

STEVENS & LEE
LAWYERS & CONSULTANTS

1818 Market Street
29th Floor
Philadelphia, PA 19103
(215) 575-0100 Fax (215) 851-0214
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Direct Line: (215) 751-1955
Email: epy@stevenslee.com
Fax: (610) 988-0860

December 17, 2010

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

Re: Michael Ingram, Sr. v. PECO Energy Company
Docket No. F-2010-2212426

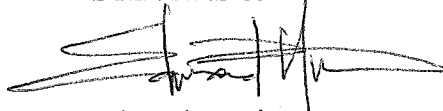
Dear Secretary Chiavetta:

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



Edward P. Yim

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**

MICHAEL INGRAM
Complainant

v.

PECO ENERGY COMPANY
Respondent

Docket No. F-2010-2212426

NOTICE TO PLEAD

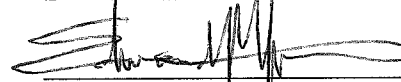
**To: *Michael Ingram
c/o Susan Moody, Esq.***

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 to 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 a Reply to Preliminary Objection, 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



Edward P. Yim (M.D. No. 205612)
1818 Market Street, 29th Floor
Philadelphia, PA 19103
Tel. (215) 751-1955
Fax (610) 988-0852
COUNSEL FOR PECO

DATE: December 17, 2010

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL INGRAM, SR.
Complainant

v.

PECO ENERGY COMPANY
Respondent

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Docket No. F-2010-2212426

PRELIMINARY OBJECTION OF PECO ENERGY COMPANY

Respondent, PECO Energy Company (“PECO”), pursuant to 52 Pa. Code §5.101(a)(1) and (a)(4), respectfully petitions this Honorable Commission to dismiss the instant Complaint for the reason described below.

1. On November 29, 2010 PECO Energy was served with the formal Complaint of Michael Ingram, Sr. (“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.
3. Pursuant to 52 Pa. Code § 5.101(a)(1), a formal complaint may be dismissed for lack of subject matter jurisdiction.
4. Pursuant to 52 Pa. Code § 5.101(a)(4), a formal complaint may be dismissed for legal insufficiency.
5. The Complainant’s formal complaint must be dismissed because the relief requested cannot be granted as a matter of law and is contrary to the policy of the Pennsylvania Public Utility Commission (“Commission”), which has held that disputes

of the kind raised in the Complainant's formal complaint are outside of the Commission's jurisdiction and that in cases where foreign load exists, the landlord must pay the utility for any account balance including arrearages transferred to the landlord's account.

6. The Complainant avers that he owns the apartment building with two rental units at 6244 N. Broad Street, Philadelphia. See *Complaint*, at paragraph 4.

7. The Complainant further avers that electric service to the first floor unit was "affected" when service was properly terminated to the second floor unit. In addition, he avers that a PECO technician "discovered a wiring issue where a portion of the first floor service was being used by the second floor apartment". See *Complaint*, at paragraph 4. The Complaint notes that the Complainant "corrected the problem." *Id.*

8. The Complainant further avers that PECO cited Complainant/landlord with a foreign wiring citation and included the second floor tenant's delinquent balance for non-payment. *Id.*

9. The Complainant seeks the following relief: "Claimant requests that he bill[sic] charged from the date the faulty wiring was discovered to the time it was corrected and not be responsible to pay for the second floor tenant's delinquent bill." See *Complaint*, paragraph 5.

10. In *Ace Check Cashing Inc. v. Philadelphia Gas Works*, Docket No. C-2008-2056428 (Order entered May 21, 2010) ("*Ace Check Cashing*"), the Commission discussed the controlling law for the utility foreign load situation at issue in the instant Complaint. The Commission noted that Section 1529.1 of the Public Utility Code, 66 Pa.C.S. 1529.1, places the responsibility on the landlord to pay the utility bills until the foreign load is corrected. Once the foreign load is corrected by the landlord and verified

by the utility, the utility places the account back in the name of the tenant. However, the Commission unequivocally stated that the arrearage, if any, must remain with the landlord. There is no *de minimus* exception and any dispute regarding the financial responsibilities of the parties is a matter to be resolved in the Court of Common Pleas and outside of the Commission's jurisdiction. See *Ace Check Cashing* at 7-8. See also *Corazzini v. UGI Penn Natural Gas, Inc.*, Docket No. F-2009-2101282 (Order entered July 16, 2010).

11. With it being well-settled that the landlord is responsible for any arrearage on an account when a foreign load situation exists, the Commission in *Corazzini* noted that "the ultimate dispute in a foreign load case is financial responsibility for an established amount of charges for past utility service between a landlord and a tenant." *Corazzini*, at 7. As such, the Commission held that it lacks subject matter jurisdiction over a financial dispute between two non-utility parties, including disputes between a landlord and a tenant. *Id.* The Commission explained that while the Commission has jurisdiction over the regulation of utility companies and utility service, it lacks jurisdiction to adjudicate every dispute involving a utility, *e.g.*, personal injury case, discrimination case, etc., and lacks the authority to settle disputes on every contract to which a public utility is a party. *Id.*, citing *Ace Check Cashing* at 4-5. While such a dispute could involve utility rates, when the charges owed to the utility for past service are settled, the only issue to be determined is financial responsibility for the charges, and that determination, the Commission held, is one for the courts. *Id.*

12. The Complainant's formal complaint relates solely to a dispute about the assignment of financial responsibility for foreign load in the building that he owns. As

averred in the formal complaint, PECO transferred the second floor electric account, including all arrearages, to the name of the Complainant/landlord once the foreign load situation was verified. Under *Ace Check Cashing* and *Corazzini*, PECO's actions were entirely proper, and the relief sought by the Complaint is not available as a matter of law.

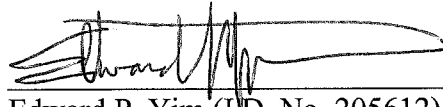
13. To the extent that the Complainant seeks to dispute the financial responsibility for the arrearage on the account and assign such responsibility to the second floor tenant, the Commission unequivocally stated in *Ace Check Cashing* and *Corazzini* that it lacks subject matter jurisdiction over such a dispute. As the Commission stated in *Corazzini*, the Complainant "may seek damages from his Tenant through the courts but that is a private matter that is outside the Commission's jurisdiction." *Corazzini* at 8.

14. Therefore, the Complainant's formal complaint, disputing the financial responsibility for the arrearage on the account and assigning such responsibility to the second floor tenant, lies outside the Commission's subject matter jurisdiction, and as such the Complaint must be dismissed for lack of subject matter jurisdiction.

15. In addition, because the relief being sought by the Complainant is contrary to the Commission's clear policy holding landlords liable for any transferred account balance in foreign load situations, the Complaint should be dismissed as well for legal insufficiency.

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss the instant Complaint pursuant to 52 Pa. Code §5.101(a)(1) and (a)(4).

Respectfully submitted,



Edward P. Yim (I.D. No. 205612)
1818 Market Street, 29th Floor
Philadelphia, PA 19103
Tel. (215) 751-1955
Fax (610) 988-0852
COUNSEL FOR PECO

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

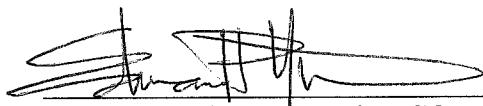
Counsel for PECO Energy Company

Dated: December 17, 2010


Commonwealth of Pennsylvania :
: SS
County of Philadelphia :

AFFIDAVIT

I, Edward P. Yim, 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.


Edward P. Yim, agent of PECO Energy Company

Sworn and subscribed before me this
17th day of December, 2010


Notary

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
PATRICIA S. BRADWAY, Notary Public
City of Philadelphia, Phila. County
My Commission Expires March 17, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

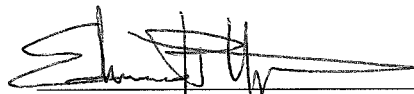
MICHAEL INGRAM	:	
Complainant	:	
	:	
v.	:	Docket No. F-2010-2212426
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

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

Susan C. Moody, Esq.
Moody Law Offices, LLC
Suite 200, Two Penn Center
1500 John F. Kennedy Blvd.
Philadelphia, PA 19102



Edward P. Yim

DATED: December 17, 2010

Exhibit 1

Zaketa, Anita D:(BSC)

From: eFile@state.pa.us
Sent: Monday, November 29, 2010 11:21 AM
To: Smith, Ward L.:(BSC)
Cc: Zaketa, Anita D:(BSC)
Subject: PA PUC eServe Notice
Importance: High

Dear WARD L SMITH,

A(n) **Formal Complaint Form** has been served in this proceeding. This document is docketed as **F-2010-2212426**. You may view this document at
INGRAM - FORMAL COMPLAINT - PECO ENERGY COMPANY-ELECTRIC

You are receiving this email because you are a(n) **Respondent** for this case and have agreed to be served electronically. By selecting electronic service (eService), you have agreed that this notification constitutes valid service. Electronic service of any and all documents will be in place of paper service.

Thank You,
Public Utility Commission
Commonwealth of Pennsylvania

** Please do not respond to this automatically generated email.*

MOODY LAW OFFICES, LLC

SUITE 200, TWO PENN CENTER
1500 JOHN F. KENNEDY BOULEVARD
PHILADELPHIA, PA 19102

(215) 854-4013
FAX (215) 659-8879

SUSAN C. MOODY

moodylawoffice@verizon.net

November 20, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Michael Ingram
No.: BCS 2714830

To the Secretary:

Please be advised that this firm represents Michael Ingram, Sr., Complainant. Enclosed please find his formal complaint against Philadelphia Electric Company.

Kindly direct all future correspondence to the undersigned.

Very sincerely yours,


SUSAN C. MOODY

SCM/scm
Enclosures
cc: Michael Ingram

NEW JERSEY OFFICE

ONE GREENTREE CENTER, SUITE 201
MARLTON, NJ 08053
856-988-5871
Fax: 856-596-8359

MONTGOMERY COUNTY OFFICE

P.O. BOX 327
WILLOW GROVE, PA 19090-0327
267-974-6521

PLEASE REPLY TO:

RECEIVED

NOV 20 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RECEIVED
2010 NOV 24
PA P.U.C.
SECRETARY'S BUREAU
AH:ID: 05

BCS 2714830

timely

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

RECEIVED

NOV 20 2010

Please print in ink or type.

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

1. CUSTOMER (COMPLAINANT) INFORMATION

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

Name MICHAEL INGRAM, SR.

Street/P.O. Box 6240 N. Broad Street Apt # _____

City Philadelphia State PA Zip 19141

County Philadelphia

Daytime Telephone Number Where We Can Contact You: (215) 927-3010

E-mail Address (optional): _____

Utility Account Number 22591-53085
(from your bill)

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

Name Alicia Lovett

Street/P.O. Box 6244 N. Broad Street, 2nd Floor

City Philadelphia State PA Zip 19141

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

Peco ^{and}

3. TYPE OF UTILITY (check one)

ELECTRIC

STEAM HEAT

GAS

WASTE WATER

WATER

MOTOR CARRIER

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

TELEPHONE

SECRETARY'S BUREAU
2010 NOV 20
RECEIVED
AH10:05

(local, long distance)
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).

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.

Complainant/Landlord owns duplex apartment building at 6244 N. Broad Street, Philadelphia, Pennsylvania. Both apartments individually metered for electric service and had service in their respective names. Complainant's lease states that tenant is responsible for electric service and the lease was to be produced when applying for service with PECO.

Hence, PECO had notice that said premises was individually metered.

In or around June, 2010, second floor tenant's electric service was terminated due to non-payment. First floor tenant's service was affected by the shut-off, service was lost in his apartment and contacted PECO. PECO's technician came out but could not obtain access to first floor apartment as the tenant was not at home. Landlord could not allow access under the Pennsylvania Landlord-Tenant law. A PECO technician returned two weeks later and discovered a wiring issue where a portion of first floor service was being used by the second floor apartment. Complainant corrected the problem immediately.

PECO cited Complainant/Landlord with a foreign wiring citation and included the second floor tenant's delinquent balance for non-payment. PECO is seeking a total of \$ 2,456.71. This was in error

Pursuant to 66 PA C.S.A. § 1529.1 the landlord is responsible for electric service from the time the wiring issue is discovered until it is resolved. Pursuant to Section 1 (b), the tenant must notify the utility that the premise was individually metered. As a result the tenant is responsible for payment for electric service. PECO is in error for charging Complainant for the second floor tenant's delinquent balance. He should only be charged for the time between the wiring issue was discovered and then corrected.

5. RELIEF

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

Claimant requests that he bill charged from the date the faulty wiring was discovered to the time it was corrected and not be responsible to pay his second floor tenant's delinquent bill.

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 SUSAN C. MOODY, ESQUIRE

Street Suite 200, Two Penn Center

City Philadelphia State PA Zip 19090

Area Code/Phone Number 215 854-4013

E-mail Address (If Known) moodylawoffice@verizon.net

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 Michael Ingram, Sr., 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]
(Signature)

11/20/10
(Date)

President
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.



0003

Final Bill Notice

Name: MICHAEL INGRAM
Service Location: 6244 N BROAD ST 2ND FL PHILADELPHIA PA 19141

Account Number: 2259153085
Issue Date: November 16, 2010

Charges past due: Your balance of \$2,456.71 at 6244 N BROAD ST remains unpaid.

Total amount past due \$2,456.71

PCO19P

For More Information: Please forward your payment immediately. Late payment charges will continue to be assessed on your account until the entire balance is paid in full.

Unless payment is made, your account will be referred to a nationally affiliated collection agency for appropriate action. It is our desire to avoid this. Such referral could affect your future credit status. (You can prevent referral by making a payment at once.)

If you have any questions about this Final Notice, electric/gas services or rates please call us at 1-800-494-4000.

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 account debit and complete form on reverse side.
- Check here to pledge a donation to NEAF and complete form on reverse side.

Monday through Friday 8:30 a.m. to 5:00 p.m.
1-800-494-4000

2965 1 AT 0.357 0001002085000001 007 01 GXBM75 111172010
MICHAEL INGRAM
550 W WAVERLY RD
GLENSIDE PA 19038-3212
|||

Account Number 22591-53085 Payment Receipt Stamp

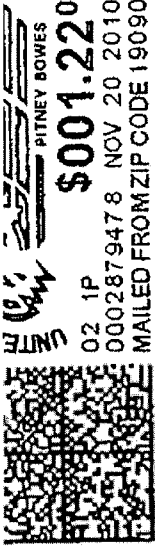
Payment Amount

Please pay this amount immediately. \$2,456.71

00000000000000000000

PECO Energy Co.
PO BOX 13439
Philadelphia PA 19162-0439
|||

225915308500000000003360000007



FIRST CLASS

FIRST CLASS

FIRST CLASS

First Class Mail First Class Mail

MOODY LAW OFFICES, LLC
SUITE 200, TWO PENN CENTER
PHILADELPHIA, PA 19102

TO:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P. O Box 3265
Harrisburg, PA 17105-3265

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Fax: (610) 988-0860

December 17, 2010

Michael Ingram, Sr.
c/o Susan C. Moody, Esq.
Moody Law Offices, LLC
Suite 200, Two Penn Center
1500 John F. Kennedy Blvd.
Philadelphia, PA 19102

Re: Michael Ingram v. PECO Energy Company -Docket No. F-2010-2212426

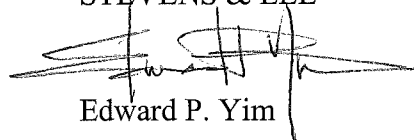
Dear Mr. Ingram:

Enclosed is a copy of PECO Energy Company's response to the formal complaint filed by you in the above-referenced docket. The law requires PECO Energy to respond to your Public Utility Commission complaint in writing. Keep these papers for your records. This is not a decision on your complaint. If there is a 'Notice to Plead' attached to this Preliminary Objection, you should review it for information on how to respond to it.

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 number listed above.

Best Regards,

STEVENS & LEE



Edward P. Yim

Encl.

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

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