

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

Business Services
Company

Direct Dial: 215.841.6841

May 24, 2011

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

RECEIVED

MAY 24 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: Donald C. LeLand III v. PECO Energy Company
PUC Docket No. F-2011-2239324

Dear Ms. Chiavetta:

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

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

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

Very truly yours,



Tishekia Williams
Counsel for PECO Energy Company
TW/adz

Enc.

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

Legal Department

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Company

Direct Dial: 215 841-6841

May 24, 2011

Donald C. LeLand III
427 W. Winona Street
Philadelphia, PA 19144

RECEIVED

MAY 24 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Donald C. LeLand III v. PECO Energy Company
PUC Docket No F-2011-2239324

Dear Mr. LeLand:

Enclosed is a copy of PECO Energy Company's response to the formal complaint filed in the above-referenced docket. The law requires PECO Energy to file an answer to your Public Utility Commission complaint. Keep these papers for your records. This is not a decision on your complaint. PECO's response may include a New Matter, Motion or Preliminary Objection. Please note that if you do not respond to a New Matter, Motion, or Preliminary Objection an unfavorable decision may be rendered against you. Responses to New Matters and Motions must be filed within 20 days. Responses to Preliminary Objections must be filed within 10 days. If there is no New Matter, Motion or Preliminary Objection included, no response is required.

Soon, the Public Utility Commission will schedule either a settlement conference or a hearing on your complaint. The Commission will let you know by mail whether there will be a conference or a hearing and will include instructions on what to do next. If the matter is set for hearing, the notice will provide you with information about the date, time and place of the hearing. If we are unable to resolve your complaint and have to proceed with a hearing, a judge will be at the hearing and will decide your complaint. You must call the Public Utility Commission if you have any questions about the hearing or if you cannot attend the hearing.

Thank you for your time and attention on this matter.

Very truly yours,



Tishekia Williams
Counsel for PECO Energy Company

Enc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DONALD LELAND, III	:	
Complainant	:	
v.	:	DOCKET NO. F-2011-2239324
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that if you do not file a written response denying or correcting the enclosed Preliminary Objection of PECO Energy Company, within 10 days from service of this notice, an unfavorable decision may be entered against you. All pleadings, such as a Reply to Preliminary Objection and Reply to New Matter, 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

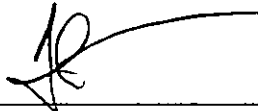
With a copy to:
Tishekia E. Williams, Esq.
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

RECEIVED

MAY 24 2011

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

Dated at Philadelphia, PA, May 24, 2011



Tishekia E. Williams
Counsel for PECO Energy Company
2301 Market Street S-23
Philadelphia, PA 19101-8699
215-841-6841
Tishekia.williams@exeloncorp.com

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

MAY 24 2011

DONALD LELAND, III
Complainant

v.

PECO ENERGY COMPANY
Respondent

:
:
:
:
:

DOCKET NO. F-2011-2239324

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

PRELIMINARY OBJECTIONS OF RESPONDENT, PECO ENERGY COMPANY

Respondent, PECO Energy Company ("PECO Energy"), pursuant to 52 Pa. Code § 5.101(3) respectfully petitions this Honorable Commission to order Complainant to amend his Complaint to provide more specificity.

1. On May 4, 2011, PECO was served with a formal Complaint filed by Donald Leland (hereafter "Complainant") before the Pennsylvania Public Utility Commission.

2. The entire complaint consists of the following two sentences: "I am being charged, the price keeps going up and there is no evidence of an infraction by me. I have been found at fault because I can't prove a negative exists."

3. The Complaint does not conform to the requirements of 52 Pa.Code §5.22 (a)(5), which provides:

5.22. Content of formal complaint.

a. A formal complaint must set forth the following:

...

(5) A clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal investigation.

4. A formal complaint must set forth "the act or thing done or omitted to be done" by a public utility "in violation, or claimed violation, of any law which the commission has

jurisdiction to administer, or any regulation or order of the commission.” 66 Pa.C.S. §701; 52 Pa.Code §5.22

5. A complaint should contain information specific enough to allow the respondent to understand the allegations against it, in order to conduct a meaningful investigation of the allegations and to prepare a coherent response.

6. In the instant matter, Complainant has not provided sufficient facts to allow PECO to formulate an appropriate response without speculating as to the issues under dispute.

7. By way of background, on June 1, 2010 Complainant filed a formal complaint with the Commission at docket number F-2010-2181089. Complainant alleged that he was improperly charged a \$230.00 revenue protection tampering fee because he did not tamper with his service.

8. On October 8, 2010 a hearing was held. Complainant represented his own interest, and PECO was represented by counsel and presented the testimony of one witness.

9. On November 18, 2010 an Initial Decision was rendered finding that Complainant failed to meet his burden of proof. A copy of the decision is attached as Exhibit 1.

10. On January 14, 2011, Complainant filed exceptions to the initial decision. A copy of the exceptions is attached as Exhibit 2.

11. On May 9, 2011, the Commission issued an Opinion and Order sustaining the initial decision. A copy of the Order is attached as Exhibit 3.

12. Based on the foregoing information, PECO *suspects* that the Complaint filed on April 20, 2011 at the instant docket is an attempt to dispute the charge previously adjudicated at docket

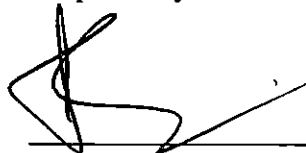
number F-2010-2181089.¹ It is unclear, however, what is meant by Complainant's statement that "the price keeps going up."

13. To the extent that Complainant is disputing the charges previously adjudicated, PECO would of course file an Answer, New Matter and Motion for Judgment on the Pleading because that claim is precluded by the doctrine of res judicata.

14. However, it is difficult to craft a targeted Answer based on the allegations contained in the actual Complaint. Accordingly, PECO Energy preliminarily objects to the Complaint pursuant to 52 Pa. Code § 5.101(a)(4). PECO requests that Complainant be ordered to simply state which "charges" and "accusations" should be dismissed.

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss the instant Complaint pursuant to 52 Pa. Code § 5.101(a)(4).

Respectfully Submitted,



Tishekia Williams
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Tishekia.Williams@exeloncorp.com

¹ PECO notes that Complainant filed the instant complaint before a decision was rendered on his exceptions.



PECO exhibit 1

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

gy

IN REPLY PLEASE REFER TO OUR FILE

ISSUED: November 18, 2010

F-2010-2181089

TISHEKIA E WILLIAMS ESQUIRE
EXELON BUSINESS SERVICES COMPANY
2301 MARKET STREET/S23-1
P O BOX 8699
PHILADELPHIA PA 19101-8699

except due: 12-8

TISHEKIA WILLIAMS

NOV 22 2010

Donald LeLand
v.
PECO Energy Company

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Ky Van Nguyen. 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, AND A COPY IN THE HANDS OF THE OFFICE OF SPECIAL ASSISTANTS, 3RD FLOOR, AND A COPY IN THE HANDS OF EACH PARTY OF RECORD within **twenty (20) days** of the issuance date of this letter.** 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.

Replies to exceptions, if any, must be served on the Secretary of the Commission, Office of Special Assistants, and each party of record, 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.

Parties are also requested to provide the Commission's Office of Special Assistants with a copy of the exceptions/reply exceptions on CD_ROM or DVD, in Microsoft Word 2007 format. If Word 2007 is not available, any Microsoft Office compatible format is acceptable including PDF.

Very truly yours,

Rosemary Chiavetta
Secretary

Encls.
Certified Mail
Receipt Requested

RECEIVED

MAY 24 2011

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

int - dec

19520 00500

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Donald LeLand

v.

PECO Energy Company

:
:
:
:
:

F-2010-2181089

INITIAL DECISION

Before
Ky Van Nguyen
Administrative Law Judge

HISTORY OF THE PROCEEDINGS

On June 1, 2010, Donald LeLand (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent). In the complaint, the Complainant essentially stated that he was not responsible for the meter being tampered with and that all the information of electric diversions was collected by unreliable persons who have nothing to do with the Respondent's business. He asked that the Commission investigate the Respondent's practice.

On July 1, 2010, the Respondent filed an answer to the complaint. The Respondent stated that on January 29, 2009, the Complainant's electric meter was replaced because his old meter was tampered with and that on July 22 and October 13, 2009, it found the Complainant's meter was again tampered with. It further stated that it assessed a meter tampering fee of \$230 to the Complainant to cover the cost of the time and materials used in correcting the diversions.

On October 8, 2010, a hearing was held on the complaint. The Complainant proceeded unrepresented. He testified on his own behalf and introduced no exhibits into the record. The Respondent was represented by Tishekia Williams, Esquire, who presented the testimony of one witness and introduced two exhibits into the record.

The record closed at the conclusion of the hearing on October 8, 2010.

FINDINGS OF FACT

1. The Complainant is a residential customer of the Respondent and takes service at 427 W. Winona Street, Philadelphia, Pennsylvania (N.T. 4, 5).

2. When receiving a signal from the Complainant's meter indicating that the meter did not work, on January 29, 2009, the Respondent dispatched a Revenue Protection Technician, Mr. Ralph Colon, to the Complainant's home. Mr. Colon found that the Complainant had a digital meter but that the meter had no display on the screen. He further found the pot latch (the potential latch) in the meter open, which caused the flow of the current not to be registered on the meter. Mr. Colon replaced the old meter with a new one (N.T. 17-19, 21, 22; PECO Exhibit 1).

3. When receiving a report from a vendor indicating that the Complainant's meter had a problem, on October 13, 2009, the Respondent dispatched a Revenue Protection Technician, Mr. Ralph Colon again, to the Complainant's home. Mr. Colon found that the barrel lock on the meter was cut off, that a line/load jumper was installed in the meter board, thus bypassing the meter. He also found that one of the meter blades on the low side was covered with tape preventing the flow of the current not to register to the meter. He then removed the tape and the line/load jumper from the meter and installed a new side cap over the barrel lock. He also took the picture of the cut barrel lock and the line/load jumper (19-21, 22; PECO Exhibit 2).

4. When a meter is not registering, it sends a signal to the Respondent's Department of Revenue Projection for this department to investigate. The department also send out its technician to investigate when it receives a report from its vendor. Vendor is the Respondent's agency whose duty is to investigate the operation of meters (N.T. 21-23).

5. The Respondent assessed the Complainant a fee of \$230 to cover the cost of the time and materials used in correcting the electric diversions.

DISCUSSION

Section 332(a) of the Public Utility Code, 66 Pa. C.S. §332(a),¹ provides that the party seeking relief from the Commission has the "burden of proof." "Burden of proof" is a duty to establish a fact by a "preponderance of the evidence." The term "preponderance of the evidence" means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). In other words, "preponderance" is not dependent on the number of witnesses testifying on either side but rather on the credibility of the testimony in the light of all the evidence in a case. Burch v. Reading Co., 240 F.2d 574 (3d Cir. 1957) cert. denied, 353 U.S. 965 (1957). The Pennsylvania Supreme Court has characterized a preponderance of the evidence as tantamount to a "more likely than not" inquiry. Commonwealth v. \$6,425 Seized From Esquilin, 583 Pa. 544, 555, 880 A.2d 523, 524 (2005).

Under these principles the Complainant has the burden of proving by a preponderance of the evidence that the Respondent was responsible for the problem described in his complaint.

¹ Section 332(a) of the Public Utility Code provides:

"(a) Burden of Proof. – Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof."

The Complainant simply testified that he was not responsible for the electric diversions at his residence because he did not do the diversions. He does not touch electricity. He is a psychologist. Those terms, such as pot latch (potential latch), barrel lock, and line/load jumper, are too technical for him to understand. Probably, the diversions were, he suspected, acts of vandalism of his neighbors, who wanted to make the area a farmland while he wanted to build homes to keep the integrity of the neighborhood (N.T. 9-12).

This testimony was of a general nature and contained only assertions. No matter how honest and strong his assertions are, they cannot form a basis for a finding in his favor: Mere bald assertions, personal opinions or perceptions do not constitute evidence. Pennsylvania Bureau of Corrections v. City of Pittsburgh, 516 Pa. 75, 532 A.2d 12 (1987).

The Respondent's Revenue Protection Technician, R. Colon, testified that he found evidence of tampering at the Complainant's residence, not once but twice.² On January 29, 2009, he found that the meter had no display and that the pot latch open which caused the flow of the current not to register to the meter. He then replaced the old meter with a new one. On October 13, 2009, he found that the barrel lock on the meter was cut off, that the meter seal was missing, that one of the meter blades on the low side was taped, and that a line/load jumper was installed in the meter board. On this occasion, Mr. Colon removed the tape and the line/load jumper from the meter, installed a new side clamp, and sealed the meter. He also took a picture of the cut barrel lock and the line/load jumper.

From the testimony above, I conclude that the Complainant has not carried his burden of proof.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this complaint.

² In its answer to the complaint, the Respondent alleged a third incident of meter tampering which occurred on July 22, 2009. But the Respondent did not testify to this incident. See the Respondent's Answer.

2. The Complainant has failed to carry his burden of proof.

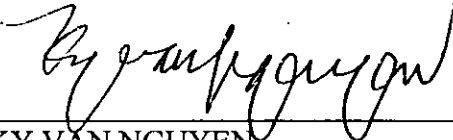
ORDER

THEREFORE

IT IS ORDERED:

1. That the complaint of Donald LeLand against PECO Energy Company at Docket No. F-2010-2181089 is denied for his failure to carry his burden of proof.
2. That the record at Docket No. F-2010-2181089 be marked closed.

Date: November 2, 2010



KY VAN NGUYEN
Administrative Law Judge



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

PRCO exhibit
2

IN REPLY PLEASE
REFER TO OUR FILE

April 11, 2011

TISHEKIA WILLIAMS

APR 14 2011

TISHEKIA E WILLIAMS ESQUIRE
EXELON BUSINESS SERVICES COMPANY
2301 MARKET STREET/S23-1
P O BOX 8699
PHILADELPHIA PA 19101-8699

Re: F-2010-2181089, Donald LeLand v. Peco Energy Company

Dear Ms. Williams:

EASE
FILE

On January 14, 2011, Donald LeLand filed Exceptions to the (Recommended or Initial) Decision of Administrative Law Judge Ky Van Nguyen the above captioned matter. Our review of the filing revealed that no certificate of service or other indication that the parties of record to the case were served with the Exceptions. Therefore, we have enclosed a copy of the Exceptions for your review. This shall constitute service of the Exceptions for purposes of 52 Pa. Code §5.533.

Pursuant to 52 Pa. Code §5.535, you shall have (10) days from the above date served to file Reply Exceptions. Although the Exceptions were timely filed, due to the failure of Donald LeLand to provide service on all the parties of record to the case, and in order to avoid prejudice to any party, we shall deem the filing date of the Exceptions to be the above date served for purposes of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), relating to the time for the Commission to consider the Exceptions.

EASE
FILE

Sincerely,

Rosemary Chavetta
Secretary

RECEIVED

MAY 24 2011

Enclosure

cc: All Parties of Record
Office of Special Assistants
Document Folder

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

EASE
FILE

RECEIVED

2011 JAN 14 AM 9:41

PA. P.U.C.
SECRETARY'S BUREAU

Commonwealth of Pennsylvania
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, Pa. 17105-3265

To whom it may concern: F-2010-2181089

I am DONALD C. LELAND III
427 W. WINONA ST.
PHILADELPHIA, PA. 19144-4507

In reference to my complaint to P.U.C. I am in disagreement with the decision of the Honorable Administrative Judge, Ky Van Nguyen. I was instructed to await written notification that the decision may become final. I received a current bill from PECO and have yet to receive any other notification.

In his decision Judge Nguyen seems to base his findings on the evidence presented by a PECO Respondent, represented by Tishkia Williams, Esquire. The evidence, in total, was dis-allowed. I am being asked to defend a position that has failed to exist as viable or at least connected to me

63289

(2)

I am asked to produce a burden of proof, by a "Preponderance of the evidence, in other words, to prove, that a negation exists. The reference that was used states that the evidence presented by one party, even by the smallest amount is more convincing. There is no evidence, however it would seem that words to accuse are given more validity than words to deny. I am requesting all charges, written, verbalized and monetary be dismissed.

Donald C. Le Paul

DOCKET NO-F-2010-2181089

PHONE - (215) 803-0823 CELL
(215) 438-8810 HOME
(215) 438-1205 FAX

3

Zaketa, Anita D:(BSC)

From: eFile@state.pa.us
Sent: Monday, May 09, 2011 8:41 AM
To: Williams, Tishekia:(BSC)
Cc: Zaketa, Anita D:(BSC)
Subject: PA PUC eServe Notice
Importance: High

Dear Tishekia Williams,

A(n) **Order** has been served in this proceeding. This document is docketed as **F-2010-2181089**. You may view this document at

Opinion and Order - 2181089-OSA - 5-5-11 PM - LeLand v PECO - Petition for Reconsideration

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.*

RECEIVED

MAY 24 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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19520 00 500

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

Public Meeting held May 5, 2011

Commissioners Present:

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

Donald LeLand

F-2010-2181089

v.

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Petition for Reconsideration (Petition) filed by Donald LeLand (Complainant) on January 14, 2011,¹ to the Commission's Final Order, entered on January 7, 2011, that adopted the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Ky Van Nguyen in this proceeding.

¹ The Complainant filed a letter in disagreement with the ALJ's I.D. We shall consider the Complainant's letter as a Petition for Reconsideration since it was filed after the Commission entered its Final Order adopting the Administrative Law Judge's Initial Decision in this proceeding.

History of the Proceeding

On June 1, 2010, the Complainant filed a Formal Complaint (Complaint) with the Commission against PECO Energy Company (PECO or Respondent). In the Complaint, the Complainant stated that he was not responsible for the tampering associated with his electric meter his electric meter and that all the information of electric diversions was collected by unreliable persons who have nothing to do with the Respondent's business. The Complainant asked that the Commission investigate the Respondent's practice. I.D. at 1.

On July 1, 2010, PECO filed an answer to the Complaint stating that on January 29, 2009, it replaced the Complainant's electric meter because of tampering that occurred with the Complainant's old meter. PECO also indicated that on July 22 and October 13, 2009, the Complainant's meter again showed signs of tampering. PECO stated that it assessed a meter tampering fee of \$230 to the Complainant to cover the cost of the time and materials used in correcting the diversions. I.D. at 1.

On October 8, 2010, a hearing was held on the Complaint before ALJ Nguyen. The Complainant appeared *pro se*, testified on his own behalf, and introduced no exhibits into the record. PECO was represented by counsel, presented the testimony of one witness and introduced two exhibits, which were admitted into the record. The record closed at the conclusion of the hearing on October 8, 2010. I.D. at 2.

In his Initial Decision, issued on November 18, 2010, ALJ Nguyen denied the Complaint due to the Complainant's failure to carry his burden of proof. By Final Order entered on January 7, 2011, the Commission adopted the ALJ's Initial Decision without further action. On January 14, 2011, the Complainant filed a letter in disagreement with the ALJ's I.D.

Background

During the hearing, the Complainant testified that he was not responsible for the electric diversions created at his residence. The Complainant claimed that he does not touch electricity and that the electric diversions were probably acts of vandalism caused by his neighbors, who wanted to make the area a farmland while he wanted to build homes to keep the integrity of the neighborhood. I.D. at 4; Tr. at 9-12.

PECO's witness R. Colon, a Revenue Protection Technician, testified that he found evidence of tampering with the Complainant's meter twice,² on January 29, 2009, and again on October 13, 2009. On the first tampering, Mr. Colon testified that the pot latch on the meter was opened causing the flow of current not to register to the Complainant's meter. A new meter, therefore, was installed. On the October 13 tampering, Mr. Colon testified that he found that the barrel lock on the meter was cut off, the meter seal was missing, one of the meter blades was taped, and a line/load jumper was installed in the meter board. On this occasion, Mr. Colon removed the tape and the line/load jumper from the meter, installed a new side clamp, and sealed the meter. Mr. Colon took a picture of the cut barrel lock and the line/load jumper. I.D. at 4.

Based on this evidence, ALJ Nguyen concluded that the Complaint should be denied because the Complainant did not meet his burden of proof. I.D. at 4.

² In its Answer to the Complaint, PECO alleged a third incident of meter tampering occurred on July 22, 2009. PECO did not testify to this incident. *See* Respondent's Answer.

Discussion

The ALJ made five Findings of Fact and reached two 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.

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.*

In his Petition, the Complainant states that he disagrees with the ALJ's Initial Decision. Initially, the Complainant appears to aver that he did not receive any notification regarding the ALJ's issuance of an I.D. or of the Final Order. Additionally, the Complainant suggests that the ALJ based his findings on the evidence presented by PECO's witness and that the evidence in total was disallowed. The Complainant requests that PECO's charges to him be dismissed. Petition at 1-2.

On review of the Petition, we find that it fails to meet the standards to modify or rescind a Commission Order that are set forth in *Duick, supra*. The Complainant's claim that it did not receive notification of the Initial Decision or of the Final Order in this proceeding are not supported by the record. The Commission's records indicate that the Complainant was served with the Final Order and the Initial Decision, as well as accompanying instructions regarding the Commission's procedure for filing Exceptions to the Initial Decision.

Other than his general disagreement with the ALJ's decision and the evidence which the ALJ properly relied upon, the Complainant has not presented any "new and novel arguments" that the Commission has not previously heard and addressed. As such, we shall deny the Complainant's Petition for Reconsideration.

Conclusion

Based on the above discussion, we shall deny the Complainant's Petition;
THEREFORE,

IT IS ORDERED:

1. That the Petition for Reconsideration filed on January 7, 2011, by Donald LeLand to Administrative Law Judge Ky Van Nguyen's Initial Decision, is hereby denied.
2. That this proceeding shall be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: May 5, 2011

ORDER ENTERED: May 9, 2011

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DONALD LELAND, III
Complainant

v.

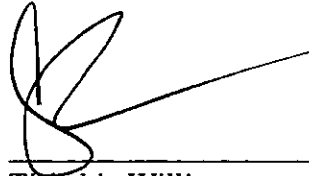
PECO ENERGY COMPANY
Respondent

:
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:

DOCKET NO. F-2011-2239324

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.



Tishekia Williams

Date: May 24, 2011

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MAY 24 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DONALD LELAND, III	:	
Complainant	:	
v.	:	DOCKET NO. F-2011-2239324
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

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

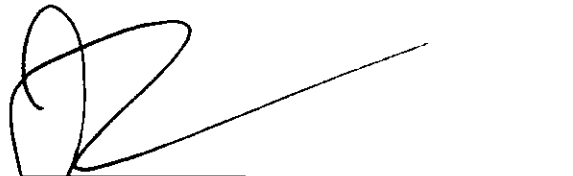
Donald C. Leland, III
427 W. Winona Street
Philadelphia, PA 19144

Dated at Philadelphia, Pennsylvania, May 24, 2011

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



Tishekia Williams
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Tishekia.Williams@exeloncorp.com