

Legal Department

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February 21, 2011

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

Re: Michael J. Ferro, Jr. v. PECO Energy Company
PUC Docket No. F-2010-2210233

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,



Tishekia Williams
Counsel for PECO Energy Company

TW/zyr

Enc.

cc: Michael J. Ferro, Jr.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL J. FERRO, JR.

v.

PECO ENERGY COMPANY

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DOCKET NO. F-2010-2210233

NOTICE TO PLEAD

Michael J. Ferro, Jr:

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, Tishekia 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:

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

Dated at Philadelphia, PA, February 21, 2011.



Tishekia Williams
PECO Energy Company
2301 Market Street, S23-1
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Counsel for PECO Energy Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL J. FERRO, JR.

v.

PECO ENERGY COMPANY

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DOCKET NO. F-2010-2210233

MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS

Under 52 Pa. Code §5.102, PECO Energy Company (“PECO”) files the within Motion for Partial Judgment on the Pleadings and respectfully requests that your Honorable Commission issue an Order holding that Complainant is ineligible to receive a Commission-ordered payment agreement. PECO averred in its new matter that the entire balance on the account at issue consists of arrearages from PECO’s Customer Assistance Program (“CAP”). Complainant does not dispute this averment. Pennsylvania law bars the Commission from ordering a payment agreement on an account containing CAP arrears. Therefore, PECO is entitled to partial judgment as a matter of law on the issue of Complainant’s ineligibility to receive a Commission-ordered payment agreement.

1. On November 9, 2010, Complainant filed a Formal Complaint against Respondent, PECO, making several allegations related to the outstanding balance and prior payment arrangements on the account. A copy of Complainant’s Formal Complaint is attached hereto as Exhibit 1.

2. PECO was served with the Formal Complaint on November 16, 2010.

3. On December 6, 2010, PECO filed an Answer, New Matter and Notice to Plead.

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

4. In its New Matter, PECO averred that the customer's account balance at 215 N. Lansdowne Avenue is \$14,221.44 and that the balance consists entirely of CAP arrears. New Matter ¶¶ 1-2.

5. To date, almost 75 days have passed since PECO filed its New Matter.

6. PECO has not been served with a response to its New Matter, and therefore it requests that the facts stated therein be deemed admitted. 52 Pa. Code §5.63(b) (providing that facts in new matter may be deemed admitted if there is no reply).

7. Under 66 Pa.C.S. §1405(c), the Commission is barred from establishing a payment agreement on an account containing CAP arrears. Section 1405(c) states as follows: "Customer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission."

8. The Commission's regulations 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. Under 52 Pa. Code §5.102(d)(1), 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.

9. 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).

10. The provision at 52 Pa. Code §5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no 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).


11. As the pleadings in this case reveal, there is no factual dispute that the entire past due balance of \$14,221.44 on the account at 215 N. Lansdowne Avenue is CAP arrears.

12. Because Complainant is legally ineligible to receive a Commission-ordered payment agreement under the undisputed facts of this case, PECO is entitled to partial judgment as a matter of law.

13. Although this Motion will not dispose of all of Complainant's claims, an Order confirming Complainant's ineligibility to receive a Commission-ordered payment agreement will serve judicial economy by avoiding a hearing on that issue and by narrowing the issues in dispute.

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission issue an order granting this motion for partial judgment on the pleadings stating that Complainant is ineligible for a Commission-ordered payment agreement on CAP arrears.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Tishekia Williams', written over a horizontal line.

Tishekia Williams
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Fax: 215.568.3389
tishekia.williams@exeloncorp.com

Dated: February 21, 2011

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL J. FERRO, JR.
Complainant

v.

PECO ENERGY COMPANY
Respondent

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DOCKET NO. F-2010-2210233

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: February 21, 2011



Tishekia Williams

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL J. FERRO, JR.	:	
Complainant	:	
v.	:	DOCKET NO. F-2010-2210233
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Motion for Partial 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

Michael J. Ferro, Jr.
215 N. Lansdowne Avenue
Lansdowne, PA 19050



Tishekia Williams

DATED: February 21, 2011