

Legal Department

Exelon Business Services Company
2301 Market Street/523-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Telephone 215.841.4000
Fax 215.568.3389
www.exeloncorp.com

Direct Dial: 215.841.6841

May 12, 2011

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

Re: Mark Mazza v. PECO Energy Company
PUC Docket No. C-2011-2235775

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the following documents and copies in the matter referenced above. (This is a re-filing of May 4, which had a wrong docket number on it.)

___	Answer (1 original)
___	Answer & New Matter (1 original)
___	Motion for Continuance (1 original)
___	Motion for Judgment on the Pleadings (1 original)
<u>X</u>	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/adz
Enc.

Scheduling Recommendation: Call of the Docket ___ Non Call of the Docket X

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

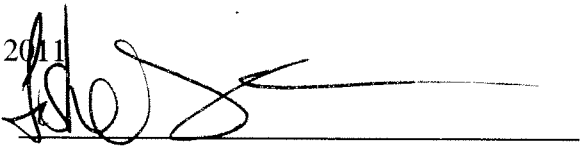
MARK MAZZA	:	
Complainant	:	
v.	:	DOCKET NO. C-2011-2235775
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.102 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objection of PECO Energy Company, within 10 days from service of this notice, your case may be dismissed. All pleadings, such as a Reply to Motions 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.

File with:
Rosemarie 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, May 12, 2011 

Tishekia 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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MARK MAZZA

v.

PECO ENERGY COMPANY

:
:
:
:
:

DOCKET NO. C-2011-2235775

**PRELIMINARY OBJECTION OF RESPONDENT,
PECO ENERGY COMPANY**

Respondent, PECO Energy Company (“PECO”), pursuant to 52 Pa. Code §5.101(6), respectfully petitions this Honorable Commission to dismiss the instant complaint as there are presently three other actions open regarding the same issues.

1. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.¹
2. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible.²
3. A complaint must be able to recover under the law to survive a preliminary objection.³
4. On July 10, 2009, PECO was served with a formal complaint filed by Complainant at docket number C-2009-2118230. Complainant alleged improper termination notice and requested a payment agreement. A copy of the Complaint is attached as Exhibit 1.
5. On July 22, 2009, PECO received a second formal complaint at docket number C-2009-2120401. Complainant raised the same allegations in this complaint. Complainant alleged

¹ *Equitable Small Transportation Interveners v. Equitable Gas Co.*, 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994)

² 2006 Pa. PUC Lexis 111, *7.

³ *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. Ct. 1998) (“preliminary objection should be sustained only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover”).

improper termination notice and requested a payment agreement. A copy of the Complaint is attached as Exhibit 2.

6. On July 30, 2009, PECO filed an Answer and Motion to consolidate the two matters. On September 16, 2009, the Motion to Consolidate was granted. By hearing notice dated March 15, 2010, the hearing was scheduled for April 13, 2010. The initial hearing convened as scheduled and a further hearing was held on June 15, 2010.

7. On August 17, 2010, the presiding officer issued a decision dismissing the complaint as it relates to the termination allegations, and granting Complainant a twenty-four month payment agreement to satisfy his balance. A copy of the initial decision is attached as Exhibit 3.

8. On September 29, 2010, Complainant filed exceptions claiming that his constitutional rights were violated and the agreement was improper.

9. By Order dated December 6, 2010, the Commission upheld the initial decision of the Administrative Law Judge. A copy of the Order is attached as Exhibit 4.

10. Complainant filed an appeal to the Commonwealth Court which is currently pending.

11. On April 21, 2010, PECO was served with a third complaint at docket number C-2010-2171324 filed by Mr. Mazza. Complainant again alleged improper termination notice and requests a payment agreement. Complainant also requests that PECO be ordered to reduce his account balance given his inability to pay. A copy of the Complaint is attached as Exhibit 5.

12. PECO Energy filed an Answer and Preliminary Objection for pendency of a prior proceeding on May 11, 2010. This complaint is also open and PECO has not received a ruling on the preliminary objection. A motion judge was assigned on April 15, 2011.

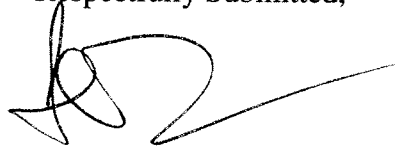
13. Complainant, a former attorney, has instigated four actions against PECO Energy regarding the same issues: his alleged inability to pay for services consumed, and PECO's

termination practices. All three other actions are open, including an open docket with the Commission.

14. PECO request that the instant complaint be dismissed for pendency of a prior proceeding to save the time, resources and the expense of the parties and the Commission of having multiple hearings on the same issues.

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

Respectfully Submitted,



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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MARK MAZZA

Complainant

v.

PECO ENERGY COMPANY

Respondent

:
:
:
:
:
:

DOCKET NO. C-2011-2235775

VERIFICATION

I, Tishekia Williams, hereby declare that I am an attorney representing 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 12, 2011



Tishekia Williams

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

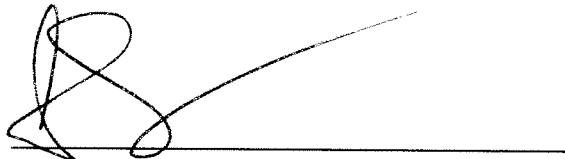
MARK MAZZA	:	
Complainant	:	
v.	:	DOCKET NO. C-2011-2235775
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of PECO Energy Company's Motion to Dismiss in the above matter upon all interested parties by mailing a copy thereof, properly addressed and postage prepaid to:

Mark Mazza
1271 Farm Road
Berwyn, PA 19312

Dated at Philadelphia, Pennsylvania, May 12, 2011.



Tishekia 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



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

Exhibit 1

IN REPLY PLEASE
REFER TO OUR FILE

DATE SERVED: July 10, 2009

Answer due 7.30

C-2009-2118230

PECO ENERGY COMPANY
C/O WARD L SMITH
ASSOCIATE GENERAL COUNSEL
PO BOX 8699
PHILADELPHIA PA 19101-8699

2009-652

WARD L SMITH

target 7.27

JUL 14 2009

*debt No!
92731-01/05*

Dear Mr. Smith:

A complaint has been filed against you before the Pennsylvania Public Utility Commission by Mark Mazza. To defend yourself against the claims stated in the following pages, you must act within twenty (20) days by filing in writing with the Commission, either personally or through your attorney, your defenses or objections to the claims stated against you. Or, you may satisfy the complaint by settling the matter with the Complainant and submitting proof of settlement to the Commission within twenty (20) days.

IF YOU FAIL TO RESPOND WITHIN TWENTY (20) DAYS, THE CASE MAY GO FORWARD IN YOUR ABSENCE AND A JUDGEMENT MAY BE ENTERED AGAINST YOU BY THE COMMISSION WITHOUT FURTHER NOTICE.

CUSTOMER OF A UTILITY

A payment schedule may be prescribed or a termination of utility services may be authorized. You may lose money or property or other rights important to you.

COMPANY/UTILITY

An Administrative Law Judge may revoke or suspend any certificate or permit held by you, or impose a fine, or any other appropriate penalty or remedy authorized by the Public Utility Code. You may lose money or property or other rights important to you.

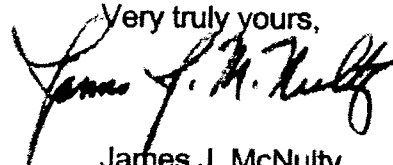
Detailed instructions on how to proceed are contained in the attached pages. You are advised to read them carefully.

JULY 10, 2009

Unless you are a corporation or other organization, you may proceed without a lawyer. However, if you want a lawyer and do not have one or cannot afford one, the office listed below can tell you where you can get legal help:

Pennsylvania Lawyer Referral Service
Pennsylvania Bar Association
P.O. Box 186
Harrisburg, PA 17108
(800) 692-7375

Very truly yours,

A handwritten signature in black ink, appearing to read "James J. McNulty". The signature is written in a cursive style with a large initial "J" and "M".

James J. McNulty
Secretary

DJ

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

DATE SERVED: July 10, 2009

MARK MAZZA

Complainant

v.

PECO ENERGY COMPANY

Respondent

Complaint Docket

No: C-2009-2118230

FORMAL COMPLAINT NOTICE TO RESPONDENT TO ANSWER OR SATISFY

TO: PECO ENERGY COMPANY

TAKE NOTICE:

That a complaint in the above entitled matter, of which the attached is a true and correct copy, has been presented and filed of record with the Pennsylvania Public Utility Commission. Section 702 of the Public Utility Code, 66 Pa. C.S. Section 702, requires the Commission to serve on each party named in a complaint a copy of the complaint and notice calling upon each party to satisfy the complaint, or to answer the same in writing within a specified time; THEREFORE,

1. You have twenty (20) days from the date on which this complaint is served to either satisfy this complaint or to file with the **Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265**, an answer (original and three copies), in writing, under oath, which, as required by Section 5.61 of the Commission's Rules of Practice and Procedure, 52 Pa. Code Section 5.61, either affirms or specifically denies the allegations in this complaint. You must also serve a copy of the answer upon the complainant. The date of service is the mailing date as indicated by the date at the top of this Notice. Section 1.56(a) of the Commission's Rules of Practice and Procedure, 52 Pa. Code Section 1.56(a).

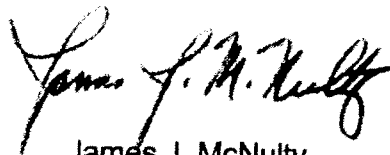
2. If you fail to either satisfy this complaint or to file answer or other responsive pleading within twenty (20) days, you will be deemed to have admitted all the allegations in this complaint in accordance with Section 5.61 of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code Section 5.61. In that event, the Commission may, without hearing, enter an order which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. Section 101, et seq.; and, if

you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

3. If you elect to satisfy this complaint you must file, within twenty (20) days from the date on which this complaint is served, affidavits executed by each complainant that this complaint has been satisfied. Such affidavits must describe the basis on which this complaint was satisfied; any settlement agreement between the parties must be reduced to writing and attached to the affidavit. Such affidavits are to be filed with the Secretary of the Commission at the address set forth in paragraph 1. Upon receipt of affidavits of satisfaction from all complainants, this complaint may be dismissed by the Commission in accordance with Section 703(a) of the Public Utility Code, 66 Pa. C.S. Section 703(a), unless the Commission determines that such dismissal would be contrary to the public interest, in which event the Commission may direct that hearings be held upon the complaint.

4. If you file an answer which admits the allegations in this complaint, or which fails to specifically deny the allegations in this complaint, the Commission may, without hearing, enter an order which either revokes or suspends any certificate held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

5. If you file a timely answer which specifically denies the allegations in this complaint, or which raises material questions of law or fact, this matter shall be referred to the Office of Administrative Law Judge for hearing and decision. If, after hearing on the issues raised by that answer, you are found to have committed any of the violations alleged in the complaint, the Administrative Law Judge may render a decision which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. In the imposition of a penalty after a hearing the Administrative Law Judge is not bound by the relief sought by the complainant in paragraph 4 of the attached complaint.



James J. McNulty
Secretary

(SEAL)

Certified Mail
Return Receipt Requested

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

Please print in ink or type.

1. CUSTOMER (COMPLAINANT) INFORMATION C-2009-2118230

Your name, mailing address, county, telephone number, utility account number and service address:

Name MARK MAZZA

Street/P.O. Box 1271 FARM RD. Apt # _____

City Beavertown State Pa. Zip 19312

County Chester

Daytime Telephone Number Where We Can Contact You: (610) 839-2619

E-mail Address (optional): _____

Utility Account Number 72730-01005
(from your bill)

COPY

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

Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

PECO

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
JUL 6 2009
PA PUBLIC UTILITY COMMISSION
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

PECO rep came to property on 6/23 + shut off service. There was no notice provided by PECO before this date. Called PECO rep said if I do not pay \$1,000 plus in 15 days they will shut off service. No written notice of

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

I seek an order by the PUC compelling and ordering PECO to give me reasonable payment arrangements in light of my continuing unemployment - with limited income of my wife and my UC payments along with expenses beyond our incomes, that the PUC order that services not be terminated due to our inability to pay past due amounts, and fine PECO for attempting to shut off service without any notice to me.

No shut off programs for economically distressed families

Plaintiff is unable to pay \$1,000.00 plus and PECO does not care about job loss and difficult economic times, and said they will shut service off, despite my efforts to make payments. (\$600.00)

6. PROTECTION FROM ABUSE

Answer the following question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility **AND** your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NO

7. PRIOR UTILITY CONTACT

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations)

NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

3. LEGAL REPRESENTATION (IF ANY)

If you are represented by a lawyer in this matter you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Lawyer's Name Ns

Street _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (If Known) _____

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:

I MARK MAZZA, 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).

Mark Mazza (Signature) 6/30/09 (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
---	--

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.

Keep a copy of your complaint for your records.



Emergency and Repairs: 1-800-841-4141. This is the number to call to report power outages, gas leaks or odors, and safety hazards related to PECO equipment. For all other business, call 1-800-494-4000.

Page 1

Name: MARK MAZZA
 Service Address: 1271 FARM RD, BERWYN
 Phone Number: 610-889-0614
 Account Number: 72730-01005
 Issue Date: 04/13/2009

General Information

Next scheduled meter reading: May 12, 2009
 Payment Information: PECO Energy, 2301 Market St, Philadelphia, PA, 19101, walk-in business hours Monday through Friday 8:30AM to 5:00PM. For additional payment options, go to www.peco.com/ehome. If you have any questions or concerns, please call 1-800-494-4000 before the due date.
 To pay by phone, call 1-877-432-9384. (A convenience fee will apply.)
 Si tiene alguna pregunta, favor de llamar al numero 1-800-494-4000 antes de la fecha de vencimiento.

Meter Information

Read Date	Meter Number	Load Type	Reading Type	Meter Reading		Diff	Mult X	Usage
				Previous	Present			
04/12	020679718	General Service	Total Ccf	5093 ACT	5238 ACT	145	1	145
04/12	105557986	General Service	Tot kWh	50207 ACT	51975 ACT	1768	1	1768
Total Ccf Used						145		
Total kWh Used						1768		

Current Period

<u>Gas Residential Heating Service</u>		Service 03/12/2009 to 04/12/2009 - 31 Days	
Customer charge			\$10.75
Natural Gas Supply Charges	145 Ccf	X \$0.72985	105.83
Distribution Charges	145 Ccf	X 0.36466	52.88
Balancing Service Charges	145 Ccf	X 0.04032	5.85
Gas Cost Adjustment Charges	145 Ccf	X 0.08956	12.99
State Tax Adjustment			0.19
Total current charges			\$188.49
<u>Electric Residential Service</u>		Service 03/12/2009 to 04/12/2009 - 31 Days	
Customer charge			\$5.18

continued ...

when paying in person, please bring the entire bill.

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



- Check here to enroll in Power Pay automatic account debit and complete form on reverse side.
- Check here to pledge a donation to MEAF and complete form on reverse side.

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

72730 0100 5000 0000

18248 1 AV 0.324 18248010248038328 094 01 04/13/09 123 04142009
 MARK MAZZA
 1271 FARM RD
 BERWYN, PA 19312-2064

Account Number 72730-01005 Payment Receipt Stan

Payment Amount

PECO ENERGY - PAYMENT PROCESSING
 PO BOX 37629
 PHILADELPHIA, PA 19101

Please pay this amount by 05/05/2009 \$2,014.51

00000455930000000000

727300100500020145191252014518



Emergency and Repairs: 1-800-841-3141. This is the number to call to report power outages, gas leaks or odors, and safety hazards related to PECO equipment. For all other business, call 1-800-494-4000.

Page 1

Name: MARK MAZZA
 Service Address: 1271 FARM RD, BERWYN
 Phone Number: 610-889-0614
 Account Number: 72730-01005
 Issue Date: 05/12/2009

General Information

Next scheduled meter reading: June 11, 2009
Payment Information: PECO Energy, 2301 Market St, Philadelphia, PA, 19101, walk-in business hours Monday through Friday 8:30AM to 5:00PM. For additional payment options, go to www.peco.com/ehome. If you have any questions or concerns, please call 1-800-494-4000 before the due date.
 To pay by phone, call 1-877-432-9384. (A convenience fee will apply.)
 Si tiene alguna pregunta, favor de llamar al numero 1-800-494-4000 antes de la fecha de vencimiento.

Meter Information

Read Date	Meter Number	Load Type	Reading Type	Meter Reading		Diff	Mult X	Usage
				Previous	Present			
05/11	020679718	General Service	Total Ccf	6238 ACT	6294 ACT	56	1	56
05/11	105557986	General Service	Tot kwh	51975 ACT	53552 ACT	1577	1	1577
Total Ccf Used				56				
Total kwh Used				1577				

Handwritten: \$100.00 + \$3.50

Current Period

Gas Residential Heating Service

Customer charge					Service 04/12/2009 to 05/11/2009 - 29 Days	\$10.75
Natural Gas Supply Charges	56 Ccf	X	\$0.72985	40.87		
Distribution Charges	56 Ccf	X	0.36466	20.42		
Balancing Service Charges	56 Ccf	X	0.04032	2.26		
Gas Cost Adjustment Charges	56 Ccf	X	0.08956	5.02		
State Tax Adjustment				0.08		
Total current charges						\$79.40

Electric Residential Service

Customer charge					Service 04/12/2009 to 05/11/2009 - 29 Days	\$5.18
-----------------	--	--	--	--	--	--------

continued ...

when paying in person, please bring the entire bill.

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

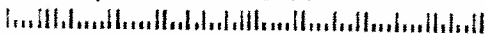


- Check here to enroll in Power Pay automatic account debit and complete form on reverse side.
- Check here to pledge a donation to MEAF and complete form on reverse side.

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

72730 0100 50000 0000

16200 1 AV 0.335 16200016200035604 063 01 GX894-8 12 05132009
 MARK MAZZA
 1271 FARM RD
 BERWYN, PA 19312-2064



Account Number 72730-01005 Payment Receipt Stamp

Payment Amount

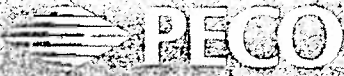
PECO ENERGY - PAYMENT PROCESSING
 PO BOX 37629
 PHILADELPHIA, PA 19101

Please pay this amount by 06/03/2009 \$2,482.72



00000318500000000000

727300100500024827291542482725



Emergency and Repairs: 1-800-341-4141. This is the number to call in
 cases of power outages, gas leaks or odors, and safety hazards related
 to PECO equipment. For all other business, call 1-800-494-4000.

Page 1

Name: MARK MAZZA
 Service Address: 1271 FARM RD, BERWYN
 Phone Number: 610-889-0614
 Account Number: 72730-01005
 Issue Date: 06/11/2009

General Information

Next scheduled meter reading: July 13, 2009
 Payment Information: PECO Energy, 2301 Market St, Philadelphia, PA, 19101, walk-in business
 hours Monday through Friday 8:30AM to 5:00PM. For additional payment options, go to
 www.peco.com/ehome. If you have any questions or concerns, please call 1-800-494-4000 before
 the due date.
 To pay by phone, call 1-877-432-9384. (A convenience fee will apply.)
 Si tiene alguna pregunta, favor de llamar al numero 1-800-494-4000 antes de la fecha de
 vencimiento.

Meter Information

Read Date	Meter Number	Load Type	Reading Type	Meter Reading Previous	Meter Reading Present	Diff	Mult X	Usage
06/10	020679718	General Service	Total Ccf	6294 ACT	6369 ACT	75	1	75
06/10	105557986	General Service	Tot kwh	53552 ACT	55340 ACT	1788	1	1788
Total Ccf Used						75		
Total kwh Used						1788		

Current Period

Gas Residential Heating Service

Service 05/11/2009 to 05/10/2009 - 30 Days

Customer charge				\$10.75
Natural Gas Supply Charges	75 Ccf	X	\$0.67917	50.94
Distribution Charges	75 Ccf	X	0.36466	27.35
Balancing Service Charges	75 Ccf	X	0.04293	3.22
Gas Cost Adjustment Charges	75 Ccf	X	0.08727	6.55
State Tax Adjustment				0.10
Total current charges				\$98.91

Electric Residential Service

Service 05/11/2009 to 05/10/2009 - 30 Days

Customer charge				\$5.18
-----------------	--	--	--	--------

continued ...

When paying in person, please bring the entire bill.

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 MEAF and complete form on reverse side.

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

72730 0100 50000 0000

16603 1 AV 0.335 16603016603037869 075 01 GXBU1C 103 06122008
 MARK MAZZA
 1271 FARM RD
 BERWYN PA 19312-2064



Account Number 72730-01005 Payment Receipt Sta

Payment Amount

PECO ENERGY - PAYMENT PROCESSING
 PO BOX 37629
 PHILADELPHIA, PA 19101

Please pay this amount by 07/06/2009 \$2,431.42



00000376390000031850



737300100500024314291872431428



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

DATE SERVED: JULY 23, 2009

TISHEKIA WILLIAMS C-2009-2120401

JUL 27 2009

Dec - 8/12
Target - 8/10
PECO ENERGY COMPANY
C/O WARD L SMITH
ASSOCIATE GENERAL COUNSEL
PO BOX 8699
PHILADELPHIA PA 19101-8699

Dear Mr. Smith:

A complaint has been filed against you before the Pennsylvania Public Utility Commission by Mark Mazza. To defend yourself against the claims stated in the following pages, you must act within twenty (20) days by filing in writing with the Commission, either personally or through your attorney, your defenses or objections to the claims stated against you. Or, you may satisfy the complaint by settling the matter with the Complainant and submitting proof of settlement to the Commission within twenty (20) days.

IF YOU FAIL TO RESPOND WITHIN TWENTY (20) DAYS, THE CASE MAY GO FORWARD IN YOUR ABSENCE AND A JUDGEMENT MAY BE ENTERED AGAINST YOU BY THE COMMISSION WITHOUT FURTHER NOTICE.

CUSTOMER OF A UTILITY

A payment schedule may be prescribed or a termination of utility services may be authorized. You may lose money or property or other rights important to you.

COMPANY/UTILITY

An Administrative Law Judge may revoke or suspend any certificate or permit held by you, or impose a fine, or any other appropriate penalty or remedy authorized by the Public Utility Code. You may lose money or property or other rights important to you.

Detailed instructions on how to proceed are contained in the attached pages. You are advised to read them carefully.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

2009 JUL 22 AM 9:09
SECRETARY'S BUREAU

Please print in ink or type.

C-2009-2120401

1. CUSTOMER (COMPLAINANT) INFORMATION

Your name, mailing address, county, telephone number, utility account number and service address:

Name MARK MAZZA

Street/P.O. Box 1271 FARM RD Apt #

City Derry State Pa Zip 19312

County Chester

Daytime Telephone Number Where We Can Contact You: (610) 889-0614

E-mail Address (optional):

Utility Account Number 72730-01005
(from your bill)

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

Name

Street/P.O. Box

City State Zip

COPY

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

PECO

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)

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

PECO rep come to property on 6/23/09 to shut off service. There was no notice provided by PECO before this date. Called PECO, rep said if I do not pay \$1,800 plus in 15 days they will shut off service. No written notice of

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

I seek an order by the PUC compelling and ordering PECO to give me reasonable payment arrangements in light of my continuing unemployment with limited income of my wife and my UC payments along with expenses beyond our incomes, that the PUC order that services not be terminated due to our inability to pay past due amounts, and fine PECO for attempting to shut off service without any notice to me.

petitioner is unable to pay \$1,800.00 plus and PECO does not care about job loss and difficult economic times, and said they will shut service off, despite my efforts to make payments. (\$600.00)

6. PROTECTION FROM ABUSE

Answer the following question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility **AND** your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NO

7. PRIOR UTILITY CONTACT

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations)

NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

8. LEGAL REPRESENTATION (IF ANY)

If you are represented by a lawyer in this matter you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Lawyer's Name Ns

Street _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (If Known) _____

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:

I MARK MARZA, 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).

 (Signature) 6/30/09 (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
---	--

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.

Keep a copy of your complaint for your records.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

ISSUED: August 17, 2010

EXH. 3
IN REPLY PLEASE
REFER TO OUR FILE

C-2009-2118230
C-2009-2120401

TISHEKIA E WILLIAMS ESQUIRE
PECO ENERGY COMPANY
2301 MARKET STREET S23-1
PO BOX 8699
PHILADELPHIA PA 19101-8699

TISHEKIA WILLIAMS

AUG 20 2010

Mark Mazza
v.
PECO Energy Company

TO WHOM IT MAY CONCERN:

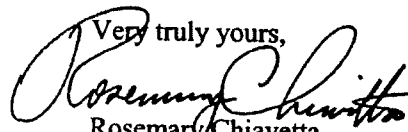
Enclosed is a copy of the Initial Decision of Administrative Law Judge Angela T. Jones. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within **twenty (20) days** of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within **ten (10) days** of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within **twenty (20) days**, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,

Rosemary Chiavetta
Secretary

MH
Encls.
Certified Mail

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mark Mazza

v.

PECO Energy Company

:
:
:
:
:

C-2009-2118230

C-2009-2120401

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

HISTORY OF THE PROCEEDING

On July 6, 2009, Mr. Mark Mazza (“Complainant”) filed his first formal Complaint (“Complaint One”) against PECO Energy Company (“PECO” or “Company” or “Respondent”) at Docket Number C-2009-2118230. Complainant alleged that PECO had attempted to terminate service without prior notice. Complainant requested that the Pennsylvania Public Utility Commission (“PUC” or “Commission”) direct PECO to provide a reasonable payment arrangement. Complaint One was served on PECO by the Commission Secretary’s Bureau on July 10, 2009.

On or about July 22, 2009, Complainant filed a second formal complaint (“Complaint Two”) with the Commission against PECO at Docket Number C-2009-2120401. Complaint Two seemed to be the same as Complaint One except documents were not attached to Complaint Two.

On July 30, 2009, Tisheka Williams, Esquire, counsel for PECO, filed an Answer and a Motion to Consolidate the two Complaints. PECO denied that the Complainant is unable to pay his electric and gas service bill. PECO contended that Complainant’s payment history

showed late and missed payments. PECO further denied that the Complainant's service was terminated without notice. PECO stated that a 10-day notice on May 26, 2009, and a 72-hour notice on June 1, 2009, were provided to the Complainant. PECO stated that service was terminated for non-payment on June 23, 2009. PECO contended that the termination of service was proper. Regarding the Motion to Consolidate PECO averred that "both actions relate to the same parties, service address, account and raise identical issues of law and facts." Motion to Consolidate at 1.

By Order dated September 16, 2009, pursuant to 52 Pa.Code § 5.81, Administrative Law Judge ("ALJ") Wayne L. Weisman found that the two Complaints met the criteria for consolidation. ALJ Weisman ordered that the two Complaints be consolidated.

By Hearing Notice dated December 22, 2009, these consolidated Complaints were scheduled for an Initial Hearing on Friday, March 5, 2010, at 10:00 a.m. with ALJ Cynthia W. Fordham presiding. On January 7, 2010, a Hearing Change Notice was sent changing the presiding officer to ALJ Angela T. Jones and the scheduled time of the hearing to 9:00 a.m.

By Prehearing Order dated January 13, 2010, the undersigned ALJ gave direction as to the proper procedure for this consolidated matter. Among other things, the ALJ gave direction as to how to reschedule the hearing.

By letter received by the undersigned on February 19, 2010, the Complainant requested that this matter be rescheduled. More specifically Complainant stated that he provides child care for his four year old daughter. He suggested that he could have someone else watch his child for him on Tuesday or Thursday; however, the hearing is not scheduled on a Tuesday or Thursday. Complainant stated he needed additional time to make child care arrangements. PECO requested that the evidentiary hearing proceed as scheduled because the request for additional time was not persuasive.

By Order dated February 25, 2010, the continuance was granted. The Order directed that the rescheduled evidentiary hearing be held on a Tuesday or Thursday. By Hearing

Notice dated March 15, 2010, the evidentiary hearing was rescheduled for Tuesday, April 13, 2010.

The evidentiary hearing convened as scheduled. Complainant was present, represented himself and was his own witness. PECO was represented by counsel, Ms. Williams, and presented one witness, Ms. Teresa Ferrier.

The Complainant offered the following four exhibits:

1. Mazza Exhibit 1, PECO Bill 4/13/09;
2. Mazza Exhibit 2, PECO Past Due Reminder, 5/12/09;
3. Mazza Exhibit 3, PECO Bill 5/12/09; and
4. Mazza Exhibit 4, PECO Bill 6/11/09.

All four exhibits were admitted without objection.

Ms. Williams offered two exhibits, PECO Exhibit 1 - Account Statement and PECO Exhibit 2 - Mazza's bill collection history. PECO Exhibit 1 was admitted but PECO Exhibit 2 was objected to because the summary of bill collection actions did not have foundation evidence for support of the summary. The objection was sustained but the hearing was continued to reconvene at a later scheduled date to obtain record evidence regarding the notice of termination to the Complainant. The undersigned ALJ told the parties that the dispute over whether a payment arrangement was warranted for the Complainant was completed and would not be heard at the further hearing.

By Hearing Notice dated April 19, 2010, these consolidated Complaints were scheduled for a Further In-Person Hearing on Tuesday, June 15, 2010.

By letter dated June 3, 2010, Complainant requested that this matter be rescheduled for a minimum of 45 days after June 15, 2010. Complainant specifically stated that he propounded discovery on PECO and had not received a response. Complainant stated that he filed a Motion to Compel against PECO on June 1, 2010. Complainant stated that the discovery

responses would prepare him to cross-examine PECO's witness and without the responses Complainant alleged he is at a disadvantage. Additionally, Complainant provided notice of a case where he is listed as the respondent or defendant in a matter before the Court of Common Pleas of Chester County. The Common Pleas Court matter conflicts with the Commission's Further Hearing on June 15, 2010.

By facsimile dated June 8, 2010, Ms. Williams submitted correspondence that addressed the requests for continuance but addressed a different Docket No. at C-2010-2171324.¹ Ms. Williams stated that the discovery process should have been initiated as soon as possible and acknowledged that the discovery was not propounded until April 27, 2010. Ms. Williams contended that this discovery was untimely and did not meet good cause to further delay the proceeding. Ms. Williams contended that the Common Pleas Court matter was scheduled on May 12, 2010, after the instant matter before the Commission; and thus, the PUC matter should take precedence as it was scheduled first.

Lastly Ms. Williams averred that Complainant has filed new Complaints to avoid collection on current charges. The most recent Complaint was filed on April 21, 2010. These consolidated proceedings were filed in July 2009. PECO contended further delay would be prejudicial to the resolution and collection for services rendered by the Company.

The undersigned ALJ ruled on the continuance request by Order dated June 9, 2010. The ALJ stated that there was no evidence of a filed Motion to Compel answers to discovery. The ALJ found it ironic that while the Complainant could follow procedure for requesting a continuance as evidenced by the June 1st request, the Complainant failed to follow proper procedure for the Motion to Compel.² The ALJ reiterated the proper procedure and stated "time is of the essence" for action on a discovery request.

The undersigned ALJ contacted the Common Pleas Court which consented to excuse the Complainant for June 15, 2010, noting the scheduled PUC matter. The ALJ found

¹ This docket was not assigned to the undersigned ALJ.

² Furthermore, the continuance request demonstrated that the Complainant knew that the undersigned ALJ was the presiding officer of the consolidated dockets.

that because there no longer was a conflict, there was no ground to grant the requested continuance.

The Further In-Person Hearing convened as scheduled on Tuesday, June 15, 2010. The Complainant represented himself and PECO was represented by Ms. Williams. Ms. Williams again called Ms. Ferrier to testify regarding the collection history of the Complainant. PECO presented PECO Exhibit #2 (which was revised from the previously presented exhibit). PECO Exhibit #2 was admitted over the objections of hearsay, lack of record custody and foundation by the Complainant. Complainant submitted Mazza Exhibit 5, after extensive debate over the proposed document, which was a letter to the PUC Secretary regarding Preliminary Objection and Motion to Compel at Docket Nos. C-2010-2171324, C-2009-2118230 and C-2009-2120401.³ Mazza Exhibit 5 was admitted without objection. The record closed on July 6, 2010. This consolidated matter is now ripe for decision.

FINDINGS OF FACT

1. Complainant, Mr. Mazza, receives both gas and electric service as a PECO customer at 1271 Farm Road, Berwyn, PA (“service address”). Tr. 9.
2. On or around June 23, 2009, Complainant had been unemployed for about a year and a half when a truck came to his property to turn off the power. Tr. 9-10.

³ Mazza Exhibit 5 was stamped received by Secretary’s Bureau on June 1, 2010. The ALJ explained to the Complainant that the timestamp may be used as evidence that the proper procedure was not followed, that is,

§ 5.342. Answers or objections to written interrogatories by a party.

(g) *Motion to compel.* Within 10 days of service of an objection to interrogatories, the party submitting the interrogatories may file a motion requesting the presiding officer to dismiss an objection and compel that the interrogatory be answered. If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory will be deemed withdrawn.

52 Pa.Code § 5.342(g)(Emphasis added). The Complainant must file the Motion to Compel within 10 days of service of the objection by PECO.

3. Complainant explained to the gentleman in the truck that he had no notice of PECO planning to terminate his power. Complainant pleaded with the gentleman not to turn off his power. Tr. 10.

4. Complainant was given a contact number to PECO and was told that he had about \$6,800 in past due bills that needed to be paid within 15 days or the power to the service address would be terminated. Tr. 10.

5. Complainant stated that the person he talked with at the PECO contact number did not address the issue of notice even though Mr. Mazza told the person that he did not receive any notice for termination of his PECO services. Tr. 17.

6. Complainant felt his only recourse was to file a formal Complaint. Tr. 10.

7. Complainant believed the termination was for both electric and gas. Tr. 11.

8. The \$6,800 that was due is for billed electric and gas service. Tr. 11.

9. Complainant became unemployed in the end of October 2007. At that time, Complainant's wife became the sole wage earner of the household. Tr. 12.

10. Complainant remains unemployed. Complainant received unemployment compensation periodically; however, he stopped receiving unemployment in April 2010. Tr. 13.

11. Complainant's household is made up of four people - himself, his wife, an eight year old and a four year old. Tr. 13-14.

12. Complainant is aware that he has had at least two payment arrangements for his PECO services. Tr. 14.

13. Sometime in 2008, when Complainant became unemployed, he made a payment arrangement with PECO. Tr. 14-15.
14. Complainant conceded that he did not maintain the payment arrangement because he continued to be unemployed. Tr. 16.
15. Complainant alleged he did not receive a phone call, or paper, or document placed on the meter, or door or anywhere on his property as notice to terminate his PECO services. His initial notice was a gentleman that came to his property in an unmarked truck on June 23, 2009, to terminate his PECO services. Tr. 16.
16. Complainant stated he did not see anything on his bill to alert him that his PECO services would be terminated. Tr. 17.
17. For the bill issue date of April 13, 2009, the amount due was \$2,014.51. Mazza Exhibit 1 and Tr. 14.
18. For the bill issue date of May 12, 2009, the amount due was \$2,482.72. Mazza Exhibit 3 and Tr. 14.
19. For the bill issue date of June 11, 2009, the amount due was \$2,431.42. Mazza Exhibit 4 and Tr. 14.
20. Complainant stated that the above exhibits were not the only pages received from PECO for each bill. Tr. 19-20.
21. Complainant stated that the other pages of the bills did not contain a notice to shutoff PECO services. Tr. 20.
22. Complainant received a reminder that his account with PECO was past due for payment on May 12, 2009. Mazza Exhibit 2.
23. The current net income of Complainant's wife is \$2,600 or \$2,800 per month. Tr. 25-26.

24. Complainant's wife's annual income is \$42,000 or \$43,800. Tr. 26.
25. Teresa Ferrier is a regulatory assessor at PECO who investigates and reviews formal Complaints filed against the Company with the PUC. Tr. 27-28.
26. Ms. Ferrier has been employed by PECO for 33 years. She has been a regulatory assessor for about 15 years. Tr. 28.
27. Complainant's current balance for PECO services rendered is \$8,623.98. PECO Exhibit 1 and Tr. 29.
28. Ms. Ferrier stated that in her opinion the Complainant's payment history is sporadic, in that a payment is not received each and every month. Tr. 34 and PECO Exhibit 1.
29. PECO entered into a payment agreement with the Complainant on May 23, 2008, on a balance due at that time of \$2,503.89. The Complainant agreed to pay a certain amount down, installments of \$104.33 per month and current billed charges. Tr. 34.
30. The Complainant defaulted on the payment agreement because PECO did not receive the requested payment of \$626.99 by July 2, 2008. Tr. 34.
31. PECO received a payment of \$600 on November 17, 2008. Tr. 34.
32. As a result of a formal Complaint filed by the Complainant, PECO entered into another payment agreement on December 13, 2009. The terms of the agreement were to pay the budget bill in the amount of \$568 per month plus a monthly payment of \$145.35 toward the outstanding balance of \$5,232.62. The agreement was a Company settlement of the formal Complaint. Tr. 35.
33. On February 24, 2010, Complainant defaulted on the agreement. Tr. 35.
34. The Complainant has never received a Commission payment agreement. Tr. 35.

35. The first 10-day termination notice of PECO services was mailed on April 10, 2008. Tr. 77 and PECO Exhibit 2.
36. The 10-day notice referenced PECO account number 72730-01005 which is the account that corresponds to the Complainant's service address. Tr. 77 and PECO Exhibit 2.
37. On April 15, 2008, a telephone attempt was made to personally notify the Complainant of the proposed termination of PECO services (72-hour notice). Tr. 77-78 and PECO Exhibit 2.
38. A telephone message was left at Complainant's service address on April 15th and 16th, 2008, regarding PECO services to the Complainant's service address. Tr. 84 and PECO Exhibit 2.
39. The 10-day notice is sent through PECO's billing system. The notice is generated by computer and then sent by an outside vendor used by the Company. Tr. 78.
40. PECO's system updates upon receiving the data from the vendor that performs the notice. Tr. 100 and PECO Exhibit 2.
41. Regarding the termination in July 2008, the 10-day notice was mailed on July 7, 2008. Tr. 79 and PECO Exhibit 2.
42. The first 72-hour notice attempt was made on July 11, 2008. The Company got the Complainant's answering machine but then the phone got disconnected.
43. A second attempt for a 72-hour notice of termination was made on July 14, 2008. A telephone message was left on Complainant's answering machine to notify him of the proposed termination of PECO service. Tr. 80, 88 and PECO Exhibit 2.
44. Further collection action on the Complainant's account was a 10-day notice mailed on May 26, 2009. Tr. 80 and PECO Exhibit 2.

45. The first 72-hour notice attempt was made on June 2, 2009, and the second attempt was made on June 3, 2009. A telephone message was left on Complainant's answering machine on both attempts to notify the Complainant of the proposed termination of PECO service. Tr. 80-81 and PECO Exhibit 2.

46. Still further collection activity occurred on March 26, 2010, when a 10-day notice was mailed. Tr. 81 and PECO Exhibit 2.

47. A 72-hour notice attempt was made on March 31, 2010, which followed the March 26th collection activity. A telephone message was left on Complainant's answering machine to notify him of the proposed termination of PECO service. Tr. 81 and PECO Exhibit 2.

48. PECO does not keep the actual notices mailed for termination. The notices are mailed through the Company's electronic system which records that the notices were sent. Tr. 81-82, 83.

49. There are instances when PECO leaves a message on a customer's telephone and no return call from the customer to PECO is anticipated or warranted. Tr. 85-86.

50. PECO follows a script when calling a customer for the 72-hour notice before termination of service. Tr. 86.

51. PECO's procedure for 72-hour notification is to perform a second attempt of the 72-hour notice, if the first attempt does not produce contact with a live ratepayer or responsible adult occupant at the service address. Tr. 101-02 and PECO Exhibit 2.

52. Complainant had a letter to PUC Secretary Chiavetta as evidence of a Motion to Compel discovery responses at Docket Nos. C-2009-2118230 and C-2009-2120401 filed with the Secretary. Mazza Exhibit 5.

DISCUSSION

The party filing the Complaint bears the burden of proving that he or she is entitled to relief from the Commission. 66 Pa.C.S. § 332(a). "Burden of proof" means a duty to

establish one's case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). To satisfy the burden of proof against a utility, the Complainant must show that the utility is responsible or accountable for the problem described in the Complaint, *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. P.U.C. 300 (1976), or that the utility has violated either its duty under the Public Utility Code or the orders or regulations of the Commission. 66 Pa. C.S. § 701.

The issues in this proceeding are whether the Complainant satisfied his burden of proof regarding the request for a payment arrangement and also the allegation that he received no notice of termination of PECO services.

A Complainant can sustain the burden of proof by establishing a sufficient case through a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n*, 134 Pa. Commw. 218, 221-222, 578 A.2d 600, 602 (1990); *alloc. den.*, 602 A.2d 863 (1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Commw., PA Public Utility Comm'n*, 67 Pa. Commw. 597, 447 A.2d 1100 (1982); *Edan Transportation Corp. v. PA Public Utility Comm'n*, 154 Pa. Commw. 21, 623 A.2d 6 (1993); 2 Pa.C.S. § 704. 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 Comm'n*, 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. Commonwealth, Dept. of Public Welfare, White Haven Center*, 85 Pa. Commw. 23, 480 A.2d 382 (1984).

Request for Payment Agreement

The record shows the Complainant has defaulted on two Company initiated payment agreements. Tr. 35. Section 1405(d) states, "Absent a change in income, the Commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. ..." 66

Pa.C.S. § 1405(d). However, the Complainant has not had a payment agreement directed by the PUC. Tr. 35.

Section 1405(a) of the Public Utility Code states,

The Commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The Commission is authorized to establish payment agreement between a public utility, customers and applicants within the limits established by this chapter.

66 Pa.C.S. § 1405(a).

Although the Complainant has defaulted on two previous payment agreements, they were set forth by the Company. The Commission has the authority to direct a payment arrangement by statute and has not done so for this Complainant. Since the Complainant has not had a payment arrangement under the authority of the PUC, the Commission may exercise its authority to put a payment arrangement in place. Although Complainant's payment history is characterized by the Company's witness as sporadic, Complainant made payments of either \$500 or \$600 every other month. PECO Exhibit 1. While Complainant's conduct is not stellar, the Commission can exercise its authority to provide a payment arrangement.

The record shows that the household income of the Complainant is \$42,000 to \$43,800. Tr. 26. The size of Complainant's household is four persons, two adults and two children. Tr. 13-14. The outstanding balance of the Complainant is \$8,623.98. PECO Exhibit 1 and Tr. 29.

Regarding the length of a payment agreement the Public Utility Code states,

The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment agreement that is investigated by the Commission and is entered into by a public utility and a customer shall not extend beyond:

- (1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.
- (2) Two years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.
- (3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.
- (4) Six month for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

66 Pa.C.S. § 1405(b).

Complainant's annual household income of \$42,000 to \$43,800 for a family of four exceeds 175% but is less than 200% of the current poverty income guidelines. *See*, Federal Register, Vol. 74, No. 14, (January 23, 2009), at 4199-4201.⁴ Pursuant to 66 Pa.C.S. § 1405(b)(2), Complainant's payment agreement can be no more than two years or 24 months. In compliance with 66 Pa.C.S. § 1405(b)(2), Complainant is required to pay his monthly budget bill, plus an amount equal to one twenty-fourth (1/24th) of the balance accrued on his account. These payment terms are to begin with the first bill following the Commission's final Order in this case. If Complainant fails to keep this payment schedule, PECO is authorized to suspend or terminate the Complainant's gas and electric services in accordance with the Commission's statute and regulations. If Complainant should default on this payment agreement, PECO should initiate the process to terminate Complainant's services.

⁴ "Congress has taken action to keep the 2009 poverty guidelines in effect until at least May 31, 2010. Congressional actions on this matter have been in response to a decrease in the annual average Consumer Price Index (CPI-U) for 2009, projected during 2009 and announced on January 15, 2010. In the absence of legislative change, this decrease - the first since the poverty guidelines began to be issued in 1965 - would have required HHS to issue 2010 poverty guidelines that were lower than the 2009 poverty guidelines..." See hyperlink at <http://aspe.hhs.gov/poverty/index.shtml> (Emphasis added).

Notice to Terminate Services

The Complainant does not appear to dispute that PECO was authorized to terminate his services. Pursuant to Section 56.81 of the Commission's regulations,

§ 56.81. Authorized termination of service.

Utility service to a dwelling may be terminated for one or more of the following reasons:

- (1) Nonpayment of an undisputed delinquent account.
- (2) Failure to post a deposit, provide a guarantee or establish credit.
- (3) Unreasonable refusal to permit access to meters, service connections and other property of the utility for the purpose of maintenance, repair or meter reading.
- (4) Unauthorized use of the utility service delivered on or about the affected dwelling.
- (5) Failure to comply with the material terms of a settlement or payment agreement.
- (6) Fraud or material misrepresentation of identity for the purpose of obtaining utility service.
- (7) Tampering with meters or other utility equipment.
- (8) Violating tariff provisions on file with the Commission so as to endanger the safety of a person or the integrity of the energy delivery system of the utility.

52 Pa.Code § 56.81. Because the Complainant conceded that he had two payment agreements upon which he defaulted, at a minimum, 52 Pa.Code § 56.81(5) is applicable and actions toward termination of PECO services were warranted.

Pursuant to Commission regulations,

§ 56.91. General notice provisions.

Prior to a termination of service, the utility shall mail or deliver written notice to the ratepayer at least 10 days prior to the date of the proposed termination. In the event of any taking or acceptance of utility service without the knowledge or approval of the utility, other than unauthorized use of service as defined in § 56.2 (relating

to definitions), the utility shall comply with §§ 56.93-56.97, but need not otherwise provide notice 10 days prior to termination.

* * *

§ 56.93. Personal contact.

Except when authorized by § 56.71, § 56.72 or §-56.98 (relating to interruption of service; discontinuation of service; and exception for terminations based on occurrences harmful to person or property), a utility may not interrupt, discontinue or terminate service without personally contacting the ratepayer or a responsible adult occupant at least 3 days prior to the interruption, discontinuance or termination, in addition to providing other notice as specified by the properly filed tariff of the utility or as required by this chapter or other Commission directive. For purposes of this section, “personal contact” means:

- (1) Contacting the ratepayer or responsible adult occupant in person or by telephone.
- (2) Contacting another person whom the ratepayer has designated to receive a copy of a notice of termination, other than a member or employee of the Commission.
- (3) If the ratepayer has not made the designation noted in paragraph (2), contacting a community interest group or other entity, including a local police department, which previously shall have agreed to receive a copy of the notice of termination and to attempt to contact the ratepayer.
- (4) If the ratepayer has not made the designation noted in paragraph (2) and if there is no community interest group or other entity which previously has agreed to receive a copy of the notice of termination, contacting the Commission in writing.

* * *

§ 56.94. Procedures immediately prior to termination.

Immediately preceding the termination of service, a utility employee, who may be the utility employee designated to perform the termination, shall attempt to make personal contact with a responsible person at the residence of the ratepayer and shall attempt to make personal contact with a responsible person at the affected dwelling.

(1) *Termination prohibited in certain cases.* If evidence is presented which indicates that payment has been made, a serious illness or medical condition exists, or a dispute or complaint is properly pending or if the employee is authorized to receive payment and payment in full is tendered in any reasonable manner, then termination shall not occur. However, if the disputing party does not pay all undisputed portions of the bill, termination may occur.

(2) *Methods of payment.* Payment in any reasonable manner includes payment by personal check unless the ratepayer within the past year has tendered a check which has been returned for insufficient funds or for which payment has been stopped.

52 Pa.Code §§ 56.91, 56.93 and 56.94.

Complainant alleged that he did not receive notice to terminate his service prior to a PECO employee at his service address ready to terminate service on June 23, 2009. Tr. 9-10. Complainant's testimony however, is not that PECO terminated service at that point, but that PECO requested payment within 15 days of June 23, 2009, or Complainant's services would be terminated. Tr. 10.

PECO provided evidence of a 10-day notice relevant to the dispute sent to the service address of Complainant on May 26, 2009.⁵ Tr. 80 and PECO Exhibit 2. The 10-day notice complies with 52 Pa.Code § 56.91 regarding general notice of termination. The first attempt of a 72-hour notice was made on June 2, 2009, and a second attempt was made on June 3, 2009. Tr. 80-81 and PECO Exhibit 2. Both 72-hour notice attempts were by telephone call with messages left on an answering machine. Tr. 81 and PECO Exhibit 2. The 72-hour notices comply with the Commission regulations at 52 Pa.Code § 56.93(1) regarding personal contact. The PECO witness explained that the 10-day notice is generated through a computer billing system, noted on the computer system and mailed by an outside vendor of the Company. Tr. 78, 81-83.

⁵ PECO also provided notices subsequent to the disputed attempted termination; however, Complainant did not challenge termination notice subsequent to the attempt made by PECO on June 23, 2009.

It is important to note that PECO previously provided a 10-day notice in April 2008 and July 2008 to Complainant's service address. On both occurrences in April and July 2008, PECO left messages on Complainant's answering machine to notify him of the proposed termination of service. Tr. 80, 84, 88 and PECO Exhibit 2. This is evidence that Complainant had gone through the practice and procedure with the Company regarding notification before termination of service prior to this disputed matter. Thus, Complainant was no stranger to the procedure that he is contesting. The record is silent as to whether the procedures in April and July 2008 were resolved by termination or by another solution.

Furthermore, according to Complainant's own testimony, PECO complied with 52 Pa.Code § 56.94 in that the Company made personal contact with a responsible ratepayer on June 23, 2009. Tr. 10. The Company went beyond the regulations and extended another fifteen days to pay for services rendered. Complainant admitted that he filed the instant consolidated Complaints rather than meet the offer extended by the Company. Tr. 10.

PECO adequately rebutted the allegation by Complainant that no notice was received regarding termination of services at his service address prior to June 23, 2009. Complainant has not provided any evidence to refute or rebut the evidence provided by PECO that notices were delivered by mail and phone in compliance with Commission regulations. The record evidence does not support a finding that PECO failed to comply with PUC statute and procedure to provide notice of termination to the Complainant. Complainant has failed to sustain his burden of proof.

CONCLUSIONS OF LAW

1. The party filing the Complaint bears the burden of proving that he or she is entitled to relief from the Commission. 66 Pa.C.S. § 332(a).
2. "Burden of proof" means a duty to establish one's case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

3. The Commission has jurisdiction over the parties to and the subject matter of this proceeding. 66 Pa.C.S. § 701.

4. The Commission can grant payment arrangements to customers that have not received a Commission payment arrangement previously. 66 Pa. C.S. § 1405(a) and (b).

5. Complainant has sustained his burden of proof regarding his request for a payment arrangement.

6. Complainant has not sustained his burden of proof regarding no notice provided for termination of services.

ORDER

THEREFORE,

IT IS ORDERED:


1. That the formal Complaints filed by Mark Mazza against PECO Energy Company at Docket Nos. C-2009-2118230 and C-2009-2120401 are sustained, in part and denied, in part.

2. That Mark Mazza shall make monthly payments consisting of his current bill plus one twenty-fourth (1/24th) of the balance accrued on his account, beginning with the first billing due date following the entry of a final Commission Order in this case.

3. That if Mark Mazza does not keep the payment schedule stated in this Order, PECO Energy Company is authorized to suspend or terminate his PECO services in accordance with the Commission's statute and regulations.

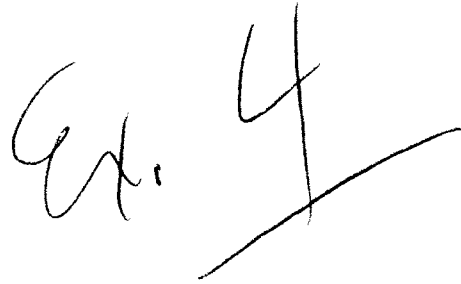
4. That the Secretary's Bureau shall mark the record at Docket Nos. C-2009-2118230 and C-2009-2120401 closed.

Date: July 26, 2010


Angela T. Jones
Administrative Law Judge

Zaketa, Anita D:(BSC)

From: eFile@state.pa.us
Sent: Monday, December 06, 2010 10:02 AM
To: Williams, Tishkia:(BSC)
Cc: Zaketa, Anita D:(BSC)
Subject: PA PUC eServe Notice
Importance: High

Handwritten signature and the number 4.

Dear Tishkia Williams,

A(n) **Order** has been served in this proceeding. This document is docketed as **C-2009-2118230**. You may view this document at

Opinion and Order - 2118230-OSA - 12-2-10 PM - Mazza v PECO - Exceptions to ID

You are receiving this email because you are a(n) **Respondent** for this case and have agreed to be served electronically. By selecting electronic service (eService), you have agreed that this notification constitutes valid service. Electronic service of any and all documents will be in place of paper service.

Thank You,
Public Utility Commission
Commonwealth of Pennsylvania

** Please do not respond to this automatically generated email.*

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held December 2, 2010

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
John F. Coleman, Jr.
Wayne E. Gardner
Robert F. Powelson

Mark Mazza

C-2009-2118230

C-2009-2120401

v.

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Mark Mazza (Complainant), filed on September 29, 2010, to the Initial Decision (I.D.)¹ of Administrative Law Judge (ALJ) Angela T. Jones, issued on August 17, 2010. No Reply Exceptions were filed.

¹ Although the Exceptions were late filed, we will consider them. However, since a Final Order adopting the ALJ's I.D. had been entered on October 1, 2010, after the initial deadline for filing Exceptions had passed, we shall treat the Complainant's Exceptions as a Petition for Reconsideration of our October 1, 2010 Final Order.

History of the Proceeding

On July 6, 2009, the Complainant filed a Formal Complaint (Complaint One) with the Commission against PECO Energy Company (PECO), alleging that PECO attempted to terminate his service without prior notice. The Complainant requested that the Commission direct PECO to provide a reasonable payment arrangement. On or about July 22, 2009, the Complainant filed a second Formal Complaint (Complaint Two). Complaint Two contained the same allegations as Complaint One. I.D. at 1.

On July 30, 2009, PECO filed an Answer and Motion to Consolidate the two Complaints. In its Answer, PECO denied that the Complainant is unable to pay his electric and gas service bill. PECO contended that the Complainant was late making payments and also missed payments. PECO further denied that the Complainant's service was terminated without notice. PECO stated that it provided a ten-day notice to the Complainant on May 26, 2009, and a seventy-two hour notice on June 1, 2009. PECO stated that service was properly terminated for non-payment to the Complainant on June 23, 2009. I.D. at 1-2; Motion to Consolidate at 1.

By Order dated September 16, 2009, the two Complaints were consolidated. An Initial Hearing was scheduled for March 5, 2010, with ALJ Cynthia W. Fordham. On January 7, 2010, the Parties were notified by a Hearing Change Notice that the presiding officer would be ALJ Angela T. Jones. On February 19, 2010, the Complainant requested that this matter be rescheduled. By Order dated February 25, 2010, ALJ Jones granted the continuance and rescheduled the hearing to April 13, 2010. I.D. at 2-3.

The Complainant appeared pro se at the hearing and offered four exhibits, which were admitted into evidence. PECO was represented by counsel who presented one witness and offered two exhibits, PECO Exhibit 1 – Account Statement; and PECO Exhibit 2 – Mazza's bill collection history. PECO Exhibit 1 was admitted into the record.

The Complainant objected to PECO Exhibit 2 because he claimed the summary of the bill collection actions did not have foundation evidence in support of the summary. ALJ Jones sustained the Complainant's objection but reconvened the hearing at a later date in order to obtain record evidence regarding the notice of termination to the Complainant. I.D. at 3.

A further in-person hearing was scheduled for June 15, 2010. The Complainant requested that the hearing be rescheduled for a minimum of forty-five days after June 15, 2010. The Complainant stated he filed a Motion to Compel against PECO in order to receive responses to his discovery requests from PECO. On June 9, 2010, ALJ Jones ruled against the Complainant on the continuance request. The ALJ stated that there was no evidence of a filed Motion to Compel. The further in-person hearing convened as scheduled on June 15, 2010. PECO presented PECO Exhibit 2 (which was revised from the previously presented exhibit). PECO Exhibit 2 was admitted over the objections of hearsay, lack of record custody and foundation by the Complainant. The Complainant submitted Mazza Exhibit 5 which was a letter to the PUC Secretary regarding Preliminary Objection and Motion to Compel at Docket Nos. C-2010-2171324, C-2009-2118230, and C-2009-2120401.² Mazza Exhibit 5 was admitted without objection. The record closed on July 6, 2010. I.D. at 3-5.

² Mazza Exhibit 5 was stamped received by Secretary's Bureau on June 1, 2010. The ALJ explained to the Complainant that the timestamp may be used as evidence that the proper procedure was not followed, that is,

§ 5.342. Answers or objections to written interrogatories by a party.

(g) *Motion to compel.* Within 10 days of service of an objection to interrogatories, the party submitting the interrogatories may file a motion requesting the presiding officer to dismiss an objection and compel that the interrogatory be answered. **If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory will be deemed withdrawn.**

As noted, on August 17, 2010, ALJ Jones' Initial Decision was issued. The Complainant filed Exceptions on September 29, 2010, and served a copy on PECO. No Reply Exceptions were filed by PECO.

Background

The Complainant receives both gas and electric service as a PECO customer. Finding of Fact No. 1. The record shows that the Complainant defaulted on two PECO initiated payment agreements. On May 23, 2008, the Complainant made a payment arrangement with PECO on a balance due at that time of \$2,503.89. The Complainant defaulted on that payment agreement by missing a payment of \$626.99 that was due July 2, 2008. Findings of Fact Nos. 29-30; Tr. at 34. PECO entered into another payment agreement with the Complainant on December 13, 2009. This payment agreement was a settlement of a Formal Complaint filed by the Complainant. On February 24, 2010, the Complainant defaulted on this second agreement. Findings of Fact Nos. 32-33; Tr. at 35. The Complainant never received a Commission payment agreement. Finding of Fact No. 34; Tr. at 35.

On or around June 23, 2009, one of PECO's trucks came to the Complainant's property to turn off his power. The Complainant pleaded with the truck driver not to turn off his power claiming he was not given notice by PECO of the service termination. According to PECO, in addition to termination notices sent to the Complainant, numerous telephone messages were left at the Complainant's service address informing him of termination of his service. Findings of Fact Nos. 35, 37, 38, 41-447.

52 Pa. Code § 5.342(g). Emphasis added. The Complainant must file the Motion to Compel within ten days of service of the objection by PECO.

The Complainant was given a contact number for PECO and was told that he had about \$6,800 in past due bills for electric and gas that needed to be paid within fifteen days or his power would be terminated. Findings of Fact Nos. 2-4, 8. Tr. at 9-10. The Complainant claimed that he contacted PECO but the person he talked to did not address the issue of notice of termination. Finding of Fact No. 5; Tr. at 17. Based on his contact with PECO, the Complainant felt his only recourse was to file a Formal Complaint, which he did on July 6, 2009.

In her Initial Decision, ALJ Jones concluded that the Complainant sustained his burden of proof regarding his request for a payment arrangement, but failed to sustain his burden of proof regarding the lack of notice provided for termination of services.

Discussion

The Public Utility Code (Code) establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision. Section 5.572(a), 52 Pa. Code § 5.572(a) provides that:

Petitions for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedeas or the like shall be in writing and shall specify, in numbered paragraphs, the findings or orders involved, and the points relied upon by petitioner, with appropriate record references and specific requests for findings or orders desired.

The standards for granting a Petition for Reconsideration or Modification were set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. PUC 553, 1982 Pa. P.U.C. LEXIS 4 (1982). *Duick* held that a petition for rehearing under Subsection

703(f) of the Code must allege newly discovered evidence not discoverable through the exercise of due diligence prior to the close of the record. *Duick at 558*. A petition for reconsideration under Subsection 703(g), however, may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, in whole, or in part. Furthermore, such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed. *Duick at 559*. A petition seeking reopening of the record (more properly one for rehearing) may be entertained as a petition for reconsideration, under the provisions of 66 Pa C.S. § 703(g), if the newly discovered evidence was not in existence, or was not discoverable through the exercise of due diligence, prior to the expiration of the time within which to file a petition for rehearing, under the provisions of 66 Pa C.S. § 703(f). *Id.*

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), which provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992).

The ALJ made fifty-two Findings of Fact and reached six Conclusions of Law. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

Before addressing the Exceptions, it is noted that any issue or Exception that we do not specifically discuss shall be deemed to have been duly considered and

denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pennsylvania Public Utility Commission*, 625 A.2d 741 (Pa. Cmwlth. 1993).

In his Exceptions, the Complainant submits that no prior phone and written notice regarding termination was received from PECO. The Complainant claims that he did not default on his payment agreement but rather was unable to maintain his payment arrangement due to becoming unemployed. Exc. at 2.

The Complainant also argues that the ALJ was biased and wrongfully denied him a continuance for failure of PECO to provide discovery. The Complainant contends that PECO did not provide any specifics with regard to phone messages that were left. Exc. at 3-4.

The Complainant submits that a payment arrangement of two years is unconstitutional and discriminatory as well as outdated. The Complainant claims PECO did not meet its burden of proving notice of termination of services. Exc. at 5.

The Complainant also argues that he was denied due process and that there was lack of consideration of his financial hardship. The Complainant requests that the Initial Decision be vacated and that new hearings be scheduled. Exc. at 6.

Based on our review of the record, we are of the opinion that the ALJ correctly ruled against the Complainant on the continuance request since the Complainant failed to follow the proper procedure for the Motion to Compel.

With regard to the Complainant's request for a payment arrangement, we agree with the ALJ that the Complainant sustained his burden of proof. The record shows that the Complainant has not had a payment agreement directed by the Commission. In this

regard, we note that Section 1405(a) of the Public Utility Code (Code), 66 Pa. C.S. § 1405(a), states:

The Commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The Commission is authorized to establish payment agreements between a public utility, customers and applicants within the limits established by this chapter.

Although the Complainant had defaulted on two previous payment agreements, those agreements were established by PECO. The Commission has the authority to direct a payment arrangement by statute but has not done so for this Complainant.

With regard to the length of a payment agreement, we note that the Public Utility Code states:

The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment agreement that is investigated by the Commission and is entered into by a public utility and a customer shall not extend beyond:

- (1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.
- (2) Two years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.
- (3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.

- (4) Six month for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

66 Pa. C.S. § 1405(b).

The record evidence shows that the Complainant's household consists of two adults and two children. Although the Complainant did become unemployed sometime in 2008, his wife had an annual income of \$42,000 to \$43,800. Tr. at 13-14, 26. That annual income for a family of four exceeds 175% but is less than 200% of the current poverty income guidelines. See, Federal Register, Vol. 74, No. 14, (January 23, 2009) at 4199-4201.³ We note that pursuant to 66 Pa. C.S. § 1405(b)(2), the Complainant's payment agreement can be no more than two years or twenty-four months.

In compliance with 66 Pa.C.S. § 1405(b)(2), we shall direct the Complainant to pay his monthly budget bill, plus an amount equal to one twenty-fourth (1/24th) of the balance accrued on his account. These payment terms are to begin with the first bill following the Commission's final Order in this case. If the Complainant fails to keep this payment schedule, PECO is authorized to suspend or terminate the Complainant's gas and electric services in accordance with the Code and the Commission's regulations. If the Complainant should default on this payment agreement, PECO should initiate the process to terminate the Complainant's services.

³ "Congress has taken action to keep the 2009 poverty guidelines in effect until at least May 31, 2010. Congressional actions on this matter have been in response to a decrease in the annual average Consumer Price Index (CPI-U) for 2009, projected during 2009 and announced on January 15, 2010. In the absence of legislative change, this decrease - the first since the poverty guidelines began to be issued in 1965 - would have required HHS to issue 2010 poverty guidelines that were lower than the 2009 poverty guidelines..." See hyperlink at <http://aspe.hhs.gov/poverty/index.shtml> (Emphasis added).

With regard to the notice to terminate service, we also agree with the ALJ that PECO adequately rebutted the Complainant's allegation that no notice was received regarding termination of services at his service address prior to June 23, 2009. The Complainant did not provide any evidence to refute or rebut the evidence provided by PECO that notices were delivered by mail and phone in compliance with Commission regulations. The record evidence does not support a finding that PECO failed to comply with the Code and the Commission's regulations to provide notice of termination to the Complainant. Therefore, the Complainant has failed to sustain his burden of proof regarding lack of notice of termination of service.

Conclusion

Based on the above discussion, we shall deny the Complainant's Exceptions and adopt ALJ Jones' Initial Decision, which sustained, in part, and denied, in part, the Complaints; **THEREFORE,**

IT IS ORDERED:

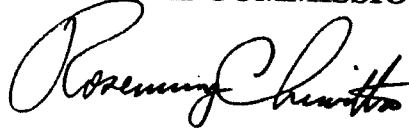
1. That the Exceptions of Mark Mazza are denied, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Angela T. Jones is adopted consistent with this Opinion and Order.
3. That the Complaints of Mark Mazza v. PECO Energy Company at Docket Numbers C-2009-2118230 and C-2009-2120401 are sustained, in part, and denied, in part, consistent with this Opinion and Order.

4. That Mark Mazza shall make monthly payments consisting of his current bill plus one twenty-fourth (1/24th) of the balance accrued on his account, beginning with the first billing due date following the entry of a final Commission Order in this case.

5. That if Mark Mazza does not keep the payment schedule stated in this Order, PECO Energy Company is authorized to suspend or terminate his PECO services in accordance with the Public Utility Code and the Commission's regulations.

6. That the consolidated proceeding at Docket Numbers C-2009-2118230 and C-2009-2120401 be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 2, 2010

ORDER ENTERED: December 6, 2010

Exh. 5

Rodriguez, Zulma Y.:(BSC)

From: eFile@state.pa.us
Sent: Wednesday, April 21, 2010 4:07 PM
To: Smith, Ward L.:(BSC)
Cc: Rodriguez, Zulma Y.:(BSC)
Subject: PA PUC eServe Notice
Importance: High

Dear WARD L SMITH,

A(n) **Formal Complaint** has been served in this proceeding. This document is docketed as **C-2010-2171324**. You may view this document at **Formal Complaint - PECO ENERGY COMPANY-ELECTRIC**

You are receiving this email because you are a(n) **Respondent** for this case and have agreed to be served electronically. By selecting electronic service (eService), you have agreed that this notification constitutes valid service. Electronic service of any and all documents will be in place of paper service.

Thank You,
Public Utility Commission
Commonwealth of Pennsylvania

** Please do not respond to this automatically generated email.*

due: 5/11
target: 5/9
dist. 5/7

10-04

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 MARK MAZZA

Street/P.O. Box 1271 FARM RD. Apt #

City BERWYN State PA Zip 19312

County Chester

Daytime Telephone Number Where We Can Contact You: (610) 269-0614

E-mail Address (optional):

Utility Account Number 7273001005 (from your bill)

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

Name

Street/P.O. Box

City State Zip

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

PECO

3. TYPE OF UTILITY (check one)

[X] ELECTRIC

[] STEAM HEAT

[X] GAS

[] WASTE WATER

[] WATER

[] MOTOR CARRIER

(e.g., taxi, moving company, limousine)

[] TELEPHONE (local, long distance)

RECEIVED 2010 APR 19 AM 11:16 SECRETARY'S BUREAU PA P.U.C.

754-833-1111
PECO

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.

PECO complaint pending. Received 10 day shut off notice. No legal notice or basis provided by PECO. Called PECO 4/10/10 - no legal basis provided, nor willing to do payment arrangement or agreement.

Seek fine or sanctions against PECO, as PUC complaint pending and prior to receipt of shut off notice I paid what I could and payments were late. The shut off notice provides no legal basis or sufficient notice why PECO is now trying to force payment or order shut off.

In the alternative, due to continued unemployment (2 1/2 yrs) and good faith efforts to pay, request PECO be compelled to enter into a payment arrangement or agreement. Also, request consideration PECO be ordered to reduce the amounts due to a lump sum compatible to my severe financial situation. PECO's programs for payment agreements and special assistance are discriminatory and unfair.

6. PROTECTION FROM ABUSE

Answer the following question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility **AND** your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NO

7. PRIOR UTILITY CONTACT

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations)

NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

8. LEGAL REPRESENTATION (IF ANY)

If you are represented by a lawyer in this matter you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Lawyer's Name _____

Street _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (If Known) _____

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:

I MARK MAZZA, 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).

Mr. Mazza (Signature) 4/12/10 (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
---	--

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.

Keep a copy of your complaint for your records.



0112

**TEN DAY SHUT OFF NOTICE
(AVISO DE SUSPENSION DE SERVICIO EN 10 DIAS)
FOR PECO ENERGY CHARGES ONLY.**

Account Number: 7273001005	Past Due Amt: \$754.83
For Service To: 1271 FARM RD	New Billing: \$556.08
Date Prepared: March 26, 2010	Total Amount: \$1,310.91

Your Gas/Electric Service May Be Shut Off!
Because your bill is past due, we will shut off the service to 1271 FARM RD on or after 8:00 a.m. on April 9, 2010.

- We will NOT shut off your gas/electric service if you do ONE of the following:**
- Pay \$754.83 in full before April 9, 2010, this includes any amount you owe on your payment plan. This notice is effective for 60 days.
 - Show us a paid receipt for the past due amount.
 - You may qualify for a payment agreement or special assistance programs. Call 1-888-480-1533 right away to provide us with household income and occupant information to determine your eligibility.
 - If you dispute this balance or have other billing questions, please call our office at 1-800-494-4000.

WE MUST RECEIVE YOUR PAYMENT BEFORE THE SHUT-OFF DATE. WE WILL NOT ACCEPT PAYMENTS AT YOUR PROPERTY.

If we shut off your gas/electric service, you may have to pay all of the following before we can turn service on:

- | | | |
|------------------------------|------------------|--------|
| • Past Due Amount of | <u>\$754.83</u> | Credit |
| • Deposit Past Due Amount of | <u>\$0.00</u> | Debit |
| • Agreement Unbilled Balance | <u>\$0.00</u> | |
| • Total | <u>\$754.83*</u> | |

*Called PECO - 4/11
PECO rec'd - 1/22
PUC complaint still pending!*

*If your service is shut off, you may be required to pay any additional bills that have become past due to restore your service.

**If your service is shut off, you may have to make substantial payments in order to have your service restored. In addition to any balance owed, you will have to pay a Reconnection charge of between \$70.00 and \$1,700.00. This fee amount is set by PECO's tariff and based on how much work is needed to restore your service. You may also be required to pay a deposit equal to two times your average monthly usage.

7

MEDICAL EMERGENCY NOTICE

Let us know if you or anyone presently and normally living in your home is seriously ill. WE WILL NOT SHUT OFF YOUR SERVICE during such an illness provided you:

1. Have your licensed physician or nurse practitioner certify by phone and in writing that such an illness exists and that it may be aggravated if your service is shut off, phone certification must be followed by written certification within 7 days.

'AND'

2. Make arrangements to pay this bill. You must provide us with household income and occupant information to determine your payment terms while protected under the medical certification.

IMPORTANT TO KNOW

Before we shut off your utility service please read the back of this notice. You may be eligible for certain protections from shut off.

Atencion ! Este es un mensaje muy importante. Si usted no lo entiende, favor de llame a 1-888-480-1533.

Send payment in the enclosed envelope or pay your bill at an authorized payment location or PECO Energy's Main Office (23rd & Market Streets Philadelphia). To pay by credit card or check by phone, call 1-877-432-9384. The service provider will charge a convenience fee of \$3.50.

See other side for more information



When paying in person, please bring the entire bill

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



Check here to enroll in Power Pay automatic account debit and complete form on reverse side.

Monday through Friday 8:30 a.m. to 5:00 p.m.

tariff and based on how much work is needed to restore your service. You may also be required to pay a deposit equal to your average monthly usage.

MEDICAL EMERGENCY NOTICE

Let us know if you or anyone presently and normally living in your home is seriously ill. **WE WILL NOT SHUT OFF YOUR SERVICE** during such an illness provided you:

1. Have your licensed physician or nurse practitioner certify by phone and in writing that such an illness exists and that it may be aggravated if your service is shut off, phone certification must be followed by written certification within 7 days.
2. Make arrangements to pay this bill. You must provide us with household income and occupant information to determine your payment terms while protected under the medical certification.

'AND'

IMPORTANT TO KNOW

Before we shut off your utility service please read the back of this notice. You may be eligible for certain protections from shut off.

Atencion ! Este es en mensaje muy importante. Si usted no lo entiende, favor de llama a 1-888-480-1533.

Send payment in the enclosed envelope or pay your bill at an authorized payment location or PECO Energy's Main Office (23rd & Market Streets Philadelphia). To pay by credit card or check by phone, call 1-877-432-9384. The service provider will charge a convenience fee of \$3.50.

See other side for more information

When paying in person, please bring the entire bill


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



- Check here to enroll in Power Pay automatic account debit and complete form on reverse side.
- Check here to pledge a donation to MEAF and complete form on reverse side.

Monday through Friday 8:30 a.m. to 5:00 p.m.
1-888-480-1533

1128 1 AT 0.357 1128001128001128 004 01 GAC08 1 03272010
 MARK MAZZA
 1271 FARM RD
 BERWYN PA 19312-2064




Account Number 72730-01005 Payment Receipt Sta

Payment Amount

Please pay this amount immediately. \$754.83

00000000000000000000

PECO Energy Co.
 PO BOX 13439
 Philadelphia PA 19162-0439



72730010050000000000009900000000

000000000001

If you have questions or need more information, please call us today at 1-888-480-1533. After you talk with us, if you are not satisfied, you may file a complaint with the Public Utility Commission (PUC). The PUC may delay the shut off if you file the complaint before the shut off date. To contact them call (800) 692-7380 or write to: Pennsylvania Public Utility Commission, Box 3265, Harrisburg, PA 17105-3265.

WINTER SHUT-OFF PROVISIONS (between December 1 - March 31)

- Contact us **BEFORE** the shut off date to give us household income & occupant information to see if you qualify for any assistance programs.
- If your income is below 250% of the federal poverty guideline, we must first ask the PUC for permission to shut off your service. Add together the monthly income of the adults in your household. If that number is the same or less than the amount listed in chart below for your household size, call us immediately at 1-888-480-1533. You will be required to provide us with proof of your income.

Monthly Income at 250% of Federal Poverty Level:

Household Size	1	2	3	4
Monthly Income	\$2256	\$3035	\$3815	\$4594

Add \$779 for each additional household member.

- If we shut off your residential service during the winter months (between Dec. 1 – Mar. 31) we will turn your service on within 24 hours of your meeting all requirements/conditions to have service reconnected. Where street digging is required it may take up to 7 days to turn the service back on.

IMPORTANT TO KNOW – BEFORE WE SHUT OFF YOUR UTILITY SERVICE

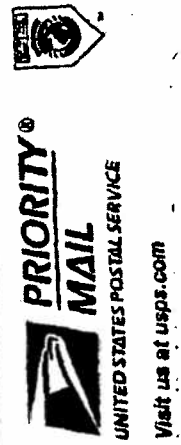
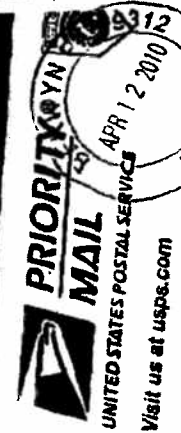
- If you currently have a valid Protection From Abuse order from a court, there are some additional protections available to you. Call us immediately at 1-888-480-1533. (You will be required to provide us with a copy of the order.)
- You may be eligible for a payment agreement or special assistance programs. Call 1-888-480-1533 right away to provide us with household income and occupant information. Documentation of your income will be required, such as pay stubs or tax documents.
- If your landlord pays your utility bill: You have certain legal protections. Call us at 1-800-494-4000.
- If you have trouble understanding or speaking English please call us at 1-888-480-1533.
- If you have a disability or need help understanding this notice, please call us at 1-800-494-4000.
- If your service is shut off, you will have to pay more than the amount on the front of this notice to have your service turned back on. You may have to pay any additional bills that have become past due.
- All adult occupants of the premise whose names are on the mortgage, deed, or lease are considered the 'customer' and are responsible for payment of this bill.
- If service is shut off, ANY adult occupant who has been living at the premise may have to pay all or portions of this bill to have service restored.
- If your service is shut off, you must contact us after your payment has been made to be sure you've met all conditions to have the service turned back on and to arrange access to your premises.
- If we shut off your service during the NON winter months (between Apr. 1 – Nov. 30) we will turn your service on within 3 days of your meeting all requirements/conditions to have service reconnected. Where street digging is required it may take up to 7 days to turn the service back on.

Atencion ! Este es un mensaje muy importante. Si usted no lo entiende, favor de llamar a 1-888-480-1533



Print postage online - Go to usps.com/postageonline

POSTAGE REQUIRED.



Label 107R, January 2008

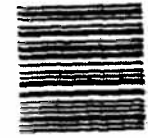
Label 107R, January 2008

Label 107R, January 2008

UNITED STATES POSTAL SERVICE

Label 107R, January 2008

Label 107R, January 2008



U.S. POSTAGE
PAID
BERWYN, PA
APR 12 2010
POSTNET

\$0.50
BERWYN, PA
0002729-03

17105

1006

Any amount of mailable material may be enclosed, as long as the envelope is not modified, and the contents are entirely confined within the envelope with the adhesive provided as the means of closure.

**INTERNATIONAL RESTRICTIONS APPLY:
4-POUND WEIGHT LIMIT ON
INTERNATIONAL APPLIES**

Customs forms are required. Consult the *International Mail Manual (IMM)* at pe.usps.gov or ask a retail associate for details.

For Domestic
Visit us at usps.com

From: /Expéditeur:

MARK MARZA
1271 Farm Rd.
Berwyn, Pa. 19312

To: /Destinataire:

Secretary
Pennsylvania Public Utility Commission
P.O. Box 32265
Harrisburg, PA 17105-3265

Country of Destination: /Pays de destination:

USPS packaging products have been awarded Grade 10 Creative Certification for their eco-friendly intelligent design. For more information go to info.usps.com



EP14F