

STEVENS & LEE
LAWYERS & CONSULTANTS

1818 Market Street
29th Floor
Philadelphia, PA 19103
(215) 575-0100 Fax (215) 851-0214
www.stevenslee.com

Direct Line: (215) 751-1955
Email: epy@stevenslee.com
Fax: (610) 988-0860

January 31, 2011

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

Re: Anne Wilson v. PECO Energy Company
Docket No. C-2009-2137790

Dear Secretary Chiavetta:

Enclosed for filing on behalf of PECO is an original of its Reply Exceptions to the Exceptions filed in the above-referenced docket. 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

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ANNE WILSON	:	
Complainant	:	
v.	:	Docket No. C-2009-2137790
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**REPLY EXCEPTIONS OF
OF PECO ENERGY COMPANY**

Pursuant to 52 Pa Code § 5.535, PECO Energy Company (PECO) hereby replies to the Exceptions of the Complainant Anne Wilson (Complainant) as follows:

I. PROCEDURAL HISTORY

On October 15, 2009, Complainant filed a Formal Complaint against PECO, alleging that there were incorrect charges on her bill, that her bills did not reflect the Customer Assistance Program (CAP) rate, that there were \$1000 in unexplained charges added to her bill in May 2009, that she received two separate billing statements from PECO in September 2009 for the same billing period, and that PECO failed to reflect a Low Income Home Energy Assistance Program (LIHEAP) payment that was made.

PECO filed its Answer and New Matter on November 13, 2009. In its Answer, PECO stated that there are no incorrect charges on Complainant's account, that the account balance due consists of CAP arrears, and that the account balance represents unpaid electric charges and late fees. In its New Matter, PECO averred that Complainant defaulted on multiple PECO payment arrangements, and cited 66 Pa.C.S. § 1405(c) to support its position that Complainant is not eligible for a payment agreement due to CAP arrears.

A telephonic hearing was held on May 21, 2010, with Administrative Law Judge Cynthia Williams Fordham as the presiding officer. By Initial Decision issued September 1, 2010 and served on September 29, 2010 (“Initial Decision”), ALJ Fordham held that 1) Complainant had failed to establish a prima facie case 2) failed to show that she was being charged the incorrect rate for the CAP Program, 3) failed to show that she was being charged more than once for budget billing and special arrangements, 4) Complainant’s arrearage accumulated because she failed to pay her electric bills in full or in a timely manner, and 5) PECO demonstrated that it credited Complainant’s account when she submitted payments. ALJ Fordham dismissed the Complaint, concluding that based on the record evidence, Complainant was billed properly for her usage, the charges on her bills are correct, and Complainant is responsible for paying her bill. On October 16, 2010, Complainant filed Exceptions to the Initial Decision but failed to serve PECO, which received the Exceptions electronically from the Commission on January 26, 2011.

II. ARGUMENT

The Commission should affirm the Initial Decision and sustain the dismissal of the Complaint. While the Exceptions purport to find fault with the Initial Decision’s findings, Complainant provides no valid basis whatsoever for reversing or modifying the Initial Decision. Pursuant to 52 Pa. Code 5.533(b), “[each] exception must...identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision,” and “[supporting] reasons for the exception shall follow each exception.”

Far from meeting that standard, the Exceptions comprise a list of assertions that are unconnected and unrelated to any specific findings of fact or conclusions of law in the Initial Decision. Some assertions appear entirely unrelated to the issues raised at the hearing and addressed in the Initial Decision, while others appear to be a mere regurgitation of

Complainant's poorly supported claims presented at the hearing. The Exceptions fail to indicate or even allege a single error in ALJ Fordham's findings or conclusions; therefore, the Exceptions must fail and the dismissal of the Complaint must be sustained. In addition, PECO requests that the Commission disregard and strike from the record any Exceptions containing issues or documents that were not raised or offered at the hearing. *Austin v. Verizon Pennsylvania Inc.*, Docket No. C-20015825 (Opinion and Order entered on October 27, 2004) (striking from the record Exceptions to the extent they contain references to matters that are not part of the record).

As ALJ Fordham correctly stated in the Initial Decision, the burden of proof is on the proponent of a rule or order, pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a). In this proceeding, Complainant is the proponent of a rule or order, and therefore she bears the burden of proving by a preponderance of the evidence that PECO has violated the Public Utility Code or a regulation or order of the Commission. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Complainant must show that the utility is responsible for the problem described in the complaint. *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. P.U.C. 300 (1976). Once Complainant has established a prima facie case, the burden of going forward shifts to the utility, but the ultimate burden of persuasion remains with Complainant. If the utility presents evidence of co-equal or greater weight compared with that of Complainant, the burden of proof will not have been met. *Milkie v. Pennsylvania Public Utility Commission*, 768 A.2d 1217 (Pa. Cmwlth. 2001). In reviewing the Complaint, the Commission's role is to determine whether that burden has been sustained. *Burleson v. Pennsylvania Public Utility Commission*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 443, 461 A.2d 1234 (Pa. 1983).

In this case, Complainant had the burden to prove that the charges on her bill were incorrect, that her bills did not reflect the CAP rate, that \$1000 in unexplained charges were

added to her bill in May 2009, that PECO issued two different bills in September 2009 for the same billing period, and that PECO added charges after a LIHEAP payment was made.

The record clearly demonstrates that Complainant failed to meet her burden to establish a prima facie case. The transcript of the hearing reveals that all of Complainant's accurate charges were fully explained by PECO's regulatory assessor, witness Dana McCollum, including past due budget billing and payment arrangement charges and the reconnection fee. Complainant offered no persuasive evidence to show that PECO erred in any way in its billing practices.

The record also reveals that PECO fully explained in detail its CAP program and clarified that Complainant was confusing a customer assistance program of the Dollar Energy Fund, a non-PECO (or Exelon) program, with PECO's CAP. Due to the confusion, Complainant mistakenly believed that PECO's program capped monthly energy charges at a fixed amount when it is simply a fixed-percentage discount program. Complainant offered no evidence to show any error by PECO in its treatment of her as a CAP customer.

PECO's account activity statement, PECO Ex.1, also shows that the charge of \$1067.64 in May 2009 is hardly "unexplained" but is the result of the accrued arrearages and associated late payment charges due to her non-payment since October 2008. Complainant offered no evidence to show that PECO's accounting in this regard was erroneous.

Complainant claimed that she was given two different billing statements in September 2009, but she only submitted as evidence one billing statement for September 2009. Regarding Complainant's assertion that she received a bill showing a zero balance, PECO fully explained that the document in question, issued in July 2008 in between the actual billing statements, is not a bill but a receipt confirming her enrollment in the budget billing program.

Regarding Complainant's LIHEAP claim, the record evidence show that PECO reflects LIHEAP payments as it receives them. Complainant offered no evidence to prove that PECO actually received a LIHEAP payment and failed to account for it.

In short, Complainant failed to meet her burden to establish a prima facie case. Therefore, ALJ Fordham properly dismissed the Complaint with prejudice. Moreover, had Complainant established a prima facie case, ALJ Fordham concluded that the Complaint still would have been dismissed where PECO presented convincing evidence that all the charges on Complainant's account were accurate and which Complainant failed to rebut with evidence.

Turning to Complainant's specific exceptions, Exceptions 1 and 2 relate to the accuracy of her name (i.e. "Anne Wilson" as opposed to "D. Anne Wilson") and address, which were not raised in the Complaint nor at the hearing, and therefore PECO requests that the Commission disregard and strike them from the record. *Austin*. In any event, the Exceptions do not dispute that Complainant is the holder of the account reflected in PECO's account activity statement, payment agreement history and CAP history, all of which have been admitted into record.

Exceptions 3 and 4, regarding the purported error in re-charging the forgiven pre-program arrears (PPA), are unsupported by the record. The record shows that the forgiven PPA does not reappear in the account statement. Finding of Fact 6; PECO Ex.1.

Exception 5 merely regurgitates Complainant's misunderstandings related to PECO's billing and accounting practices such as itemizing past due budget billing charges and past due special payment arrangement charges as well as isolating disputed past due balances from non-disputed charges when a formal complaint is filed. But the record shows, and ALJ Fordham discussed, that PECO fully explained these practices at the hearing. Tr. 18-28; Decision, pp. 6-7.

In Exceptions 6, Complainant disputes that Ms. McCollum spoke to her before the hearing. But this point is irrelevant as no finding was made nor any conclusion drawn by ALJ Fordham based on Ms. McCollum's assertion that she spoke to Complainant about the account.

Exceptions 7 and 8 misrepresent the record evidence. Review of the transcript reveals no support at all for Complainant's claims that PECO admitted issuing a billing statement reflecting a zero balance (mistaking a budget billing confirmation for a bill) and that at the hearing Ms. McCollum agreed to forgive her arrears once PECO receives a \$400 LIHEAP payment. PECO made no such statements at the hearing.

Exceptions 9 through 15 regarding LIHEAP payments and various administrative errors by the Department of Public Welfare are completely irrelevant as they do not even implicate PECO, much less allege any wrongdoing thereby. Complainant's new exhibits related to her irrelevant LIHEAP claims, therefore, are of no moment. PECO requests that the Commission disregard these new assertions and documents, which were not raised or offered in the Complaint or at the hearing, and strike them from the record. *Austin*. In any event, PECO notes that the purported LIHEAP grant of \$400, as shown in the new exhibits, is only a fraction of Complainant's past due balance of \$2,904.84 at the time of the hearing. Finding of Fact 19.

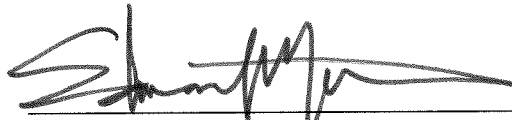
Complainant's last Exception asserting that she made regular payments and is current on her account belies the undisputed record evidence that show an extremely poor payment history with a past due balance nearing \$3,000. PECO Exs 1-3.

III. CONCLUSION

The Exceptions, raising either irrelevant points or repeating positions that ALJ Fordham soundly rejected based on the evidence, are without any merit. The substantial record evidence show that Complainant failed to establish a prima facie case at the hearing. The Initial Decision

also concluded that Complainant would have failed to meet her burden of persuasion even if she established a prima facie case, given the clear evidence by PECO that all charges on the account are accurate and that her arrearages accumulated because she failed to pay. The Commission should affirm the Initial Decision in its entirety and sustain the dismissal of the Complaint.

Respectfully submitted,



Edward P. Yim (I.D. No. 205612)
Dana Pirone Carosella (I.D. No. 57221)
Stevens & Lee
1818 Market St. 29th Floor
Philadelphia, PA 19103
Telephone: 215-575-0100
Facsimile: 610-988-0852
epy@stevenslee.com
dpc@stevenslee.com

Michael Gruin (I.D. No. 78625)
Stevens & Lee
17 North 2nd Street, 16th Floor
Harrisburg, PA 17101
Telephone: 717-234-1090
Facsimile: 717-234-1099
mag@stevenslee.com

Counsel for PECO Energy Company

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: January 31, 2010

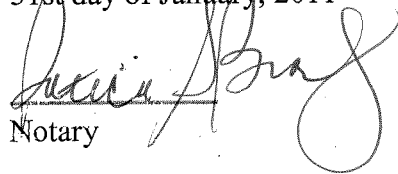
Commonwealth of Pennsylvania :
: SS
County of Philadelphia :

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
31st day of January, 2011


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**


ANNE WILSON	:	
Complainant	:	
	:	
v.	:	Docket No. C-2009-2137790
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Answer and New Matter 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

Anne Wilson
111 Washington Street
Parkesburg, PA 19365



Edward P. Yim

DATED: January 31, 2011

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1818 Market Street
29th Floor
Philadelphia, PA 19103
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January 31, 2011

Anne Wilson
111 Washington Street
Parkesburg, PA 19365

Re: Anne Wilson v. PECO Energy Company, Docket No. C-2009-2137790

Dear Ms. Wilson:

Enclosed is a copy of PECO Energy Company's response to the Exceptions filed by you in the above-referenced docket. Keep these papers for your records. This is not a decision on your Exceptions.

Best Regards,



Edward P. Yim

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Encl.

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Williamsport • Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

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