

Legal Department

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January 28, 2011

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

**Re: Nancy L. Manson v. PECO Energy Company
PUC Docket No. C-2010-2170452**

Dear Ms. Chiavetta:

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

—	Answer (1 original)
—	Answer & New Matter (1 original)
—	Motion for Continuance (1 original)
<u>X</u>	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,



Tishkia 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**

NANCY L. MANSON

v.

PECO ENERGY COMPANY

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DOCKET NO. C-2010-2170452

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 Motion for Judgment on the Pleadings within 20 days from service of this notice, the facts set forth by PECO Energy Company may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Tishkia Williams, and where applicable, the Administrative Law Judge presiding over the issue.

Failure to respond to this Motion could result in the dismissal of your case.

File with:

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

With a copy to:

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

Dated at Philadelphia, PA, January 28, 2011.



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

Counsel for PECO Energy Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NANCY L. MANSON

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v.

DOCKET NO. C-2010-2170452

PECO ENERGY COMPANY

MOTION FOR JUDGMENT ON THE PLEADINGS

PECO Energy Company ("PECO"), pursuant to 52 Pa. Code §5.102, respectfully requests that your Honorable Commission dismiss the instant complaint. Dismissal is warranted as the pleadings filed in this case conclusively demonstrate that 1) the Complainant's claims are barred under the principle of *res judicata* because the identical claims were fully litigated and dismissed by the Commission previously, and 2) pursuant to 66 Pa.C.S. §1405(c), Complainant is ineligible for a Commission-ordered payment agreement, which is the sole relief she seeks. Therefore, Complainant fails to state a claim upon which relief can be granted.

I. Background

1. In April 2010, Complainant filed a Formal Complaint ("Complaint") against Respondent, PECO. A copy of Complainant's Formal Complaint is attached hereto as Exhibit 1.

2. The Complaint alleged that the PECO charges to Ms. Manson at her previous address at 5663 Pentridge St. were incorrect and that they were due to a foreign wiring situation. The Complaint also requested a payment arrangement for the outstanding balance due on Ms. Manson's PECO account.

3. PECO was served with the Formal Complaint on April 16, 2010.

4. On May 13, 2010, PECO filed an Answer and New Matter to the Complaint.

A copy of PECO's Answer and New Matter is attached hereto as Exhibit 2.

5. In its Answer, PECO denied that there are any incorrect charges on Ms. Manson's bill, and averred that Ms. Manson is responsible for the entire balance of her account balance, which at the time was \$31,840.22. The Answer stated that Ms. Manson was enrolled in the Customer Assistance Program (CAP), tier D, while she resided at 5663 Pentridge St. from December 7, 1998 to April 19, 2006. The Answer also stated that Ms. Manson was removed from CAP after service to 5663 Pentridge St. was removed from her name.

6. PECO's Answer stated that PECO applied Ms. Manson's prior account balance of \$16,772.59 to her current account at 208 Walnut St., Darby, PA when that account was established. The Answer further stated that Ms. Manson was enrolled in CAP at her current address at 208 Walnut St., Darby, PA effective March 15, 2006, but was removed from CAP after failing to re-certify.

7. PECO's Answer stated that Ms. Manson's account balance consists entirely of CAP arrears.

8. In its New Matter, PECO explained that Ms. Manson's allegations of high bills and foreign wiring at her previous address of 5663 Pentridge Street had already been adjudicated by the Commission and therefore should be barred by the doctrine of res judicata. PECO attached a copy of the Initial Decision and the Final Order from Ms. Manson's previous Complaint to the New Matter.

9. To date, over 240 days have passed since PECO filed its New Matter.

10. PECO has not been served with a response to its New Matter, and therefore it requests that the facts stated therein be deemed admitted.

II. Standard of Review

11. The Commission's regulation at 52 Pa. Code 5.102(a) permits any party to move for summary judgment or judgment on the pleadings after the pleadings are closed, but within such time as to not delay a hearing. The presiding officer will grant the motion if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

12. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. First Mortgage Co. of Pennsylvania v. McCall, 459 A.2d 406(Pa. Super. 1983).

13. The provision at 52 Pa. Code §5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If not factual issue pertinent to the resolution of the case exists, a hearing is unnecessary. Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission, 563 A.2d. 557 (Pa. Cmwlth. 1989).

III Argument

A. The Complainant's high billing and foreign wiring claims are barred by the doctrine of Res Judicata

14. The Complainant's claims of high billing and foreign wiring at her prior address have already been adjudicated by the Commission and were dismissed. See, Nancy Manson v. PECO Energy Company, Docket No. C-2008-2028733, Initial Decision of

Administrative Law Judge Charles E. Rainey dated April 22, 2009, Final Order entered July 9, 2009.

15. In the Initial Decision in Ms. Manson's previous Complaint case, ALJ Rainey noted that Ms. Manson's Complaint alleged that "the bills attributed to her previous residence were too high". A copy of the Initial Decision is included as an Exhibit to PECO's Answer and New Matter filed in this case (Exhibit 2 hereto).

16. A hearing in the matter was held, and Ms. Manson appeared pro se and testified. PECO presented the testimony of two witnesses and submitted nine exhibits into the record.

17. ALJ Rainey made thirteen findings of fact and four conclusions of law, and ultimately concluded that Ms. Manson's Complaint should be dismissed. The ALJ found that the Complainant had failed to establish a prima facie case of overbilling, and that PECO conducted a high bill investigation on July 29, 2005 and found that Complainant's meter was accurate. The ALJ also found that there were no signs of foreign load and that Ms. Manson's household appliances were capable of consuming the electricity for which Complainant was billed.

18. No Exceptions were filed to the Initial Decision, and by Final Order dated July 9, 2009, the Commission dismissed Ms. Manson's Complaint. A copy of the Final Order is included as an Exhibit to PECO's Answer and New Matter filed in this case (Exhibit 2 hereto).

19. For the reasons set forth below, Ms. Manson's current complaint must be dismissed on grounds of *res judicata*.

20. The policies underlying the doctrine of *res judicata* are: minimizing the judicial energy devoted to individual cases, establishing certainty and respect for court judgments, and protecting the party relying on the prior adjudication from vexatious litigation. *See, Lebeau v. Lebeau*, 258 Pa.Super. 519, 393 A.2d 480(1978).

21. Four conditions must be shown to support a claim of *res judicata*:

- 1) identity of the thing sued upon;
- 2) identity of the cause of action;
- 3) identity of the persons or parties to the action;
- 4) identity of the quality or capacity of the parties suing or sued. *Id.*

22. The doctrine of *res judicata* may be applied in administrative agency proceedings. *See, Philadelphia Electric Co. v. PA Public Utility Comm'n*, 61 Pa.Comm.w. 325, 433 A.2d 620(1981), *Charles Black v. Equitable Gas Company*, 58 PA PUC 433(1984).

23. The binding effect of a former adjudication does not depend upon the evidence or arguments presented. *Fleming v. Strayer*, 367 Pa. 284; 80 A.2d 786; 788(1951).

24. *Res judicata* encompasses not only those issues, claims or defenses that were actually raised in the prior proceeding, but also those which could or should have been raised and were not. *Scott v. Mershon*, 441 Pa.Super. 551; 657 A.2d 1304; 1307(1995), *alloc. den.*, 675 A.2d 1250(1996).

25. With these well-established legal principles in mind, it is clear that the instant Complaint filed by Ms. Manson, is barred by the doctrine of *res judicata*, and therefore PECO is entitled to judgment as a matter of law.

26. Complainant and Respondent are the same parties in both this Complaint and in the Complaint at Docket Number C-2008-2028733.

27. Both the 2008 Complaint and the current Complaint relate to Ms. Manson's PECO residential electric account.

28. The capacity of both parties (customer and public utility providing electric service) is exactly the same.

29. The "thing sued upon", are the same, in that in both Complaints the Complainant is alleging high billing and possible foreign wiring at her prior residence.

30. Finally, the cause of action is the same in both Complaints, in that the Complainant is alleging improperly high billing by PECO and possible foreign wiring and is seeking relief under the Public Utility Code.

31. The Complainant previously prosecuted the same issues as raised in this Complaint. She was afforded the opportunity to be heard, and in fact did appear to present her case to the Commission.

32. After hearing, the Commission dismissed Ms. Manson's prior Complaint against PECO.

33. To allow the same Complainant to file an identical complaint against PECO would completely thwart the policies underlying the doctrine of *res judicata*. PECO deserves the protection from vexatious litigation that the doctrine provides.

34. Because the Complaint is barred by the doctrine of *res judicata*, PECO is entitled to judgment as a matter of law.

35. For the foregoing reasons, PECO respectfully requests that the Complaint be dismissed, with prejudice.

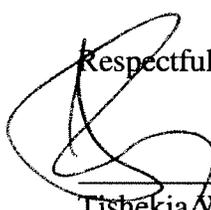
B. Section 1405(c) of the Public Utility Code precludes the Commission from establishing a payment plan for a CAP customer.

36. In addition to being barred by the doctrine of *res judicata*, the Complaint should be dismissed as a matter of law because the relief requested by the Complainant (i.e. a payment arrangement) cannot be granted by the Commission.

37. The pleadings in this case make it clear that Complainant is seeking a payment arrangement, but the Complainant participates in CAP and is therefore ineligible for a Commission-ordered payment agreement under 66 Pa.C.S. §1405(c).

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss the instant complaint with prejudice 1) on the grounds of *res judicata* with respect to Complainant's high billing and foreign wiring claims and 2) pursuant to 66 Pa.C.S. §1405(c) with respect to Complainant's request for a payment arrangement. The Complaint fails to state a claim upon which relief can be granted, and therefore PECO is entitled to judgment as a matter of law.

Respectfully submitted,



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

Dated: January 28, 2010

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NANCY L. MANSON

v.

PECO ENERGY COMPANY

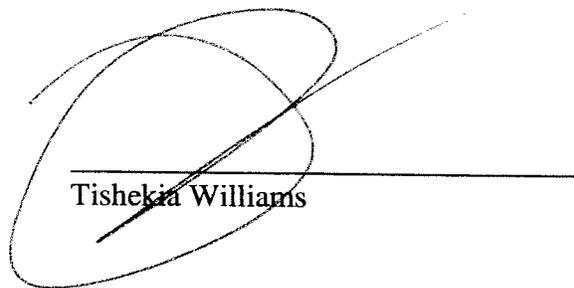
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DOCKET NO. C-2010-2170452

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 Motion 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: January 28, 2010



Tishekia Williams

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NANCY L. MANSON

v.

PECO ENERGY COMPANY

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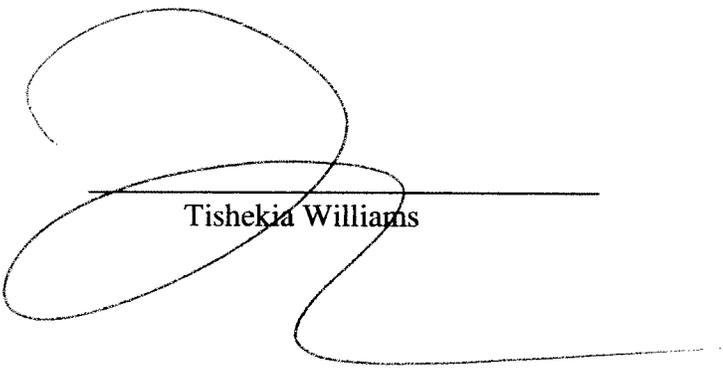
DOCKET NO. C-2010-2170452

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Motion for Judgment on the Pleadings upon the party 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

Nancy Manson
208 Walnut St.
Darby, PA 19023


Tishekia Williams

DATED: January 28, 2010

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 NANCY L MANSON

Street/P.O. Box Apt #

City 208 WALNUT ST State DARBY Zip PA

County

267 650 0869
610 534 1298

Daytime Telephone Number Where We Can Contact You: ()

E-mail Address (optional): Nancy777@verizon.net

Utility Account Number (from your bill) 98906 01302

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

Name PECO ENERGY

Street/P.O. Box 37032

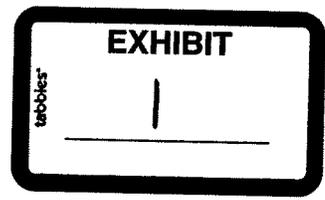
City Philadelphia State PA Zip 19101

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

3. TYPE OF UTILITY (check one)

- ELECTRIC
- GAS
- WATER
- TELEPHONE (local, long distance)
- STEAM HEAT
- WASTE WATER
- MOTOR CARRIER (e.g., taxi, moving company, limousine)

RECEIVED
2010 APR 12 AM 9:26
PA P.U.C.
SECRETARY'S BUREAU



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.

5. RELIEF

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

Fix my Bill so I know what I am paying, get my Bill right. People that own stores don't pay that much. What they is saying is not true. What in the world could I owe to make my Bill that high.

First my Electric BILL from 5663 Pentridge St have never been straight out. I complain several time. Nothing never been done. I never had what they said I had in my home. I was on well fare with my Grand kids. I keep asking them to check my Bill. To change the meters to see if someone was using my Electric they did nothing. That's why I moved. Then they put that Bill on my new Address. ASK me for a lot of money. I tried to pay then they wouldn't except. No money unless I paid them 5,000 At one time.

Which I don't have the superior
of the Electric Company told Leheip
not to Grant me No help on my
BILL, I have proof of that they
CALL me From Leheip and told me
I went to Crisis they ALL SAID
I SAID the SAME I had a stroke
I just got so I could WALK I WAS
in the hospital a while + I have
a grandchild have a breathing machine
and I use ma I AM 65 yrs old
I don't understand why I AM
haven't so much trouble with
them. I 5663 Pentridge St the
MAN had a stroke at the house on
Pentridge St before I move there
IT WAS A big Bill there before
I move there I found out I
need help. I get \$1728.00 a month, 3200
a month from welfare every two weeks
I just starting getting \$71.00 from
from Social Security for my Grandson
they turn me down every where I
go they ALL ways go back to what
the superior say. How CAN they
tell other ^{persons} sources Not to help me
they SAID After 1 or APRIL I will get a shot.

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: Nancy L. MANSON, 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).

Nancy Manson (Signature) 4-31-10 (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.

I need a Budget PLAN SO I CAN keep up with my bill. MAKE it so I CAN afford to PAY it. AND to make

Keep a copy of your complaint for your records.

my Electric Bill right the bill from 5663 pentridge street WAS never correcte that they put on 208 WALNUT ST. both bills together. is not correct, it's like I have a Large apartment building with 40 rooms for renting out. I have been with a long time. nothing been done

Account Number
98906-01302

Please pay this

amount by 04/14/2012

\$31,337.71

Return only this portion with your check made payable to PECO. Please write your account number on your check.



An Exelon Company

- 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.

To pay by phone call 1-877-432-9384.
A convenience fee will apply.

98906 0130 20000 0000

10201 AV 0 335 1020001020002387 005 01 GX4981 123 03132010
NANCY MANSON
208 WALNUT ST
DARBY PA 19023 - 2942

Account Number
98906-01302

Payment Receipt Stamp

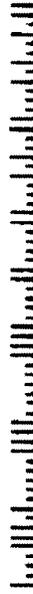
Payment Amount

PECO ENERGY - PAYMENT PROCESSING
PO BOX 37632
PHILADELPHIA, PA 19101

Please pay this amount by 04/14/2010

\$31,337.71

000000357580001088987



989060130200000000001040000004



Matching Energy Assistance Fund (MEAF) Pledge Form

You can help needy residents in the Delaware Valley pay their energy bills by making a donation to the Matching Energy Assistance Fund (MEAF). When you do, PECO will match your contribution, dollar for dollar - to double the amount of money donated to MEAF. It's easy to make a difference in the community, just complete this form and mail it with your payment. For questions or more information, call 1-800-403-6806.

YES, I'd like to empower families in my neighborhood with a pledge donation to MEAF. Please add the amount indicated to my monthly bill. (Minimum \$1)

\$1 \$5 \$10 \$ _____

YES, I'd like to empower families in my neighborhood with a one-time donation to MEAF.

\$ _____ One-time donation (Payable to PECO.)

POWER PAY - Payment Authorization

If you enroll in Power Pay, each bill will be automatically deducted from your checking or savings account on the date it is due. You'll still receive a monthly statement, but you'll no longer have to write a check. Please continue to pay as usual until you see a bank deduction noted on your bill. If you have any questions about Power Pay, please visit www.peco.com/powerpay or call our toll-free hotline number, **1-800-494-4000**.

FINANCIAL INSTITUTION _____

CHECKING

STATEMENT SAVINGS (NO PASSBOOKS)

YOUR BANK ACCOUNT NUMBER AND BANK ROUTING NUMBER _____

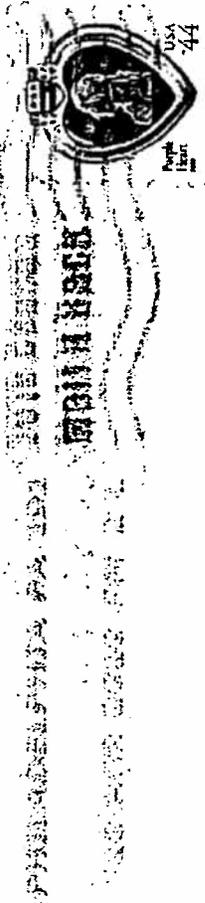
X

SIGNATURE _____

By signing this form, I authorize PECO to instruct my bank/savings institution to make my payments from the account listed above. I understand this authorization may be revoked by me at any time by providing PECO with a written notice to discontinue my automatic payment.

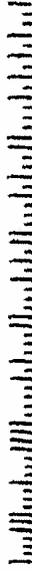
Be sure to check the box on the front of this stub for participation in the program.

Nancy Manson
208 Walnut St.
Darby, PA - 19023



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

171053265



Legal Department

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Direct Dial: 215.841.6841

May 13, 2010

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

**Re: Nancy L. Manson v. PECO Energy Company
PUC Docket No. C-2010-2170452**

Dear Ms. Chiavetta:

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

X	Answer & New Matter (1 original)
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—	Reply Exceptions (E-filed and 1 original)
—	Brief (E-filed and 1 original)
—	Reply Brief (E-filed and 1 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.



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NANCY L. MANSON

v.

PECO ENERGY COMPANY

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DOCKET NO. C-2010-2170452

**ANSWER & NEW MATTER
OF RESPONDENT, PECO ENERGY COMPANY**

PECO Energy Company ("PECO Energy"), pursuant to 52 Pa. Code § 5.61, responds to the Complaint and states:

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied. PECO Energy denies that there are incorrect charges on Complainant's bill.

Additionally, Complainant is not eligible for a payment agreement from the PUC, as her balance consists of CAP arrears. 66 Pa. C.S. §1405(c). Complainant is responsible for the entirety of her account balance, which is \$31,840.22. A copy of the account statement is attached as Exhibit 1. Due to significant balance at issue, PECO requests expedited scheduling of this matter.

Complainant was enrolled in CAP, Tier D at Pentridge St. from December 7, 1998 to April 19, 2006, when she was removed after service was discontinued in her name. On March 15, 2006, Complainant was enrolled in CAP at her current address at 208 Walnut St., Darby, PA. PECO applied the prior account balance of \$16,772.59 to the current account. On April 23, 2010, Complainant was removed from CAP for failing to re-certify. Complainant's account balance

consists entirely of CAP arrears. Complainant is not eligible for a PUC-issued payment agreement. 66 Pa.C.S. §1405(c).

By way of further reply, Complainant avers that she has suspicions of foreign wiring at her previous address at 5663 Pentridge St. that PECO refused to investigate. In fact, these claims of high billing and possible foreign wiring have already been adjudicated, and the claims concerning overbilling and/or foreign wiring at Pentridge Street were dismissed.¹ These claims should be barred due to res judicata.²

The Bureau of Consumer Services (BCS) has repeatedly found that Complainant is not entitled to Commission terms. On November 14, 2008, the BCS issued Decision No. 2471477, finding that Complainant is a CAP customer, and dismissing the case. A copy of the decision is attached as Exhibit 2.

Complainant filed another informal complaint on October 28, 2009. The BCS dismissed the case on November 1, 2009, Decision No. 2612685, declining to revisit matter that has already been adjudicated and dismissing the case. A copy of the decision is attached as Exhibit 3.

5. This paragraph is a request for relief and no answer is required.
6. PECO Energy is without sufficient to confirm or deny this statement.
7. Admitted.

¹ Nancy Manson v. PECO Energy Company, Initial Decision of Administrative Law Judge Charles E. Rainey dated April 22, 2009, Final Order entered July 9, 2009.

² Stevens Painton Corp. v. First State Ins. Co. 746 A.2d 649 (Pa.Super. 2000).

NEW MATTER

PECO Energy Company (“PECO Energy”), pursuant to 52 Pa. Code § 5.62(b), further responds to the Complaint and states:

1. Complainant avers that she had suspicions of foreign wiring at her previous address at 5663 Pentridge St. and that PECO refused to take any action.
2. These claims of high billing and possible foreign wiring have already been adjudicated by the PUC and were dismissed.³ A copy of the initial decision is attached as Exhibit 4.
3. The doctrine of res judicata requires that the two actions possess the following 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.⁴
4. Complainant filed a formal complaint on February 1, 2008, alleging that her bills were too high at 5663 Pentridge St., possibly due to high billing, and PECO had failed to investigate.
5. On April 22, 2009, the PUC dismissed the complaint, finding that Complainant had failed to meet her burden of proof to show overbilling.⁵
6. The previous formal complaint and the present one contain such similar allegations and identical parties that all of the elements for res judicata have been met.

³ Nancy Manson v. PECO Energy Company, Initial Decision of Administrative Law Judge Charles E. Rainey dated April 22, 2009, Final Order entered July 9, 2009.

⁴ 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.

⁵ Nancy Manson v. PECO Energy Company, Initial Decision of Administrative Law Judge Charles E. Rainey dated April 22, 2009, Final Order entered July 9, 2009. The PUC found that Complainant had failed to establish a prima facie case of overbilling, and that PECO had conducted a high bill investigation on July 29, 2005 that found that Complainant’s meter was accurate, there were no signs of foreign load, and that the household appliances were capable of consuming the electricity for which Complainant was billed. *Id.*

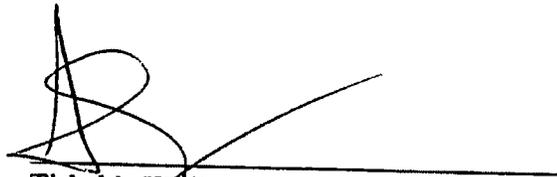
7. Complainant was enrolled in CAP from December 7, 1998 to April 23, 2010, and her balance consists of CAP arrears.

8. The PUC is cannot make CAP arrears the subject of a payment agreement. 66 Pa.C.S. §1405(c).

9. Complainant is not eligible for a PUC-issued payment agreement.

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss the instant complaint.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Tishkia Williams', is written over a horizontal line. The signature is stylized and somewhat cursive.

Tishkia Williams
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
tishkia.williams@exeloncorp.com



PECO submit
2

May 13, 2010

BCS Decision Report

BCS Case #: 002471477
Customer Name: NANCY MANSON
Service Address: 208 WALNUT ST

Open Date: 2008-11-12

BCS Bill Account #: 9890601302
Violation Type: NO
Decision Type: W
Investigator Name: ROBERT SHINDLE

Previous Case #:
Chapter Type:
Section / Rule:

Decision Issued Date: 2008-11-14
Case Closed Date: 2008-11-13

Letter Description:
CAP REVIEWED / NO DECISION

Total Balance: \$1709.74
Amount to Restore Service: \$0.00
Date Payment Due:
Special Budget Payment: \$0.00
Plus Arrears Payment: \$0.00
Current Monthly Payment: \$0.00
Payment Terms:

Balance Date: 2008-11-13
Amount to Continue Service: \$0.00
Regular Budget Amount: \$0.00
Final Bill Monthly Payment: \$0.00
End of Month Payment: \$0.00

PAR Description:

Resolution Description:
CASE DISMISSED -- CAP CUS -- PER/PECO/FERRIER DISMISSAL LTR DTD
11/14/08



PSCO exhibit
3

May 13, 2010

BCS Decision Report

BCS Case #: 002612685 **Open Date:** 2009-10-28
Customer Name: NANCY MANSON
Service Address: 208 WALNUT STREET

BCS Bill Account #: 9890621302 **Previous Case #:**
Violation Type: NO **Chapter Type:**
Decision Type: W **Section / Rule:**
Investigator Name: THOMAS HENNINGER

Decision Issued Date: 2009-11-01
Case Closed Date: 2009-10-29

Letter Description:
CHAPTER 14 EGW ON DISMISS LETTER

Total Balance:	\$88888.88	Balance Date:	2009-10-29
Amount to Restore Service:	\$0.00	Amount to Continue Service:	\$0.00
Date Payment Due:		Regular Budget Amount:	\$0.00
Special Budget Payment:	\$0.00	Final Bill Monthly Payment:	\$0.00
Plus Arrears Payment:	\$0.00	End of Month Payment:	\$0.00
Current Monthly Payment:	\$0.00		
Payment Terms:			

PAR Description:

Resolution Description:
COMPANY REQUESTS DISMISSAL OF THIS COMPLAINT DUE TO THE FACT THAT THIS CUSTOMER HAS FILED A FORMAL COMPLAINT C-2008-2028733. HEARING WAS HELD 10/15/2008 AND INITIAL DECISION DISMISSING THE COMPLAINT WAS ISSUED TO ALL PARTIES (SEE DOCUMENT BELOW) DATED 5/11/2009. THE COMPLAINT FILED WITH THE PUC UNDER BCS 2612685 DEALS WITH THE SAME ISSUES AS STATED IN THE FORMAL COMPLAINT. PUC WILL NOT REVISIT THIS ISSUE AT THE INFORMAL LEVEL. LETTER IS SENT TO CU ADVISING TO FILE THE NEEDED EXCEPTIONS WITH THE SECRETARY BUREAU UNDER THE FORMAL COMPLAINT. CLOSING CASE

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nancy Manson :
 :
 v. : C-2008-2028733
 :
 PECO Energy Company :

INITIAL DECISION

Before
Charles E. Rainey, Jr.
Administrative Law Judge

HISTORY OF THE PROCEEDING

On February 1, 2008, Nancy Manson (Complainant) filed a formal complaint (complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent) alleging that the bills attributed to her previous residence were too high. On April 14, 2008, Respondent filed an answer denying the material allegations in the complaint.

By Hearing Notice dated July 30, 2008, a hearing was scheduled for October 15, 2008. On July 31, 2008, I issued a Prehearing Order that set forth procedures to be followed in this case.

The hearing was held as scheduled. Complainant appeared pro se and testified. Respondent was represented by Michael Swerling, Esquire. Respondent presented the testimony of two of its employees, Teresa Ferrier and Timothy Fisher. Ms. Ferrier is a regulatory assessor and Mr. Fisher is a high bill field representative. Tr. 33, 71. Respondent introduced nine exhibits, all of which were admitted into evidence. The hearing transcript consists of 103 pages. The hearing record closed on November 17, 2008.

FINDINGS OF FACT

1. Complainant, Nancy Manson, resides at 208 Walnut Street, Darby, PA 19023. Tr. 5.
2. Complainant previously resided at 5663 Pentridge Street, Philadelphia, PA 19143. Complainant was the ratepayer of record, responsible for paying the electric bills, from October 28, 1994 (when service was initiated in her name) to August 2, 2006 (when Complainant's granddaughter Shakima Mason applied for service in her name). Tr. 6, 27, 35, 41-42; PECO Ex. 1.
3. Complainant accrued an outstanding bill of \$15,749.22 for electric service provided to the Pentridge Street property. On December 19, 2006, Respondent transferred the outstanding bill amount to Complainant's account at her present address. Tr. 43; PECO Ex. 2 at 5.
4. Complainant's budget bills at the Pentridge Street residence were approximately \$321 a month. Tr. 52-53; PECO Ex. 1.
5. The Pentridge Street property included three bedrooms, a living room and a kitchen. Complainant lived in the property with her four grandchildren, currently ages 10-25. Tr. 9, 18-19, 27-30.
6. The electrical appliances at the Pentridge Street property included a side-by-side refrigerator, an upright freezer, range, microwave oven, washer, dryer, ceiling fan, circulator and oil burner motor for the heating system, water heater, lighting for 9-12 rooms, two televisions, cable box, two VCR or DVD players, and three air conditioners. Tr. 83-85; PECO Ex. 8.
7. On July 29, 2005, Respondent's technician conducted a field investigation at the Pentridge Street residence. Tr. 83-84; PECO Ex. 8.

8. On July 29, 2005, the technician performed drop and passing load tests that showed that the electric meter was accurately registering usage. Tr. 83-84; PECO Ex. 8.

9. On July 29, 2005, the technician conducted an appliance analysis. The appliance analysis showed that Complainant's Pentridge Street household was capable of consuming 1,919 kWh per month when the air conditioners were not used, and 3,687 kWh per month when the air conditioners were used. Tr. 83-85; PECO Ex. 8.

10. On September 26, 2005, a Low Income Usage Reduction Program (LIURP) audit was conducted at the Pentridge Street property. The LIURP audit revealed broken windows and leaks in the roof of the house. Tr. 90-91; PECO Ex. 9.

11. Complainant was enrolled as a CAP Rate D customer from December 7, 1998 to April 19, 2006. As a CAP Rate D customer she received a 50% discount on the first 500 kWh of usage each month. Tr. 47-48; PECO Ex. 3.

12. Complainant made no electric bill payments from January to August 2006. Tr. 41; PECO Ex. 1 at 8.

13. Between March 2002 and April 2006, Complainant broke five payment agreements, including one established by the Commission's Bureau of Consumer Services on August 1, 2003. Tr. 50-51; PECO Ex. 4.

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 person 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. Marguiles*, 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).

In the present case, Complainant alleged that the electric bills attributed to her previous residence – 5663 Pentridge Street in Philadelphia – were too high. High bill complaints are governed by the “Waldron Rule.” In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980), the Commission stated that a complainant establishes a prima facie case of overbilling by: (1) showing that the disputed bill was abnormally high when compared to prior usage patterns; and (2) showing that his pattern of usage had not changed. 54 Pa. PUC at 100. The burden of going forward then shifts to the utility to show that the complainant actually used the amount of energy in dispute. *Id.* A utility may meet its burden by introducing evidence of submetering readings to major appliances, evidence of a lack of possibility of error in reading the meters, or evidence of defective wiring. 54 Pa. PUC at 101. However, “even where the utility can present evidence that it has tested the customer’s meter and found it to be accurate, the customer may, nonetheless, prove his case by circumstantial evidence which would support a

finding that the metered usage exceeded the actual usage.” *Milkie v. Pa. PUC*, 768 A.2d 1217, 1220 (Pa. Commw. 2001). “Once it is determined that the complainant had made out his prima facie case, the burden of going forward shifts to the utility, but the ultimate burden of persuasion remains with the complainant.” 768 A.2d at 1220.

Respondent billed Complainant for electric service to the Pentridge Street residence from October 28, 1994 (when service was initiated in her name) to August 2, 2006 (when Complainant’s granddaughter Shakima Mason applied for service in her name). Tr. 27, 35, 41-42. Complainant’s outstanding account balance from the Pentridge Street residence was \$15,749.22. On December 19, 2006, Respondent transferred that amount to Complainant’s account at her present address – 208 Walnut Street, Darby. Tr. 43; PECO Ex. 2 at 5.

To establish a prima facie case of overbilling under the Waldron Rule, Complainant was first required to show a disputed bill(s) and then show that the bill was abnormally high when compared to prior usage patterns. Complainant was then required to show that her pattern of usage had not changed. Complainant did not satisfy either prong of the Waldron Rule. Complainant did not dispute any specific bills. She made a general statement that her electric bills at the Pentridge Street residence were in the \$500-\$600 range, as compared to her neighbors’ bills which she said were in the \$50-\$100 range. Tr. 8, 18. Complainant indicated that her neighbors lived in the same type of house and used the same appliances as she did and therefore her bills should have been the same as theirs. Tr. 18. However, as Respondent’s witness, Teresa Ferrier, testified, Complainant’s budget bills¹ were approximately \$321 a month and not \$500-\$600 a month. Tr. 52-53; PECO Ex. 1. In failing to dispute a specific bill(s), Complainant provided no reference point for comparing prior usage patterns. And as a consequence, Complainant provided no reference point from which she could establish that her pattern of usage had not changed. Complainant provided no evidence regarding her pattern of usage when she resided at the Pentridge Street address. I also note that Complainant did not present any evidence that she and her neighbors consumed the same amount of electricity each month, and yet her bills were higher than theirs. For all of the foregoing reasons,

¹ Under budget billing a customer’s bills are spread out evenly over a year. Ms. Ferrier explained that a customer’s budget bills are determined by taking a year’s worth of revenues attributed to the customer and then dividing that amount by eleven. Tr. 52-53.

Complainant failed to establish a prima facie case of overbilling, and her complaint must be dismissed.

Even assuming for the sake of argument that Complainant had established a prima facie case of overbilling, Respondent presented persuasive evidence that Complainant actually used the electricity for which she was billed. Complainant described the Pentridge Street address as a residential property that included three bedrooms, a living room and a kitchen. Complainant lived in the property with her four grandchildren, currently ages 10-25. Tr. 9, 18-19, 27-30. The electrical appliances at the Pentridge Street property included a side-by-side refrigerator, an upright freezer, range, microwave oven, washer, dryer, ceiling fan, circulator and oil burner motor for the heating system, water heater, lighting for 9-12 rooms, two televisions, cable box, two VCR or DVD players, and three air conditioners. Tr. 83-85; PECO Ex. 8. On July 29, 2005, Respondent's technician conducted a field investigation at the Pentridge Street residence. The technician performed drop and passing load tests.² The tests showed that the electric meter was accurately registering usage. Tr. 83-84; PECO Ex. 8. Respondent's technician also conducted an appliance analysis. The appliance analysis showed that Complainant's Pentridge Street household was capable of consuming 1,919 kWh per month when the air conditioners were not used, and 3,687 kWh per month when the air conditioners were used. Respondent's technician consequently found that Complainant's household was capable of consuming the electricity for which she was billed. Tr. 83-85; PECO Ex. 8. Earlier field investigations conducted by Respondent at the property on August 17, 2002 and May 6, 2003, also showed that the meter was accurately registering usage; that there were no grounds, dissipation or foreign load;³ and that the household appliances were capable of consuming the electricity for which Complainant was billed. Tr. 73-76; PECO Ex. 7.

I also note that a Low Income Usage Reduction Program (LIURP) audit was conducted at the Pentridge Street property on September 26, 2005. The LIURP audit revealed

² A passing load test is conducted by operating an appliance to see if the meter registers the wattage of the appliance. A drop load test is conducted by turning off all appliances to see if the meter stops registering usage. Tr. 75-76.

³ Grounds or dissipation refers to electricity leaking into the ground or wall and not used by an appliance. Tr. 74-75. Foreign load refers to consumption of electricity by a source outside of the ratepayer's household.

broken windows and leaks in the roof of the house. Respondent's witness, Timothy Fisher, indicated that the draftiness of the house may have caused more electricity to be consumed to maintain a comfortable temperature at the residence. Tr. 90-91; PECO Ex. 9.

Another contributing factor to Complainant's large arrearage at the Pentridge Street property was her poor payment history. Tr. 35-36, 43. Complainant was enrolled as a CAP Rate D customer from December 7, 1998 to April 19, 2006. As a CAP Rate D customer she received a 50% discount on the first 500 kWh of usage each month.⁴ Tr. 47-48; PECO Ex. 3. Complainant made no electric bill payments from January to August 2006. Tr. 41; PECO Ex. 1 at 8. I also note that between March 2002 and April 2006, Complainant broke five payment agreements, including one established by the Commission's Bureau of Consumer Services on August 1, 2003.⁵ Tr. 50-51; PECO Ex. 4.

For all of the foregoing reasons, I find that Complainant did not meet her burden of proving that she was overbilled by Respondent. I must therefore dismiss the complaint.

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. Respondent has not violated any provision of the Public Utility Code, Commission regulation or any Commission order.

⁴ On March 24, 2008, Complainant was recertified for CAP Rate D at her present residence on Walnut Street in Darby. Tr. 47-48; PECO Ex. 3.

⁵ Complainant broke two additional payment agreements at her present address. Tr. 50-51; PECO Ex. 4.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint filed by Nancy Manson against PECO Energy Company at Docket No. C-2008-2028733 is dismissed.
2. That this case be marked closed.

Date: April 22, 2009

Charles E. Rainey, Jr.
Administrative Law Judge

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Nancy Manson :
 :
 v. : C-2008-2028733
 :
 PECO Energy Company :

F I N A L O R D E R

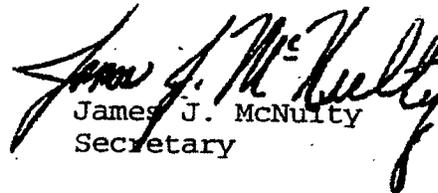
In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the decision of Administrative Law Judge Charles E. Rainey, Jr. dated April 22, 2009, has become final without further Commission action;

THEREFORE,

IT IS ORDERED:

1. That the complaint filed by Nancy Manson against PECO Energy Company at Docket No. C-2008-2028733 is dismissed.
2. That this case be marked closed.

BY THE COMMISSION,


James J. McNulty
Secretary

(SEAL)

ORDER ENTERED: July 9, 2009

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NANCY L. MANSON

:
:
:
:
:

v.

DOCKET NO. C-2010-2170452

PECO ENERGY COMPANY

VERIFICATION

I, Tishkia 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: May 13, 2010



Tishkia Williams

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NANCY L. MANSON :
 :
v. : **DOCKET NO. C-2010-2170452**
 :
PECO ENERGY COMPANY :

CERTIFICATE OF SERVICE

I, Tishekia 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:

Nancy L. Manson
208 Walnut Street
Darby, PA 19023

Dated at Philadelphia, Pennsylvania, May 13, 2010.



Tishekia Williams
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