

Legal Department

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Business Services
Company

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December 22, 2010

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

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**Re: Diana & Phillip McKee v. PECO Energy Company
PUC Docket No. F-2010-2213216**

Dear Ms. Chiavetta:

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

<u> X </u>	Answer & New Matter (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,



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

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

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DIANA MCKEE

v.

PECO ENERGY COMPANY

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DOCKET NO. F-2010-2213216

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NOTICE TO PLEAD

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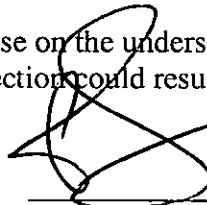
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

To: *Diana McKee*

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.



Tishekia Williams
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Fax: 215.568.3389
tishekia.williams@exeloncorp.com
Counsel for PECO Energy Company

DATE: December 22, 2010

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DIANA MCKEE :
 :
v. : **DOCKET NO. F-2010-2213216**
 :
PECO ENERGY COMPANY :

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 25, 2010 PECO Energy was served with the formal Complaint of Diana McKee (“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

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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 she owns the apartment building with three rental units at 1845 Perkiomenville Rd., Perkiomenville. See *Complaint*, at paragraph 4.

7. The Complainant further avers "heat for the 1st and 2nd floor units was provided by a single gas-fired heater located in the basement. The temperature for this heater was controlled by a single thermostat located inside the first floor unit. The second floor unit has no thermostat." See *Complaint*, at paragraph 4. The Complaint notes that the Complainant "permanently addressed the wiring/piping situation." *Id.*

8. The Complainant further avers that PECO transferred the entirety of the tenant's gas balance into Complainant/landlord's account, along with a portion of the tenant's electric bill. *Id.*

9. The Complainant seeks the following relief: "charge the tenant (Michael Bauknecht Acct #94684-09028) for his portion of the foreign piping (\$1,579.69), and only charge us for "our portion" of the foreign piping/gas (\$1,053.13), as PECO clearly stated in their original May 26th letter." 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 she 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.

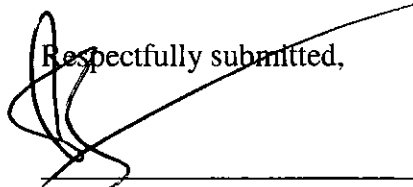
13. To the extent that the Complainant seeks to dispute the financial responsibility for the arrearage on the account and assign such responsibility to the first floor tenant, the Commission unequivocally stated in *Ace Check Cashing* and *Corazzini* that it lacks subject matter jurisdiction over such 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 first 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,



Tishkia Williams
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tishkia.williams@exeloncorp.com

Counsel for PECO Energy Company

Dated: December 22, 2010

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

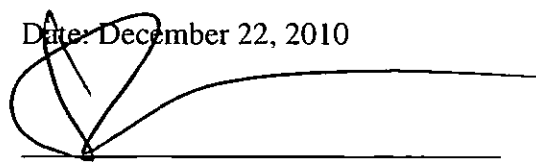
DIANA MCKEE	:	
	:	
v.	:	DOCKET NO. F-2010-2213216
	:	
PECO ENERGY COMPANY	:	

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.

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Date: December 22, 2010



Tishekia Williams

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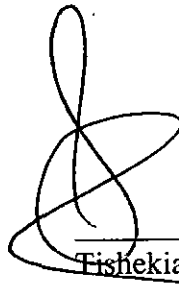
DOCKET NO. F-2010-2213216

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

Diana McKee
1821 Perkiomenville Rd.
Perkiomenville, PA 18074



Tishekia Williams

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DATED: December 22, 2010