

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**MAXINE McCLENDON**  
**Complainant**

v.

**PECO ENERGY COMPANY**  
**Respondent**

:  
:  
:  
:  
:  
:  
:

**Docket No. C-2010-2207045**

**RECEIVED**

**NOTICE TO PLEAD**

NOV 18 2010

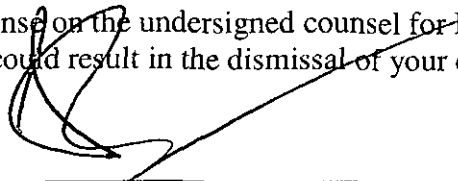
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**To: Maxine McClendon**

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. You are also notified If you do not file a written response denying or correcting the enclosed Preliminary Objection within ten (10) days of service, a decision may be rendered against you. All pleadings, such as responses to New Matter, 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 Answer and New Matter could result in the dismissal of your case.



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](mailto:tishekia.williams@exeloncorp.com)

DATE: November 18, 2010

**RECEIVED**

NOV 18 2010

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**MAXINE McCLENDON**  
**Complainant**

**v.**

**PECO ENERGY COMPANY**  
**Respondent**

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**Docket No. C-2010-2207045**

**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.<sup>1</sup>

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.<sup>2</sup>

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

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

<sup>2</sup> 2006 Pa. PUC Lexis 111, \*7.

<sup>3</sup> *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”).

5. On or about October 28, 2010, Complainant filed the instant complaint with the Public Utility Commission. In the complaint, Complaint disputes the account balance.

6. PECO is filing a timely Answer, New Matter and Preliminary objections in response to the Complaint.

7. PECO raises the affirmative defense of Res Judicata.

8. On March 5, 2009, Complainant filed a formal complaint against PECO Energy Company alleging improper charges on her account. A copy of the complaint is attached as Exhibit 1.

9. On May 1, 2009, PECO filed a response denying the material allegations of the complaint.

10. By hearing notice dated May 20, 2009 a hearing was scheduled for June 23, 2009.

11. On June 23, 2009, Complainant arrived after the hearing concluded.

12. By hearing notice dated June 26, 2009, a second hearing was scheduled for July 8, 2009.

13. On July 8, 2009 the hearing was conducted. Complainant specifically rejected PECO's settlement offer. Complainant presented testimony in support of her case and was afforded a full and fair opportunity to be heard.

14. On August 6, 2010, the ALJ rendered a decision dismissing the complaint. A copy of the decision is attached as Exhibit 2.

15. At that time, Complainant's balance was \$9,462.26. Complainant's balance is now \$10,196.66.

16. PECO avers that Complainant's attempt to dispute the charges is barred by the doctrine of Res Judicata. Complainant was afforded a full and fair opportunity to present her case. A final decision has issued on the merits finding that Complainant failed to meet her burden of proof. Accordingly, Complainant's claim is barred. A copy of the final order is attached as Exhibit 3.

17. To succeed in a defense based on Res Judicata, a party must demonstrate that the actions have four 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.<sup>4</sup>

18. All four elements are met. The identity of the thing sued is the same in both actions. Complainant disputes the charges on her PECO bill. 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.

---

<sup>4</sup> 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 request that Complainant's claim regarding the accuracy of her billing be dismissed.

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  
Tishkia.williams@exeloncorp.com

COPY of formal Complaint.  
In file folder

**RECEIVED**

NOV 18 2010

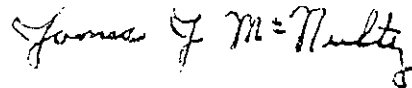
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

March 19, 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 cursive script that reads "James J. McNulty".

James J. McNulty  
Secretary

ane

PECO  
Exhibit  
2

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Maxine McClendon  
v.  
PECO Energy Company

TISHEKIA WILLIAMS  
AUG 10 2010  
C-2009-2095418

INITIAL DECISION

RECEIVED

NOV 18 2010

Before  
Charles E. Rainey, Jr.  
Administrative Law Judge

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

HISTORY OF THE PROCEEDING

On March 5, 2009, Maxine McClendon (Complainant) filed a formal complaint (complaint) against PECO Energy Company (Respondent) claiming that there are incorrect charges on her bill. On May 1, 2009, Respondent filed an answer denying the material allegations in the complaint.

By Hearing Notice dated May 20, 2009, an initial hearing was scheduled for June 23, 2009. On May 26, 2009, I issued a Prehearing Order that set forth procedures to be followed in this case.

On June 23, 2009, Complainant arrived after the hearing had concluded. Complainant explained that she got lost because the Hearing Notice did not indicate the floor the hearing was being held on. Consequently, the hearing was rescheduled for July 8, 2009, pursuant to Hearing Cancellation/Reschedule Notice dated June 26, 2009.

The rescheduled hearing was held. Complainant appeared pro se and testified. She presented one exhibit on cross examination, which was admitted into evidence.

Respondent was represented by Tishekia Williams, Esquire. Charles Thomas, who is employed by Respondent as a regulatory assessor, testified on Respondent's behalf. Respondent presented five exhibits, all of which were admitted into evidence. The record closed on August 10, 2009.

### FINDINGS OF FACT

1. Complainant, Maxine McClendon, is a residential electric service customer of Respondent, PECO Energy Company. She resides at 2424 N. Marshall Street, Philadelphia, PA 19133. Tr. 10; McClendon Cross Ex. 1.

2. Complainant's outstanding balance for electric service as of July 8, 2009, was \$9,462.26. Tr. 7, 49.

3. Complainant was initially enrolled in Respondent's Customer Assistance Program (CAP) on January 2, 1996. Complainant last recertified for CAP on March 20, 2008, and most recently provided Respondent with income information on July 14, 2008. Her financial statement showed monthly income of \$664.00 for one adult, which places Complainant at 76% of the Federal poverty level (FPL). That income level places Complainant in Tier D of Respondent's CAP, and as a result she receives a 50% discount on the first 500 kWh of electric usage each month. There has been no change in her income since 2008. Tr. 12, 17-18, 24; PECO Ex. 1.

4. From July 20, 2000 to February 17, 2006, Complainant entered into five payment agreements. Complainant defaulted on all five agreements. Complainant has a history of making no payments or only partial payments. When a customer fails to pay the full amount requested by the due date, the payment agreement defaults. Tr. 31-33, 36; PECO Ex. 5.

### DISCUSSION

Section 701 of the Public Utility Code, 66 Pa.C.S. §701, provides that "...any person...may complain in writing, setting forth any act or thing done or omitted to be done by

any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” As the complainant seeking affirmative relief from the Commission, Complainant has the burden of proving the complaint allegations by producing evidence which establishes the material facts by a preponderance of the evidence. *Darling v. Philadelphia Electric Co.*, F-00161139 (November 16, 1993); 66 Pa.C.S. §332(a). The term “preponderance of the evidence” means that one party has presented evidence that is more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Public Utility Commission*, 578 A.2d 600, 602 (1990), *alloc. den.*, 602 A.2d 863 (1992); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (1950). Stated differently, “preponderance” is not dependent on the number of witnesses testifying on either side but rather on the credibility of the testimony in light of all the evidence in a case. *Burch v. Reading Co.*, 240 F.2d 574 (3d Cir. 1957), *cert. denied*, 353 U.S. 965 (1957). Additionally, any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence. *Mill v. Pa. Public Utility Commission*, 447 A.2d 1100 (1982); *Edan Transportation Corp. v. Pa. Public Utility Commission*, 623 A.2d 6 (1993); 2 Pa.C.S. § 704. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Bethenergy Mines, Inc. v. Workmen’s Compensation Appeal Bd. (Skirpan)*, 531 Pa. 287, 612 A.2d 434 (1992). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Public Utility Commission*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa. Super. 278, 166 A.2d 96 (1960); *Murphy v. Dept. of Public Welfare*, 85 Pa. Commw. 23, 480 A.2d 382 (1984).

{ Although Complainant alleges in her complaint that there are incorrect charges on her bill, it became apparent at the hearing that this case is principally about Complainant’s attempt to enter into what she believes would be an affordable payment agreement with Respondent. Complainant, however, did not prove that there are any incorrect charges on her bill, or that Respondent is required to enter into another payment agreement with her.

Record evidence shows that as of the hearing on July 8, 2009, Complainant owed Respondent a total of \$9,462.26 for electric service. Respondent offered Complainant a

settlement in which the outstanding balance would be reduced to approximately \$7,475.00.<sup>1</sup> Respondent then offered to amortize the new outstanding balance over 60 months, the longest period allowed under Chapter 14 of the Public Utility Code ( $\$7,475.00 \div 60 \text{ months} = \$125.00$ ).<sup>2</sup> Under Respondent's settlement proposal, Complainant would then be required to monthly pay her current budget amount of \$149.00 plus \$125.00 toward her arrearage, for a total amount of \$274.00. Tr. 49. Complainant claimed that Respondent's settlement offer was unaffordable. Complainant proposed a payment agreement requiring her to monthly pay current charges plus \$15.00 toward her arrearage. Tr. 13-14.

Complainant is enrolled in Respondent's Customer Assistance Program (CAP). CAP is designed to assist payment troubled, low income customers. Complainant was initially enrolled in CAP on January 2, 1996. Complainant last recertified for CAP on March 20, 2008, and most recently provided Respondent with income information (financial statement) on July 14, 2008. Her financial statement showed monthly income of \$664.00 for one adult, which places Complainant at 76% of the Federal Poverty Level (FPL). That income level places Complainant in Tier D of Respondent's CAP, and as a result she receives a 50% discount on the first 500 kWh of electric usage each month. Complainant testified that there has been no change in her income since 2008.<sup>3</sup> Tr. 12, 17-18, 24; PECO Ex. 1.

Because Complainant is a CAP customer, the Commission is restrained from establishing or approving a payment agreement. Chapter 14 of the Public Utility Code, which became effective on December 14, 2004, provides that "Customer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission." 66 Pa.C.S. § 1405(c).

Parenthetically, I note that from July 20, 2000 to February 17, 2006, Complainant entered into five payment agreements. Complainant defaulted on all five agreements.

---

<sup>1</sup> Respondent's witness indicated that the reduced outstanding balance of approximately \$7,475.00 that was offered Complainant was derived by offering to waive \$1,709.00 in late fees as a customer courtesy, and also offering a credit in the amount of \$280.47. Tr. 49.

<sup>2</sup> Chapter 14 of the Public Utility Code provides that the length of time for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level, to resolve an unpaid balance on an account, is five years. 66 Pa.C.S. § 1405(b)(1).

<sup>3</sup> Complainant testified that the source of her income is Social Security Disability. Tr. 10-11.

Complainant has a history of making no payments or only partial payments. Respondent's witness testified that when a customer fails to pay the full amount requested by the due date, the payment agreement defaults. Tr. 31-33, 36; PECO Ex. 5. Pursuant to Chapter 14 of the Public Utility Code, even if Complainant were not a CAP customer, the Commission would be restrained from establishing or ordering Respondent to establish additional payment agreements, because there is no evidence of a change in Complainant's income since the last payment agreement, and Complainant has failed to comply with previous payment agreements. Chapter 14 of the Public Utility Code states:

**§ 1405. Payment agreements**

\*\*\*\*\*

**(d) Number of payment agreements.**-Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. A public utility may, at its discretion, enter into a second or subsequent payment agreement with a customer.

66 Pa.C.S. § 1405(d).

A "change in income" is defined as "[a] decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level." 66 Pa.C.S. § 1403. In the present case, there is no evidence of a change in income. However, as earlier described, there is substantial evidence that Complainant defaulted on previous payment agreements.

For all of the foregoing reasons, I find that Complainant did not meet her burden of proving that there are incorrect charges on her bill or that Respondent violated the law by not entering into another payment agreement with her.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa. C.S. §701.
  
2. Complainant had the burden of proof.
  
3. Complainant failed to meet her burden of proof.
  
4. Complainant has not shown that Respondent violated any provision of the Public Utility Code, Commission regulation or any Commission order.

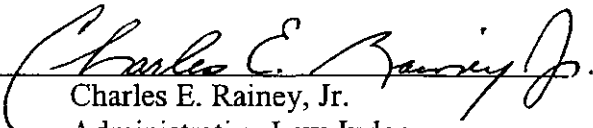
ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint filed by Maxine McClendon against PECO Energy Company at Docket No. C-2009-2095418 is dismissed.
  
2. That this case be marked closed.

Date: July 15, 2010

  
Charles E. Rainey, Jr.  
Administrative Law Judge

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

*Handwritten initials/signature*

Maxine McClendon

v.

PECO Energy Company

:  
:  
:  
:  
:

C-2009-2095418

**FINAL ORDER**

In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the decision of Administrative Law Judge Charles E. Rainey, Jr. dated July 15, 2010, has become final without further Commission action;

THEREFORE,

IT IS ORDERED:

1. That the complaint filed by Maxine McClendon against PECO Energy Company at Docket No. C-2009-2095418 is dismissed.
2. That this case be marked closed.

BY THE COMMISSION,

*Rosemary Chiavetta*

Rosemary Chiavetta  
Secretary

**RECEIVED**

NOV 18 2010

(SEAL)

ORDER ENTERED: September 9, 2010

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

*Handwritten: PECO exhibit 3*

7783100708

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**MAXINE McCLENDON**  
**Complainant**

v.

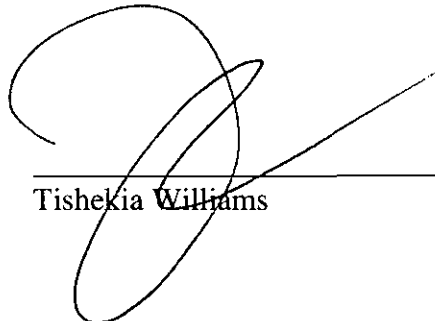
**PECO ENERGY COMPANY**  
**Respondent**

:  
:  
:  
:  
:  
:  
:

**Docket No. C-2010-2207045**

**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: November 18, 2010

**RECEIVED**

NOV 18 2010

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**MAXINE McCLENDON**  
**Complainant**

v.

**PECO ENERGY COMPANY**  
**Respondent**

:  
:  
:  
:  
:  
:  
:

**Docket No. C-2010-2207045**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of PECO Energy Company's Preliminary Objections in the above matter upon all interested parties by mailing a copy thereof Certified mail, properly addressed and postage prepaid to:

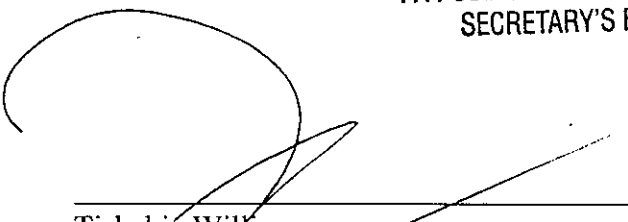
Maxine McClendon  
2424 N. Marshall Sreet  
Philadelphia, PA 19133

**RECEIVED**

NOV 18 2010

Dated at Philadelphia, Pennsylvania, November 18, 2010

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU



---

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