

Legal Department

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Business Services
Company

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April 15, 2011

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

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APR 15 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**RE: Renee G. Ogilvie Spann v. PECO Energy Company
PUC Docket No. C-2010-2195490**

Dear Ms. Chiavetta:

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

—	Answer (Original)
—	Answer & New Matter (original)
—	Motion to Consolidate (original)
—	Motion for Judgment on the Pleadings (original)
—	Preliminary Objection (original)
<u>X</u>	Exceptions (original)
—	Reply Exceptions (original)
—	Brief (original)
—	Reply Brief (original)

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Also enclosed is an extra copy of this letter, which I request that you date stamp and return to me in the envelope provided as proof of filing. Thank you for your time and attention on this matter.

Very truly yours,



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

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April 15, 2011

Renee C. Ogilvie Spann
312 W. Somerville Avenue
Philadelphia, PA 19120

**Re: Renee C. Ogilvie Spann v. PECO Energy Company
PUC Docket No C-2010-2195490**

Dear Ms. Spann:

Enclosed is a copy of PECO Energy Company's Exceptions to the initial decision. You may file a response to the exceptions within 10 days.

Soon, the Public Utility Commission will issue an Opinion and Order in your case. You will receive a copy of the Opinion by mail.

Thank you for your time and attention on this matter.

Very truly yours,



Tishekia Williams
Counsel for PECO Energy Company

cc: Office of Special Assistants

Enc.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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APR 15 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RENEE C. OGILVIE-SPANN
Complainant

v.

PECO ENERGY COMPANY
Respondent

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:
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:
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Docket No. C-2010-2195490

EXCEPTIONS OF PECO ENERGY COMPANY
TO THE INITIAL DECISION OF
ADMINISTRATIVE LAW JUDGE KY VAN NGUYEN

Pursuant to 52 Pa.Code §5.535, PECO Energy Company (PECO) hereby files its exceptions to the Initial Decision (hereafter "ID") issued in this docket on March 23, 2011¹ as follows:

I. PROCEDURAL HISTORY

On or about August 23, 2010, Renee C. Ogilvie-Spann ("Complainant") filed a Formal Complaint against PECO requesting a payment agreement. The complaint was an appeal of the decision rendered by the Commission's Bureau of Consumer Services (BCS) at case number 2684303. The BCS dismissed the complaint denying to grant a payment agreement. By hearing notice dated September 14, 2010, a hearing was scheduled for January 18, 2011.

II. STATEMENT OF THE CASE

On January 18, 2011, the hearing convened as scheduled. The issue presented was whether Complainant is entitled to a Commission-issued payment agreement for an arrearage billed at CAP rates. Complainant testified that "my complaint is not with the

¹ PECO Energy received the Initial Decision five (5) days after the issuance date and filed a Petition of Extension of time on April 12, 2011.

amount or the fact that I owe PECO. My complaint is that they will not allow me to make any kind of payment arrangements to pay them.” N.T. 5. PECO submitted that the customer is not entitled to a Commission issued agreement under 66 Pa.C.S. §1405(c). The ALJ concluded that Complainant is not a PECO customer, but lives at 312 W. Somerville Avenue, Philadelphia PA and has benefited from the Respondent’s service since 2005. The ALJ further concluded that a member of a CAP program is not the same as an applicant who is required to pay for the service the applicant receives at a property. 66 Pa.C.S. §1407(d). Complainant’s request for a payment agreement on CAP arrears was granted.

PECO respectfully excepts to this decision. The Commission is precluded from negotiating or approving a payment agreement on CAP rate arrears. Where a customer is legally obligated to pay for services rendered and admits to benefitting from the discounted service, the distinction between a customer and applicant is immaterial.

The hearing revealed the following *uncontested* facts:

- Complainant has lived at 312 W. Somerville Avenue for 10 to 12 years. N.T. 24.
- From September 1999 until October 12, 2005, Complainant was the customer of record. N.T. 21, 25, PECO Exhibit 5.
- Complainant’s first account was closed in 2005 with a final balance of \$5,843.25, which remains unpaid but is not a part of the balance at issue in this proceeding. N.T. 21, 25, 28, PECO Exhibit 5.
- In 2005, the service was switched to Complainant’s daughter’s name, Ms Jamia Spann. N.T. 25.

- The account was enrolled in PECO's Customer Assistance Program on August 4, 2006, while both Complainant and her daughter resided at the property. N.T. 5, 29, PECO Exhibit 2.

- Or about July 2010, Complainant requested service in her name again. N.T. 25 - 28. As she and her daughter benefitted from the service, Complainant's name was added to the account as a joint account holder. N.T. 27

- At that time, the CAP enrollment was based on Complainant and her daughter's residence at the 312 Somerville Avenue property. N.T. 28-29.

- On May 17, 2010, Complainant filed an informal complaint with the Bureau of Consumer Services ("BCS") requesting service in her name. The BCS determined that Complainant was presently a joint owner of the account; the balance due included CAP arrears and no payment agreement was granted. N.T.21, PECO Exhibit 5.

III. RELEVANT LAW.

66 Pa.C.S. § 1403. Definitions

"Applicant." A natural person not currently receiving service who applies for residential service provided by a public utility or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested.

"Customer." A natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested.

"Customer assistance program." A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, as defined by section 2202 (relating to definitions) or 2803 (relating to definitions), in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program.

66 Pa.C.S. § Payment agreements

(c) **Customer assistance programs.**--Customer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission.

66 Pa.C.S. § 1407. Reconnection of service

(d) **Payment of outstanding balance at premises.**--A public utility may also require the payment of any outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there.

Subsection 1405(a) of the Code, 66 Pa. C.S. § 1405(a), gives the Commission the authority, generally, to establish payment agreements between public utilities, customers and applicants. That authority is limited by the restrictions in Section 1405(b)-(f) and not by Section 1407. *George Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 (entered December 6, 2007).

IV. ARGUMENT

- a. The Commission is precluded from issuing payment agreements on CAP Rate Arrears regardless of whether a person is a “customer” or “applicant.”

The plain language of the statute precludes the Commission from issuing a payment agreement on CAP rate arrears. Section 1405 (c) says that “customer assistance program rates shall be timely paid and not the subject of Commission approved or negotiated rates.” This language is not dependant on the person’s status as a “customer” or “applicant.” While 66 Pa. C.S. § 1405(a), gives the Commission the authority to establish payment agreements between public utilities, customers and applicants, the Commission’s authority is limited by the restrictions in Section 1405(b)-(f). *George Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 (entered December 6, 2007).

In the instant case, the ALJ concluded that a member of a CAP program is not the same as an applicant who is required to pay for the service the applicant receives at a property during the time the applicant resided there. 66 Pa.C.S.§1407(d). PECO respectfully suggests that this is red herring. While it is correct that section 1407 doesn’t turn an “applicant” to a CAP customer, a person’s status as an “applicant” verses “customer” is immaterial to the issue. 66 Pa. C.S. § 1405(c), states that customer assistance program rates shall be timely paid and not the subject of Commission approved or negotiated agreements. Interpreting this section 1405 (c) to prohibit the “customer of record” from receiving a Commission-issued agreement on CAP arrears while permitting any other adult occupant or “applicant” whom benefitted from the service and is jointly liable for the debt to receive a Commission agreement would lead to inconsistent results and encourage the kind of name gaming that occurred in this case.

b. The Record Evidence Does Not Support a finding that Complainant is not a PECO customer.

Assuming for the sake of argument that the ALJ properly interpreted the statute, the record does not support a finding that Complainant is not a customer. Complainant is an adult occupant whose name appears on a residential service account and is jointly and severally liable for the unpaid balance.² This places the customer squarely within the definition of a customer. 66 Pa.C.S. § 1403 defines a customer as “a natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service...” Complainant admits that she is the payment responsible person. Indeed, Complainant testified during hearing that she explained to her daughter, “Jamia, the bill is in my name now. I’m going to be responsible for the bill...” N.T. 23. Complainant is an adult occupant whose name a residential service account is listed, and is fully liable for payment of the outstanding balance. When Complainant requested service, agreed that she was responsible for balance, and was added as a joint account holder she became a “customer” for all intents and purposes. Therefore, PECO properly concluded that Complainant is a customer.

Additionally, PECO’s witness testified that the account was enrolled in PECO’s Customer Assistance Program on August 4, 2006, while both Complainant and her daughter resided at the property. In July 2010, Complainant was added to the account as a joint account holder. At that time, the CAP enrollment was based on Complainant and

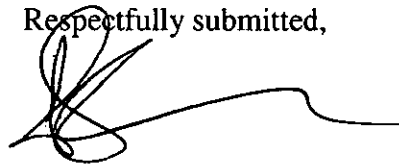
² 66 Pa.C.S. § 1407 permits a public utility to *also* require payment of any outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued.

her daughter's residency at the home.³ Clearly, both Complainant and her daughter received the benefits of the CAP program.

V. CONCLUSION

The Commission should reverse the initial decision granting Complainant a payment agreement on CAP arrears.

Respectfully submitted,



Tishekia Williams
Counsel for 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

³ Customer assistance program is defined as a plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, as defined by section 2202 (relating to definitions) or 2803 (relating to definitions), in which customers make monthly payments *based on household income and household size*...

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RENEE C. OGILVIE-SPANN
Complainant

v.

PECO ENERGY COMPANY
Respondent

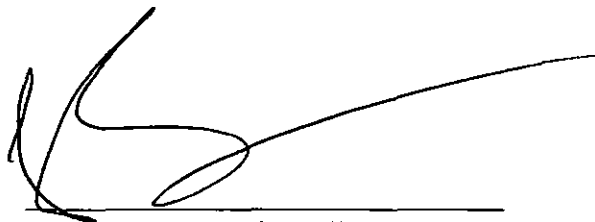
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Docket No. C-2010-2195490

VERIFICATION

I, Tishekia Williams, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.

Date: April 15, 2011



Tishekia Williams

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
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Complainant

v.

PECO ENERGY COMPANY
Respondent

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Docket No. C-2010-2195490

CERTIFICATE OF SERVICE

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

Renee C. Ogilvie
312 W. Somerville Avenue
Philadelphia, PA 19120

Office of Special Assistants
3rd Floor, Keystone Building
400 North Street
Harrisburg, PA 17105

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APR 15 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



Tishkia Williams

DATED: April 15, 2011

From: (215) 841-5353
Anita Zaketa

Origin ID: PSQA



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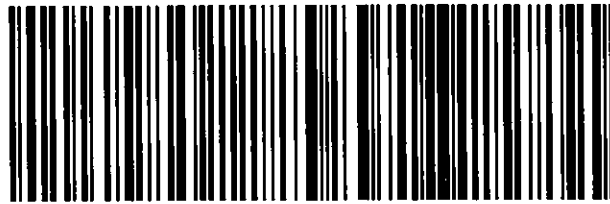
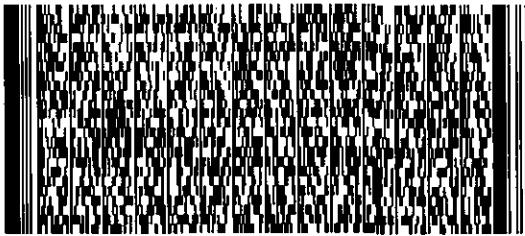
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