

**STEVENS & LEE**  
**LAWYERS & CONSULTANTS**

17 North Second Street  
16th Floor  
Harrisburg, PA 17101  
(717) 234-1090 Fax (717) 234-1099  
www.stevenslee.com

Direct Dial: (717) 255-7365  
Email: mag@stevenslee.com  
Direct Fax: (610) 988-0852

March 28, 2011

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

**Re: Laura Maisch v. PECO Energy Company**  
**Docket No. C—2009-2118649**

Dear Secretary Chiavetta:

Enclosed please find the Reply Exceptions of PECO Energy Company which were electronically filed today. A copy has been served on all parties of record in accordance with the enclosed certificate of service.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

STEVENS & LEE



Michael A. Gruin

Enclosures

cc: Cheryl Walker Davis, Esq., Office of Special Assistants  
Certificate of Service

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A PROFESSIONAL CORPORATION

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LAURA MAISCH	:	
Complainant	:	
v.	:	Docket No. C-2009-2118649
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

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**REPLY EXCEPTIONS OF  
OF PECO ENERGY COMPANY**

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Pursuant to 52 Pa. Code §5.535, PECO Energy Company (PECO) hereby replies to the Exceptions of the Complainant Laura Maisch (“Complainant”).

It is PECO’s goal to provide its customers with straightforward, clear billing. In the present case, the customer’s billing was complex due to number of factors, which are discussed below. As a result, the customer was confused by her billing. Prior attempts to explain the billing were unsuccessful; indeed, following a full evidentiary hearing the customer continues to believe that her bill contains erroneous charges. While the Initial Decision in this case found that there were no erroneous charges on the Complainant’s account, the ALJ recommended a civil penalty against PECO for failing to satisfactorily explain its billing to the Complainant. In light of the foregoing circumstances, PECO did not file Exceptions to the ALJ’s Initial Decision, and tendered payment of the recommended civil penalty and sought to comply with the Initial Decision in good faith. On March 17, 2011, however, the Complainant filed Exceptions to the Initial Decision arguing that the ALJ erred because:1) she gave undue consideration to PECO’s evidence, and 2) she recommended an inappropriately small civil penalty. PECO must respectfully

disagree with the Complainant. As discussed more fully below, the ALJ properly concluded that Complainant failed to carry her burden in proving that her bill contained erroneous charges. Moreover, issuance of a civil penalty was unwarranted based on the evidence in the record.

## **I. BACKGROUND AND SUMMARY OF REPLY**

This case involves a dispute over an overdue balance on the Complainant's gas and electric account with PECO. The Complainant in this case alleges that she made payments on her account for which she was not credited, and she seeks corrected bills from PECO.<sup>1</sup> At the evidentiary hearing, PECO presented evidence and testimony which prove that the balance on Complainant's account is, in fact, correct. PECO's witness demonstrated that the Complainant's account balance includes unpaid consumption charges that had previously been the subject of a payment agreement between PECO and the Complainant, and which remain on her account because the Complainant had defaulted on the payment arrangement.<sup>2</sup>

After examining the pleadings, hearing transcript, and Exhibits in this matter, Administrative Law Judge ("ALJ") Colwell denied the Complaint in part and sustained it in part.<sup>3</sup> The ALJ correctly concluded that the balance due on Complainant's PECO account, as stated by PECO, was accurate and correct, and therefore denied the Complaint insofar as it seeks to reduce the amount that the Complainant owes to PECO.<sup>4</sup> However, the ALJ sustained the Complaint on the issue of inadequate service by PECO, on the grounds that PECO's bill to the Complainant did not indicate the total amount the

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<sup>1</sup> Initial Decision ("I.D."), at p. 1.

<sup>2</sup> I.D., at p. 9

<sup>3</sup> The evidentiary hearing in this matter was presided over by ALJ Charles Rainey, Jr. prior to his appointment as Chief ALJ. ALJ Susan Colwell drafted the Initial Decision in this matter.

<sup>4</sup> I.D., at 16 (Conclusion of Law No. 2)

Complainant would owe if the Complainant defaulted on her payment arrangement with PECO.<sup>5</sup> The ALJ determined that the finding of inadequate service warranted the imposition of a civil penalty of \$1000 against PECO.<sup>6</sup>

The Complainant filed Exceptions to both aspects of the Initial Decision. The Complainant's Exceptions argue that the ALJ erred in not granting her requested relief, i.e., a reduction in the amount owed on her PECO account. The Exceptions also argue that the recommended civil penalty against PECO was inappropriately small.

PECO hereby replies to the Complainant's Exceptions. In doing so, PECO will demonstrate that there is no justification in the record to reduce the amount that the Complainant owes on her PECO account or to reverse the ALJ's determination on this point. PECO will also respond to the issue of the appropriateness of the civil penalty recommended by the ALJ.

## **II. REPLY EXCEPTIONS**

### **A. PECO Did Not Misrepresent Any Facts, and the ALJ Clearly Did Not Lend Undue Weight to PECO's positions**

A review of the transcript in this case reveals that this matter involves a complicated account history. The Complainant's account history includes consumption charges for both gas and electric service, a budget billing arrangement (which by its very nature changes quarterly to track the customer's usage), a multitude of missed payments resulting in account arrearages, a termination for non-payment, an unlawful reconnection by the Complainant, late payment fees, a meter-tampering assessment, several large one-time arrearage payments, a company offered payment arrangement, a default on that arrangement, removal from budget billing, a budget billing deficit, a BCS- ordered

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<sup>5</sup> I.D., at 15-16 (Conclusion of Law No. 1)

<sup>6</sup> I.D., at 16 (Conclusion of Law No. 3)

payment arrangement, and a default on that arrangement. Many of these items overlapped in time, thereby making a review of a monthly account activity difficult to understand and interpret, especially several years after that activity took place.

Through the testimony of its regulatory assessor and documentary evidence, PECO attempted to the best of its ability to explain the Complainant's account history and the basis for the current balance on the account. Complainant's allegations of "misrepresentation" by PECO are completely unsupported and baseless. To the contrary, every aspect of PECO's position in the case is supported by PECO's business records, which were entered into the record as Exhibits. As reflected in the transcript, considerable time was spent at the hearing by the parties and the ALJ on mathematical computations and cross-references to the Complainant's bills and account history. In light of the complexity of the account history, it may be said that the Complainant did not completely understand PECO's position, but such misunderstanding was not the result of any misrepresentation by PECO.

It also must be noted that orderly conduct of the evidentiary hearing was made significantly difficult by the Complainant's attempts to make new allegations that were outside the scope of her original complaint. For instance, the Complainant alleged for the first time at hearing that she was disputing her budget billing amounts<sup>7</sup>, that her service was improperly terminated<sup>8</sup>, that she was improperly assessed late payment charges<sup>9</sup>, that she never received a BCS-ordered payment arrangement in 2008<sup>10</sup>, and that PECO

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<sup>7</sup> Tr. 119-124

<sup>8</sup> Tr. 19. The Complainant subsequently testified that her service was terminated while she had a pending "complaint" that she had submitted to PECO, as opposed to a Complaint filed at the Commission. Tr. 27

<sup>9</sup> Tr. 150-151

<sup>10</sup> Tr. 69

attempted to transfer the balance from a dead woman to her account<sup>11</sup>. None of the above-referenced allegations were contained in the original Complaint. To the extent that the Complainant's account history is confusing, PECO respectfully submits that the confusion should not be blamed on PECO.

A comparison of the record in the case to the Initial Decision demonstrates that there was no undue weight given to PECO's evidence. The ALJ correctly gleaned the following un-refuted facts from the record, with appropriate citations to the record:

- The Complainant was enrolled in PECO's budget billing program. Tr. 72
- PECO's budget billing is an average of the prior 12 months of usage, which results in a monthly amount due which is revised every three to four months. (FoF 11, Tr. 72)
- As a result of an overdue account balance of \$577.40, the Complainant was issued a payment arrangement by PECO on September 11, 2007 (the "2007 payment arrangement"). (FoF 20, PECO Ex. 5.)
- The 2007 payment arrangement required the Complainant to make 24 monthly payments of 23.10, in addition to her monthly budget billing amount. (FoF 20, PECO Ex. 5)
- When PECO enters into payment arrangements with customers to address overdue balances, the overdue balance is not reflected on the customer's bills thereafter. Rather, only the monthly payment installment amount is reflected. (FoF 15, Tr. 74-75)
- The Complainant made no payments whatsoever on her account in October 2007, November 2007, December 2007, January 2008, or February, 2008, which led to a new accumulated balance due on her account, in addition to the prior accumulated balance that was the subject of the 2007 payment arrangement. (PECO Ex. 1)
- As a result of her nonpayment, the Complainant defaulted on the 2007 payment arrangement. At the time of default, the arrearage under the payment arrangement was \$300.20. (FoF 22, Tr. 99, PECO Ex. 1)
- In March 2008, the Complainant made payments totaling \$600 on her PECO account (PECO Ex. 1). Also in March 2008, the Complainant filed an informal complaint with the Commission's Bureau of Consumer Services ("BCS") in March 2008. (FoF 6, Tr. 71)
- Between March 2008 and September 2008, the Complainant made only one payment of \$200 on her PECO account (i.e., she did not make payment on her current bills as required by Chapter 14 of the Public

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<sup>11</sup> Tr. 172

Utility Code), which again led to an overdue balance accumulating on her account. (FoF 23, PECO Ex. 1, Tr. 100).

- The BCS issued its decision on the informal complaint on September 25, 2008. (FoF 8, Tr. 71). On that same day, the Complainant made a payment of \$1255.34. (FoF 17, PECO Ex. 1)
- The BCS decision was based on an arrearage of \$584.26, and called for the Complainant to make payments of \$24.34 in addition to her budget billing amount (FoF 9, FoF 12, Tr. 72).
- Consistent with PECO's billing practices, as a result of the payment arrangement, the overdue balance was not reflected on the Complainant's monthly bills thereafter. Rather, only the monthly payment installment amount was reflected. (FoF 15, Tr. 74-75)
- The BCS decision, and associated payment arrangement, did not address the \$300.20 arrearage from the prior payment arrangement that the Complaint broke. (FoF 26, Tr. 201).
- The Complainant defaulted on the BCS ordered payment arrangement when she did not make the payment that was due on her account on March 6, 2009 (Tr. 91).
- As a result of the default, the amount under the agreement that was as-yet unpaid (\$486.90) was added back to the Complainant's account balance. (Tr. 91)
- Complainant's service was terminated on June 9, 2009 for non-payment, was restored without PECO's authorization and terminated again on July 15, 2009. (FoF 29, Tr. 106)
- Following a payment by the Complainant of \$946, service was restored by PECO. (FoF 30, Tr. 106)
- As a result of the illegal restoration, PECO assessed a tampering fee of \$920 to Complainant's account. PECO also assessed a \$75 fee for the after restoration of Complainant's service. (FoF 27, 29, Trs. 104, 106).
- As of the date of the hearing, the total amount due on the customer's accounts was \$1,725.69. This amount was calculated as follows: A balance of \$475.58 after the large payment on September 25, 2008, plus consumption charges of \$2,182.45, plus late fees during this period of \$21.31, plus a reconnection fee of \$75, plus a tampering charge of \$920, for total charges of \$3,674.34. Payments during that time frame totaled \$1,948.65. Subtracting \$1,948.65 from \$3,674.34 results in a balance due of \$1,725.69. (FoF 27-28, Tr. 104-105)

All of the above-referenced facts were supported by PECO's business records and the testimony of its witness. The ALJ did not give undue weight to PECO's evidence.

To the contrary, the ALJ gave the Complainant every opportunity to make her case and to

rebut PECO's evidence, but a review of the record makes it clear that the Complainant did not meet her burden of proving that her account balance was incorrect.

B. The ALJ Correctly Concluded that There Was No Basis for Reducing the Amount Owed on Complainant's PECO Account

As set forth above, there is ample evidence in the record to support PECO's calculation of the current balance due on the Complainant's account. While the account history is confusing due to the Complainant's pattern of missed payments and broken payment arrangements, a simple comparison of the charges on the account to the payments on the account for the period from September 25, 2008 through January 12, 2010 corroborates the balance of \$1,725.69 that PECO showed on the Complainant's account as of the date of the hearing. The Complainant has the burden of showing that the utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. PA Public Utility Comm'n*, 578 A.2d 600 (Pa. Cmwlth.1990), *alloc. den.*, 529 A.2d 654, 602 A.2d 863 (1992). The Complainant did not demonstrate by the preponderance of the evidence that she was entitled to the relief she requested in her Complaint (recalculation of bills), and therefore the ALJ's dismissal of the Complaint on this point should be upheld by the Commission.

C. The Complainant's Exceptions to the ALJ's Findings of Fact are Baseless and Contrary to the Clear Record Evidence in the Case

The Complainant objects to numerous Findings of Fact from the Initial Decision. However, in most cases, the Complainant does not provide any references to the record to support her contentions, and instead makes new arguments or references to material outside of the record in order to contest the Findings of Fact. PECO replies to the Complainant's "Exceptions to Findings of Fact" as follows

Complainant denies that she defaulted on a payment arrangement in 2009, but the ALJ properly concluded that the Complainant did default on a payment arrangement. This conclusion is based upon a review of the account history (PECO Exhibit 1) and the payment arrangement history (PECO Exhibit 5), combined with the testimony of PECO's witness (Tr. 91). The Complainant defaulted when she did not make the payment that was due on her account on March 6, 2009 (Tr. 91).

The Complainant repeatedly attempts to assert that the I.D. is improper because it references facts from prior to September 2008, and/or addresses billings for periods prior to September 2008. But as the ALJ correctly notes, it is necessary to evaluate the full account history, including periods prior to September 2008, in order to address the allegations in the Complaint. All of the I.D.'s references to events prior to September 2008 were fully supported by record evidence in the form of PECO Exhibits 1 and 5, and the testimony of Renee Tarpley. These references were necessary to explain the Complainant's current account balance.

The Complainant appears to allege in her Exceptions that she never agreed to budget billing. However, the Complainant acknowledges throughout the transcript that she was on a budget billing plan, although she expressed confusion about how budget billing works.

The Complainant alleges that PECO's billing system violates "PUC law", but does not provide a citation to any statute, regulation or Commission Order to support her allegation. The Commission's regulations at 52 Pa. Code § 56.15 set forth the requirements for public utility bills. PECO's bill format complied in all respects with the Commission's regulations, and the ALJ correctly did not find that PECO's bills were in violation of any Commission regulation.

The Complainant's arguments about PECO illegally obtaining a payment agreement from a deceased customer, late payment charges being improperly assessed, the lack of a tampering, and improper termination have no foundation whatsoever in the record and should be disregarded as an attempt to introduce new evidence after the close of the record. The Commission's regulations state that after the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion. 52 Pa. Code § 5.431. As such, these new arguments and references must be rejected by the Commission. In sum, the Complainant's Exceptions to the Findings of Fact do not identify a single Finding that is unsupported by the evidence in the record, and therefore, those Exceptions should be denied by the Commission.

D. Contrary to the Complainant's Characterization of the Recommended Civil Penalty as "Measly", the Recommended Civil Penalty is Excessive Under the Facts of this Case

The Complainant's Exceptions question the appropriateness of the ALJ's recommended civil penalty against PECO. Because the Complainant has explicitly invited the Commission to review the civil penalty recommended by the ALJ in this case, PECO is obligated to address this issue. On this point, PECO respectfully submits that

the civil penalty was not too low, as the Complainant suggests, but in fact was unwarranted altogether under the Commission's standards for the imposition of civil penalties and the circumstances of this case

The Initial Decision recommends sustaining the Complaint on the issue of inadequate service due to "PECO's failure to indicate the full amount owed by a customer, thus giving inadequate notice of the full amount that would be due if the customer failed to make a timely payment on a payment agreement...".<sup>12</sup> However, the ALJ did not find that PECO's bill format was in violation of the Commission's regulations concerning bill formatting (52 Pa. Code § 56.15) or the Commission's Policy Statement on Plain Language at 52 Pa. Code § 69.251. In fact, a review of the complainant's bill format (Complainant Exhibit 1) demonstrates that the bill meets all of the requirements of the Commission's billing regulations. PECO's bill format may have been less than perfect for providing information to a customer with the Complainant's set of circumstances, but no billing system can be perfectly attuned to the specifics of every customer's situation.

In any event, the basis for the ALJ's finding of a violation against PECO – lack of notice of Complainant's total account arrearage on her bill - was not the basis for the ALJ's recommendation of a civil penalty. Rather, the ALJ recommended a civil penalty of \$1000 solely because "PECO did not provide a complete and thorough explanation of the billing specifics to the Complainant until the evidentiary hearing".<sup>13</sup>

While the Complainant objects to the proposed civil penalty as "measly", PECO respectfully submits that the recommended civil penalty is inappropriate altogether

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<sup>12</sup> I.D., at 11

<sup>13</sup> I.D. at 11

because 1) the ALJ's sole basis for imposition of the penalty is unsupported by the record, and 2) the imposition of civil penalties is not warranted in the context of this case, based on the Commission's 10- part test for imposition of civil penalties.

As set forth above, the sole basis for the recommendation of a civil penalty was that PECO did not provide a complete and thorough explanation of the billing specifics to the Complainant until the evidentiary hearing. PECO's respectfully disputes this characterization of its actions and efforts to explain the Complainant's billing history, and submits that this finding by the ALJ is not supported by the record. In concluding that PECO did not provide a thorough explanation of the billing history to the Complainant, the ALJ overlooks fact that the parties participated in the Commission's mediation program, and during that process PECO attempted to explain the billing history and account balance to the Complainant on multiple occasions. While the substance of the parties' discussions during mediation's are privileged and not admissible, the fact that the parties engaged in settlement discussion is part of the record. ALJ Rainey noted this, when he stated "Now there were attempts, as I understand it,...to settle, that were not fruitful and did not pan out." See Tr., 51. The Complainant herself actually sought to admit documents from those settlement discussions as exhibits, but the ALJ (correctly) prohibited their introduction into the record.<sup>14</sup> Tr. 51-52. It was improper for the ALJ to conclude that PECO failed to explain the Complainant's billing history until the evidentiary hearing, when the record reflects that mediation and settlement discussions occurred prior to the hearing. Therefore, the ALJ's prime reason for the imposition of a civil penalty - PECO's purported failure to thoroughly explain the billing specifics to the Complainant — is contradicted by the record and is based on incomplete information.

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<sup>14</sup> According to Pennsylvania Rules of Evidence Rule 408, settlement discussions are not admissible.

Furthermore, the ALJ's application of the Commission's 10-part test for imposition of civil penalties under 52 Pa.Code § 69.1201 was flawed in this case. First, the ALJ improperly found that PECO's violation was of a "serious nature", under the Commission's regulations, because "the Complainant was hit with an abnormally high bill after failing to make a timely payment in March 2009".<sup>15</sup> This conclusion is flawed for several reasons. Being "hit with a high bill" does not qualify as a "consequence of a serious nature" under 52 Pa. Code § 69.1201 (c)(2), which describes "consequences of a serious nature" as being personal injury or property damage. Furthermore, the ALJ fails to recognize that while the dollar amount of the bill may have been high, the bill was not improper. The bill properly reflected the amount owing on the Complainant's PECO account, and as set forth elsewhere in the Initial Decision, the balance was a combination of usage charges, arrearages from defaulted payment arrangements, late payment charges, reconnection charges, and tampering fees. The ALJ's finding that PECO's violation resulted in consequences of a serious nature was a key factor in the recommendation to impose a civil penalty, but it is quite clear that the consequence described by the ALJ – receiving a high, but proper, bill – is not a "serious consequence" under the Commission's regulation.

Another key factor in the ALJ's application of the 10-point test was the conclusion that more than one customer was affected by PECO's violation. As set forth above, this Complainant's account history was particularly complicated, which contributed greatly to the Complainant's confusion over her account balance. There is no evidence in the record to allow a finding that other customers were similarly affected by

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<sup>15</sup> I.D. at 13

PECO's billing system, and therefore, it was improper for the ALJ to consider PECO's violation as affecting more than one customer.

Furthermore, the ALJ noted that there was no other Commission decisions addressing a billing issue such as the one raised in this case.<sup>16</sup> Therefore, this was not a situation where PECO was ignoring a clear Commission directive or Order. To the contrary, this was a case of first impression, and the lack of prior precedent makes the imposition of a civil penalty inappropriate. It should be noted that the sole case cited by the ALJ in support of the finding of violation against PECO (*Dickson v. National Fuel Gas Distribution Corporation*, Docket No. C-2009-2132947 (Opinion and Order entered December 9, 2010)) did **not** result in the imposition of a civil penalty against the utility. Furthermore, while it could be argued that the *Dickson* Order put utilities on notice that the Commission wants utility billing to be clear, the Order did not set forth any clear guidance or standards for utility billing format that would enable utilities to know exactly what is expected of them. With no additional guidance provided by *Dickson*, utility companies such as PECO can only be held to the clear standards that are articulated in the Commission's regulations, and PECO fully complied with those standards. That fact, coupled with the complex account background that was due in large part to past non-payment and other actions by the Complainant, make a civil penalty unwarranted in this case.

Finally, the ALJ omitted the 10<sup>th</sup> point of the Commission's 10-point test from her analysis - "Other relevant factors". There are several relevant factors that should have been considered by the ALJ in determining whether a civil penalty was appropriate. First, the ALJ failed to give any weight to the fact that PECO's bills complied in all

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<sup>16</sup> I.D. at 14

respects with the Commission's regulations concerning bill formatting (52 Pa. Code § 56.15) and the Commission's Policy Statement on Plain Language (52 Pa. Code § 69.251). PECO's compliance with these regulations should not be overlooked, and certainly are relevant to an analysis of a civil penalty. Secondly, as the ALJ correctly noted, the confusion regarding the Complainant's account could have been avoided had the Complainant either made timely payments on her account or complied with the very reasonable terms of the payment arrangements.

### III. CONCLUSION

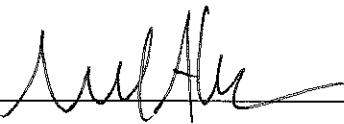
As set forth above, the ALJ properly dismissed the Complaint on the issue of the Complainant's balance. All of the facts relied upon by the ALJ regarding the Complainant's account balance were supported by PECO's business records and the testimony of its witness. The ALJ did not give undue weight to PECO's evidence. To the contrary, the ALJ gave the Complainant every opportunity to make her case and to rebut PECO's evidence, but a review of the record makes it clear that the Complainant did not meet her burden of proof. The Complainant did not demonstrate by the preponderance of the evidence that she was entitled to the relief she requested in her Complaint (recalculation of bills), and therefore the ALJ's dismissal of the Complaint on this point should be upheld by the Commission.

With respect to the issue of the civil penalty, it is clear from the transcript in this case that the Complainant was confused about her PECO account history, and extremely frustrated by the situation as a whole. PECO regrets that it was unable to resolve the Complainant's concern and explain her account history satisfactorily. But PECO respectfully submits that the imposition of civil penalty is simply not appropriate in this

case. The ALJ's basis for imposing the penalty failed to recognize that the parties did attempt to mediate the dispute, and failed to recognize that PECO attempted to explain the billing history during that mediation process. As set forth above, a fair application of the Commissions standard for the imposition of civil penalties does not warrant imposition of a penalty against PECO under the circumstances of this case.

Wherefore, for the reasons set forth above, PECO respectfully requests that the Commission dismiss the Complaint in its entirety, and reject the civil penalty that was recommended by the I.D.

Respectfully submitted,



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

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: March 28, 2011

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

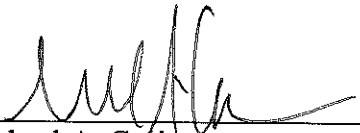
LAURA MAISCH	:	
Complainant	:	
v.	:	Docket No. C-2009-2118649
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing Reply Exceptions 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

Laura Maisch  
322 S. 3<sup>rd</sup> St.  
Colwyn, PA 19023

  
\_\_\_\_\_  
Michael A. Grun

DATED: March 28, 2011