**

Respondent, PECO Energy Company (“PECO Energy”), pursuant to 52 Pa. Code § 5.101(a)(5), respectfully petitions this Honorable Commission to dismiss the Complaint for lack of capacity to sue.

1. On October 8, 2010, PECO Energy was served with a formal Complaint from Barry Gray (“Complainant”). A copy of the complaint is attached as Exhibit 1.
2. The Commission’s Rules of Administrative Practice and Procedure permit the filing of Preliminary Objections. Pursuant to 52 Pa. Code § 5.101(a)(5), a formal complaint may be dismissed for lack of capacity to sue.
3. According to the Complaint, the Complainant resides at 14008 Monticello Drive, Cooksville, Maryland.
4. The Complaint relates to the account of Leon A. Gray of 118 East Richardson Avenue, Langhorne, Pennsylvania, and individual other than the Complainant.
5. The Complaint does not allege that the Complainant is using or benefitting from service to the property at 118 East Richardson Avenue, Langhorne, Pennsylvania.

6. The Complaint does not set forth that the Complainant has any interest in or beneficial usage of the electric service to 118 East Richardson Avenue, Langhorne, Pennsylvania.

7. The Complaint does not allege that the Complainant is an “aggrieved” person, who has standing in a proceeding before an administrative agency.¹

8. Under the Commission’s regulations at 52 Pa. Code §§1.21-1.22, individuals in contested proceedings may represent themselves, or they may be represented by an attorney at law admitted to practice before the Supreme Court of Pennsylvania or by a certified legal intern

9. The Complaint does not indicate that the Complainant is an attorney admitted to practice law in Pennsylvania or a certified legal intern, and it is evident from the four corners of the Complaint that the Complaint relates to service provided to another individual at a different location from where the Complainant resides.

10. The Complainant, who is not a PECO customer, does not possess the capacity to sue PECO on behalf of a third party, when the Complainant is not an aggrieved person and is not using or benefitting from service to the third party.

11. Furthermore, the Commission’s regulations do not permit an individual to be represented in a contested proceeding by anyone other than an attorney at law or certified legal intern.

12. For the foregoing reasons, PECO respectfully submits that the Complaint should be dismissed for lack of capacity to sue pursuant to 52 Pa.Code §5.101 (a)(5).

¹ See, *Williams Penn Parking Garage. Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 296 (1975), wherein the Pennsylvania Supreme Court stated that an alleged “aggrieved” person must show:

1. A direct interested in the subject matter
2. That the interest is substantial; and

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss the Complaint, with prejudice

Respectfully submitted,



Michael A. Gruin (I.D. No. 78625)
17 North Second Street, 16th Floor
Harrisburg, PA 17101
Telephone: 717-255-7365
Facsimile: 610-988-0852
mag@stevenslee.com

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

Counsel for PECO Energy Company

Dated: October 27, 2010

3. The interest is direct, immediate and not a remote consequence of the harmful action.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

Please print in ink or type.

1. CUSTOMER (COMPLAINANT) INFORMATION

Your name, mailing address, county, telephone number, utility account number and service address:

Name Barry Gray

Street/P.O. Box 4008 Monticello Drive Apt #

City Cooksville State MD Zip 21723

County Howard

Daytime Telephone Number Where We Can Contact You: (410) 401-8961

E-mail Address (optional): bg3213@msn.com

Utility Account Number 7055500100 (from your bill)

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name Leon A. Gray

Street/P.O. Box 118 East Richardson Avenue

City Langhorne State PA Zip 19047

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

PECO Energy

3. TYPE OF UTILITY (check one)

[X] ELECTRIC

[] STEAM HEAT

[] GAS

[] WASTE WATER

[] WATER

[] MOTOR CARRIER

(e.g., taxi, moving company, limousine)

[] TELEPHONE (local, long distance)

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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). I would like 100% refund ^(Assessed fee) for incorrect assertion that power meter was tampered and company assessed fee.

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.

(See attached documents including photos).

SERIES OF EVENTS CAUSING POWER SHUT-OFF AT 118 E RICHARDSON AVE

- 1) PECO notified us of past due balance for electric bill in May 2010 of approximately \$660.00.
- 2) Spoke with PECO customer service and negotiated payment plan and made initial payment of \$240.00.
- 3) PECO customer service office then restored power based on commitment to pay remaining o/s balance in conjunction after confirmation of initial payment amount.
- 4) On or about June 25, 2010, PECO determines that the electric power to 118 E. Richardson was incorrectly re-activated and the only plausible explanation from their perspective is that the power meter was tampered with on the premise to restore service.
- 5) PECO then shuts-off power and indicates that the customer not only must pay the past due balance, but also charged an additional \$1,300.00 (approximately) in penalties, tampering and re-activation fees.
- 6) Customer called PECO as well as taken pictures of power meter to show that the "box" has never been tampered in any manner (see attached). Therefore, it is our belief that someone in the PECO customer service restored power in conjunction with the payment plan arrangement (See #2) but either did not follow PECO policy or not properly document the course of actions in the customer files.
- 7) We agree that the past due balance must be paid in full, but any and all fees associated with the tampering and shut-off penalties need to be waived and immediately credited against the account.

5. RELIEF

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

I ~~want~~ ~~would~~ PECO Energy to credit my utility account for the approximately \$1,300.00 in penalties and fees they incorrectly determined that the tenant pried off the power meter to re-activate electrical services, when such event never transpired.

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

(see decision documents attached)

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 Barry Gray, 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).

 (Signature) 9/28/2010 (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:

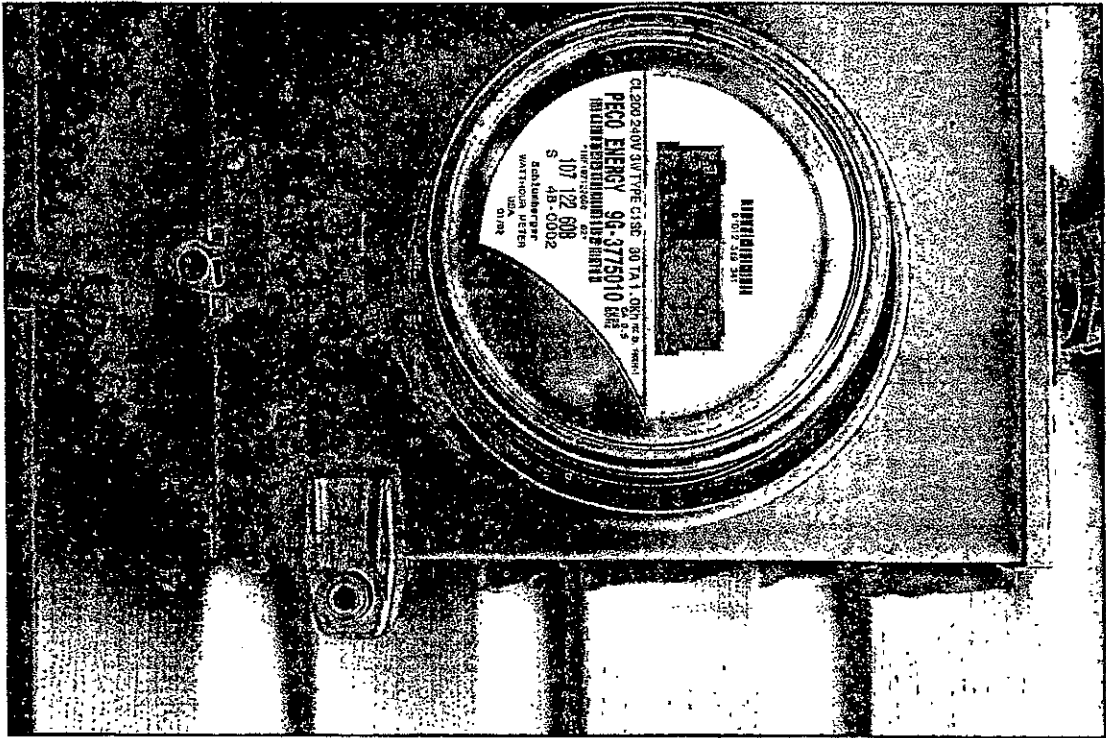
If using overnight delivery service:

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
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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.



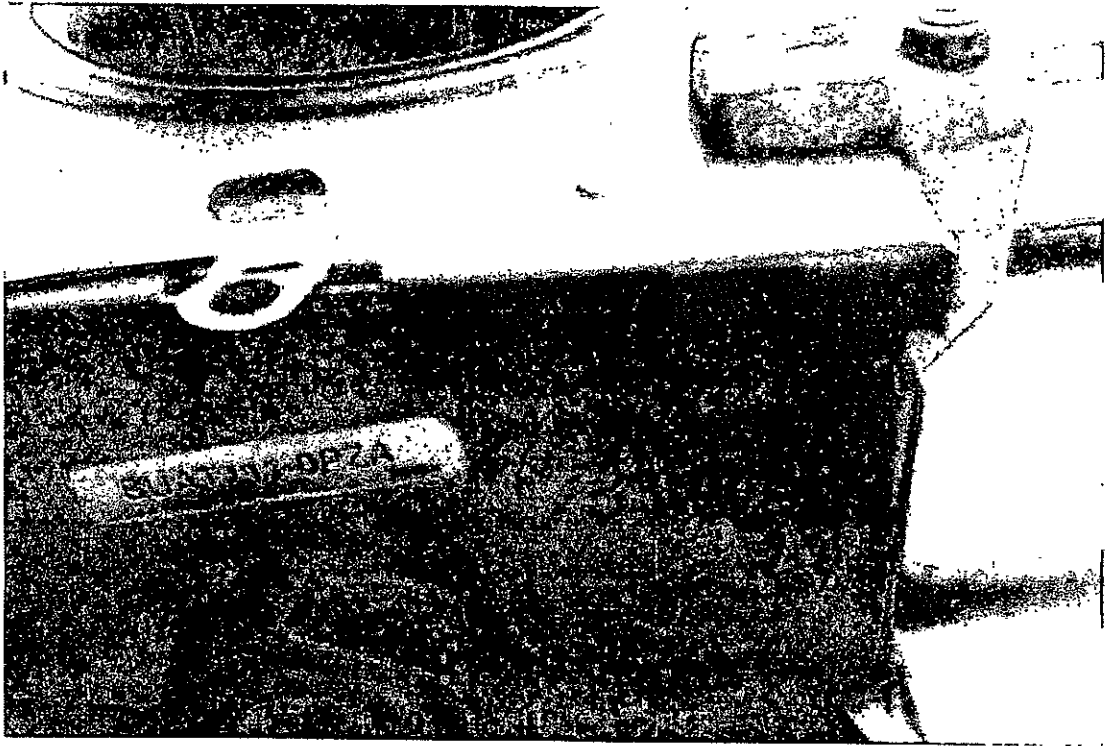
Pictures of power meter taken
in June 2010 at 118 East Richardson Ave.

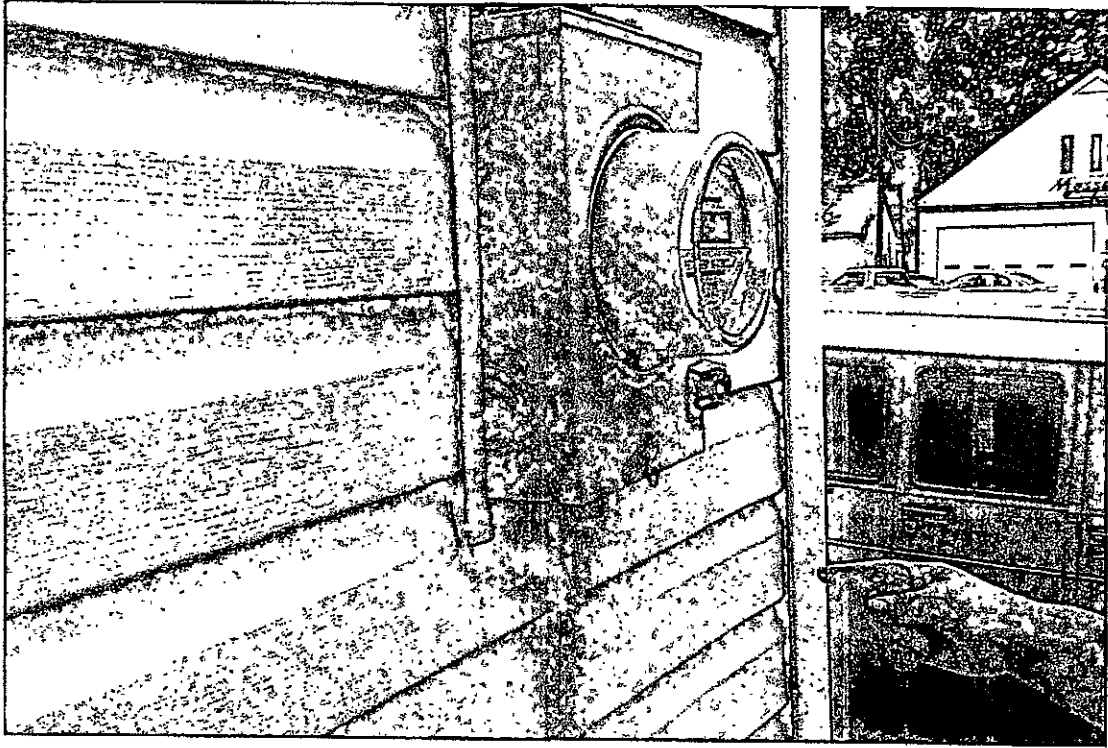
RECEIVED

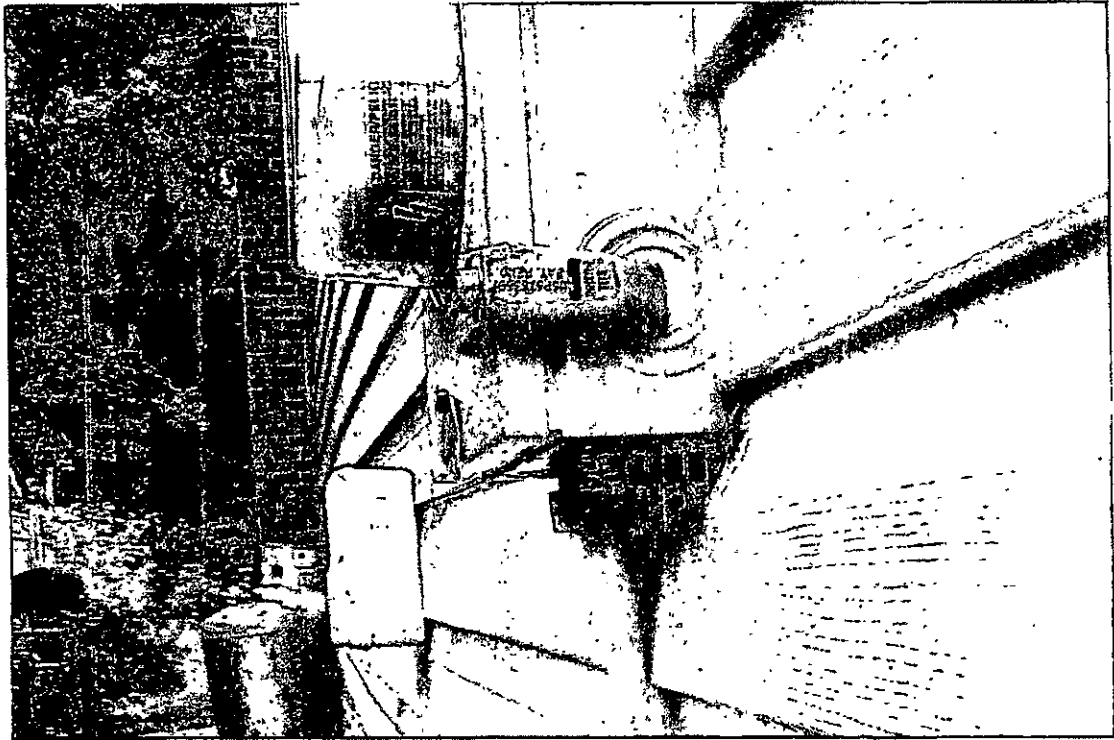
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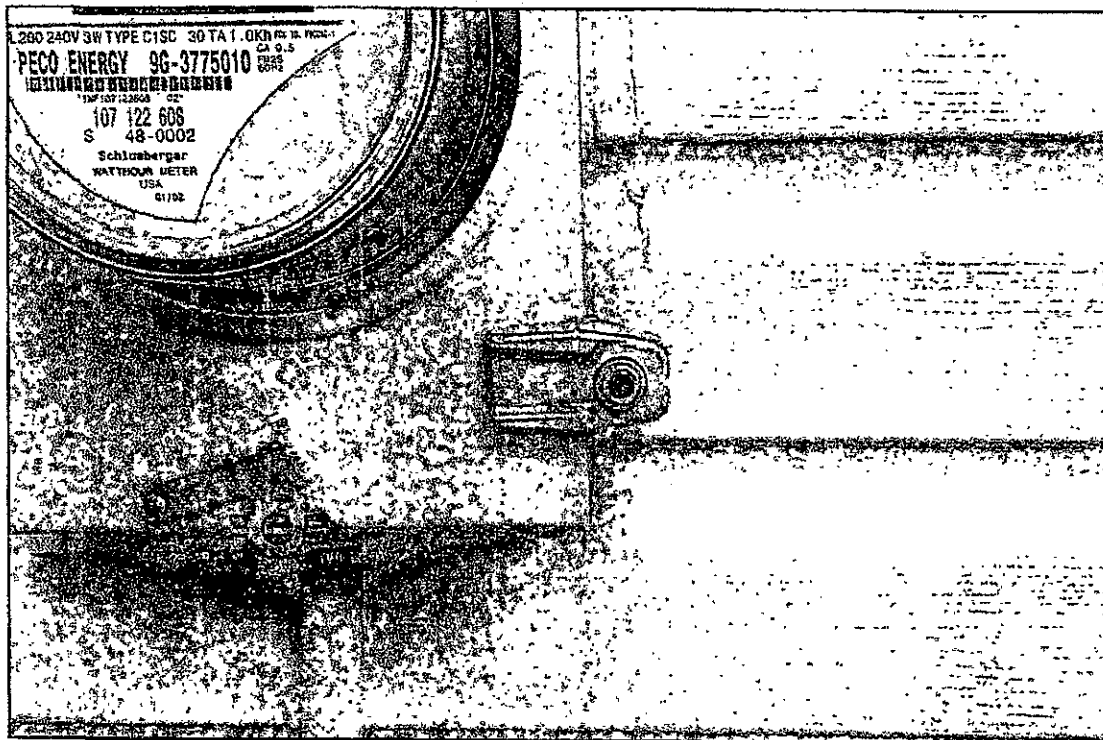
P.A.P.U.C.
SECRETARY'S BUREAU



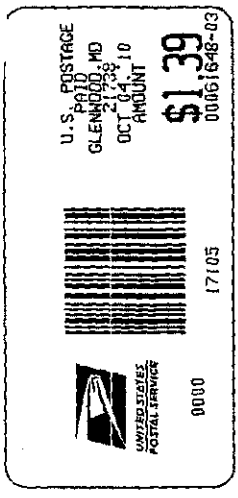








14008 Monticello Drive
Cooksville, MD. 21723



Return to sender

Pennsylvania Public Utility Commission
Attn. Secretary
P.O. Box 3265
Harrisburg, PA. 17105-3265¹⁸

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SECRETARY'S BUREAU

Commonwealth of Pennsylvania :
County of Dauphin : SS

AFFIDAVIT

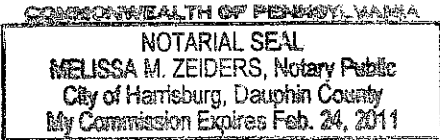
I, Michael A. Gruin, being duly sworn according to law, depose and say I am agent of PECO Energy Company and have been authorized to make this affidavit on its behalf and that the facts above set forth are true and correct to the best of my knowledge, information and belief, and PECO Energy Company expects to be able to prove the same at any hearing hereof.

Michael A. Gruin
Michael A. Gruin, agent of PECO Energy Company

Sworn and subscribed before me this 27th day of October, 2010

Melissa M. Zeiders

Notary
My Commission Expires:



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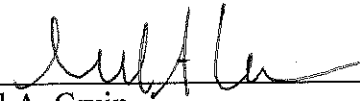
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Preliminary Objection upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA First Class U.S. Mail

Barry Gray
14008 Monticello Drive
Cooksville, Maryland 21723

Leon A. Gray
118 East Richardson Avenue
Langhorne, PA 19047



Michael A. Gruin

DATED: October 27, 2010