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July 1, 2011

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

**Re: PECO Energy Company v. Michelle Chavous**  
**Docket No. F-2010-2215689**

Dear Secretary Chiavetta:

Enclosed for filing on behalf of PECO Energy Company is its Motion for Judgment on the Pleadings in the above-captioned matter, which was electronically filed on the Commission's website today. The Motion was served on the Respondent in accordance with the attached certificate of service.

If you have any questions about this matter, please feel free to contact me.

Best Regards,

STEVENS & LEE



Michael A. Gruin

Encl.

Philadelphia • Reading • Valley Forge • Lehigh Valley • Harrisburg • Lancaster • Scranton  
Williamsport • Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

A PROFESSIONAL CORPORATION

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PECO ENERGY COMPANY	:	
Complainant/Appellant	:	
	:	
v.	:	Docket No. F-2010-2215689
	:	
MICHELLE CHAVOUS	:	
Respondent	:	

**NOTICE TO PLEAD**

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**To:** Michelle Chavous

You are hereby notified to file a written response to the attached Motion for Judgment on the Pleadings of PECO within twenty (20) days from the date of service of this notice. If you do not file a written response denying or correcting the enclosed Motion, within twenty (20) days of service, the facts set forth by PECO may be deemed to be true, thereby requiring no other proof, and judgment may be entered against you. All pleadings, such as an Answer to a Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

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

You must also serve a copy of your response on the undersigned counsel for PECO. Failure to respond to this Motion for Judgment on the Pleadings could result in the dismissal of your case.

STEVENS & LEE

  
\_\_\_\_\_  
Michael A. Gruin, Esquire  
Attorney I.D. No. 78625  
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17 N. 2nd St., 16th Fl.  
Harrisburg, PA 17101  
Telephone: 717-255-7365  
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mag@stevenslee.com

COUNSEL FOR  
PECO ENERGY COMPANY

DATE: July 1, 2011

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PECO ENERGY COMPANY	:	
Complainant/Appellant	:	
	:	
v.	:	Docket No. F-2010-2215689
	:	
MICHELLE CHAVOUS	:	
Respondent	:	

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**MOTION FOR JUDGMENT ON THE PLEADINGS**

PECO Energy Company ("PECO"), pursuant to 52 Pa. Code § 5.102, respectfully requests that your Honorable Commission reverse the decision of the Bureau of Consumer Services ("BCS") in this matter, deny Respondent Michelle Chavous' request for a payment agreement, and hold that the Commission is without jurisdiction to order payment arrangements to any utility customer who is a debtor in an active Chapter 13 Bankruptcy case, for the reasons set forth below.

**I. Introduction**

1. This case involves the question of whether the Commission has jurisdiction to order a payment arrangement for a utility customer who has an active Chapter 13 Reorganization Bankruptcy case pending. In the past, the Commission has held that it lacks jurisdiction in such cases only when substantially all of the debtor/customer's income is necessary for execution of the Bankruptcy Plan. In other words, under past Commission rulings, the question of jurisdiction would be determined on a case-by-case basis, depending on the specifics of the debtor/customer's Plan and their post-Plan income and expenses. PECO respectfully submits that this interpretation

is incorrect, and that the determination of jurisdiction does not depend on the specifics of the debtor/customer's Bankruptcy case. As explained below, the mere pendency of a Chapter 13 Bankruptcy case for the debtor/customer automatically pre-empts the Commission from establishing any payment arrangement with a utility, regardless of the specifics of the debtor/customer's case. When a Chapter 13 Bankruptcy case is pending, the Bankruptcy Court has exclusive jurisdiction of all property of the debtor, and therefore the Commission has no jurisdiction to issue an order which affects the debtor's property, such as an order directing the debtor to make payments to a utility company.

## **II. Procedural History**

2. Michelle Chavous filed an informal complaint against PECO on October 27, 2010. Ms. Chavous' informal complaint (BCS Case # 002760261) sought a payment arrangement from PECO on an unpaid PECO electric account balance of \$588.79.

3. In response to the complaint, PECO submitted an informal report requesting that the case be dismissed on the grounds that the Commission lacks jurisdiction over the matter because Ms. Chavous has an active Chapter 13 Bankruptcy case.

4. Over the objection of PECO, the BCS issued Ms. Chavous a payment agreement. The BCS-ordered payment arrangement called for Ms. Chavous to pay \$15 per month towards her unpaid PECO balance, in addition to her budget billing amount of \$331. A copy of the BCS decision is attached hereto as Exhibit 1.

5. On December 10, 2011, PECO filed a Formal Complaint to appeal the BCS Decision. A copy of PECO's Formal Complaint is attached hereto as Exhibit 2.

6. By Secretarial Letter issued on December 29, 2010, the Commission Secretary served Ms. Chavous with a copy of PECO's Formal Complaint and directed Ms. Chavous to file a response. A copy of the December 29, 2010 Secretarial Letter is attached hereto as Exhibit 3.

7. To date, over 150 days have passed since Ms. Chavous was served with the Formal Complaint, and she has not filed an Answer or Preliminary Objection to the Formal Complaint. Accordingly, the facts set forth in PECO's Formal Complaint should be deemed admitted.

8. The facts set forth in PECO's Formal Complaint are not in dispute, and are taken directly from the information provided to the BCS in Case # 002760261. See Exhibit 1 to PECO's Formal Complaint. PECO's Formal Complaint seeks a ruling from the Commission on a discrete question of law: whether the Commission lacks subject matter jurisdiction over Ms. Chavous' request for payment terms on her PECO account because she has filed a Chapter 13 bankruptcy petition and her petition is still active. PECO respectfully submits that the Commission does not have subject matter jurisdiction to issue payment agreements on delinquent utility accounts when the customer has an active Chapter 13 bankruptcy petition pending.

9. Because the pleadings in this case demonstrate that there is no genuine issue of material fact and PECO is entitled to judgment as a matter of law, pursuant to 52 Pa. Code §5.102, the Commission should grant the within Motion for Judgment on the Pleadings.

### **III. Statement of Undisputed Facts**

10. As set forth in PECO's Formal Complaint, Ms. Chavous filed for Chapter 13 Bankruptcy Protection on September 18, 2008. Ms. Chavous' Chapter 13 Bankruptcy case was assigned Docket No. 08-16079-bif. A copy of the "Public Access to Court Electronic Records" ("PACER") case summary for Ms. Chavous's Chapter 13 bankruptcy case, confirming the filing date and docket number, was attached to PECO's Formal Complaint as Exhibit 3.

11. As set forth in PECO's Formal Complaint, Ms. Chavous had an outstanding balance on her PECO account of \$4,329.64 at the time of the filing of the Chapter 13 Bankruptcy petition. After the Chapter 13 Petition was filed, this amount was moved to a non-service account, and Ms. Chavous' PECO account continued with a zero balance as of the petition date. PECO does not expect to receive payment on the pre-petition balance of 4,329.64.

12. According to the PACER Case Summary sheet, William C. Miller has been appointed the bankruptcy Trustee in connection with Ms. Chavous' Chapter 13 reorganization.

13. According to the PACER Case Summary sheet, Ms. Chavous' Bankruptcy case is active and has not been discharged.

14. Over the objection of PECO, the BCS issued Ms. Chavous a payment agreement, notwithstanding the fact that Ms. Chavous had an active Chapter 13 Bankruptcy Petition pending. The BCS-ordered payment arrangement called for Ms. Chavous to pay \$15 per month towards her unpaid PECO balance, in addition to her budget billing amount of \$331.

#### IV. Legal Argument

15. The Commission lacks subject matter jurisdiction over Ms. Chavous' request for payment terms on her PECO account because she has filed a Chapter 13 bankruptcy petition and her petition is still active.

16. The Commission has only those duties, powers, responsibilities and jurisdiction as were expressly or by necessary implication given to it by the Legislature. *Rogoff v. The Buncher Company*, 395 Pa. 477, 151 A.2d 83 (1959); *Western Pennsylvania Water Company*, 10 Pa. Commw. 533, 311 A.2d 370 (1973). The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. P.U.C.*, 157 Pa. Super. 595, 43 A.2d 348 (1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 427 Pa. 581, 235 A.2d 602 (1967).

17. The Commission lacks jurisdiction to issue an Order affecting a customer's assets when that customer has an active Chapter 13 Bankruptcy case. In the case of *Anyanwu v. Philadelphia Electric Company*, 55 Pa. P.U.C. 221 (1981), the Commission dismissed a complaint seeking an amortized payment agreement by a debtor in a Chapter 13 bankruptcy, finding that: "[T]he Complainant's filing of a petition for personal bankruptcy has pre-empted this commission from establishing any payment schedule with respect to any amounts owed by the Complainant to the Respondent. Accordingly, we must dismiss this complaint for lack of subject matter jurisdiction." The Commission reiterated this principle in the case of *Benjamin v. Equitable Gas Company*, PA PUC Docket No. C-20032180 (Order Entered January 20, 2005). In that case, the Commission also determined that it lacked subject matter jurisdiction over a customer's

complaint, explaining: “As provided by §1471 of Title 28, United States Code (28 U.S.C. § 1471), a United States District Court and its Bankruptcy Court has jurisdiction over all civil proceedings arising under Title 11, and the Bankruptcy Court has exclusive jurisdiction of all property of the debtor, wherever located, as of the commencement of the proceeding.”

18. More recently, in the case of *Borlak v. Columbia Gas Company of Pennsylvania*, Docket No. C-2008-2064344, (Order entered July 6, 2009), the Commission stated “... [t]he Bankruptcy Court has exclusive jurisdiction over the Complainant's property and the Commission cannot order a payment arrangement.” See also, *Smith v. Equitable Gas Company*, 1996 Pa. PUC LEXIS 192 (1996) (“The Commission did not have jurisdiction over the bulk of the issues raised by the Complainant.”); *Hodge v. Equitable Gas Company*, 1997 Pa. PUC LEXIS 76 (1997) (“Any motions or petitions pertaining to deposits, including requests for a lesser deposit must be brought before the Bankruptcy Court”); *Mattson v. PECO Energy Company*, Docket No. F-00349372, Order entered Sept. 23, 1998; and *Saunders v. PECO Energy Company*, Docket No. F-00433998, Order entered June 25, 1999.

19. The BCS asserts that in some cases, the Commission may issue a payment agreement to a customer with an active Chapter 13 bankruptcy petition. It appears that BCS’s policy is to issue a payment agreement to a customer with an active bankruptcy *unless* the utility proves that the Chapter 13 filing specifically addresses the customer’s post-petition utility debt.<sup>1</sup>

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<sup>1</sup> In addition to the BCS decision in the instant case, See, e.g., Informal Complaint of Tracy Monaghan, BCS case no. 2759612; Informal Complaint of Lenora Laken, BCS case no.2597064. In each of the aforementioned cases the BCS issued a payment agreement to a customer with an active Chapter 13 bankruptcy petition. On the contrary, the BCS declined to issue an agreement to customers with an active

20. The Commission has also indicated in some past cases that the pendency of a Chapter 13 Bankruptcy Petition does not automatically pre-empt the Commission for ordering a payment arrangement for a utility customer. In the case of *Brenda Stewart v. PECO*, Docket No. C-2009-2135585 (Initial Decision issued June 2, 2010, Final Order entered August 24, 2010), the Commission held that only the debtor's income necessary for the execution of the Bankruptcy Plan is under the control of Chapter 13 Trustee, and income that is not necessary for the execution of the plan could be the subject of a Commission-ordered payment arrangement. The Commission indicated that subject matter jurisdiction would need to be determined on a case-by-case basis in payment arrangement cases involving debtors with pending Chapter 13 Bankruptcies. In order to make the jurisdictional determination under the *Stewart* reasoning, the Commission would need to review the debtor's Bankruptcy Plan, compare it to the debtor's income, and determine whether "substantially all" of the debtor's income was necessary for the execution of the Plan.

21. PECO respectfully submits that the reasoning in *Stewart* is wrong as a matter of law. In determining whether the Commission is pre-empted from establishing a payment arrangement for a customer with an active Chapter 13 bankruptcy case, the controlling factor is simply whether the Chapter 13 case is, in fact, open. It is not necessary for the Commission to determine whether the payment arrangement is being sought with respect to a pre-petition or post-petition account balance, whether the Plan encompasses substantially all of a customer's income, or whether the customer's petition includes a specific schedule for paying the utility debt. The Chapter 13 pre-emption

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Chapter 13 filing in the Informal Complaint of Margaret Byrd, BCS Case No. 002690721, and the Informal Complaint of Mary Burton, BCS Case No. 002733829.

results from the bankruptcy court's exclusive control over all of the debtor's income and assets. Under 28 U.S.C. § 1471, no other agency or authority – including the Commission - has the authority to issue an order that affects the disposition of the debtor's income or assets, because after the filing of a Petition, the Bankruptcy Court has exclusive jurisdiction over the disposition of the debtor's assets. See Benjamin v. Equitable Gas Company, PA PUC Docket No. C-20032180 (Order Entered January 20, 2005).

22. Under Section 1306(2) of the Bankruptcy Code<sup>2</sup>, the debtor's Bankruptcy estate includes the debtor's "earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first." In other words, all of the debtor's income during the pendency of the Chapter 13 Bankruptcy case is considered part of the estate that is subject to the exclusive control of the Bankruptcy Trustee.

23. A Commission Order imposing a payment arrangement would violate the Bankruptcy Code's exclusive jurisdiction over a debtor's assets. An Order by the Commission fixing a monthly payment arrangement by the customer necessarily impacts the debtor's Chapter 13 proceeding. Such an Order by the Commission binds the debtor to dispose of his or her assets, i.e., it binds the debtor to use a portion of the assets to pay the utility company. This would be a clear violation of the Bankruptcy Court's exclusive jurisdiction over the debtor's assets.

24. It must be noted that the specifics of the Commission-ordered payment arrangement are irrelevant to the determination of jurisdiction. The mere pendency of a

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<sup>2</sup> 11 U.S.C. § 1306(2)

Chapter 13 Bankruptcy case for the debtor/customer automatically pre-empts the Commission from establishing a payment arrangement with a utility, regardless of the specifics of the debtor/customer's Bankruptcy Plan or income. Any Commission decision about how the debtor's assets are to be spent would result in a *per se* violation of the Bankruptcy Code. Therefore, once it is proven that a customer has an active Chapter 13 Bankruptcy cases, the BCS's inquiry into a possible payment arrangement should end there, and the case should be dismissed for lack of subject matter jurisdiction.

25. In addition to being legally incorrect, the conclusion that the debtor's Plan and post-petition income must be evaluated before the jurisdiction question can be resolved is unworkable from a practical perspective. For instance, in many cases, the debtor's Plan is not finalized at the time that the debtor files a Commission Complaint seeking a payment arrangement, and therefore it will be impossible for the Plan to be evaluated by the Commission. Similarly, in some cases all of the debtor's debts are not included in a Bankruptcy filing, so again, it would be impossible to determine what portion of the debtor's post-petition income will be devoted to the Plan. Furthermore, even if the debtor's initial Plan does not consume all of the debtor's income, subsequent changes to the Plan or changes to the debtor's income could easily result in the entire debtor's income being devoted to the Plan. In such a case, a Commission-ordered payment arrangement would directly conflict with the terms of the Plan.

26. In the present case, PECO has supplied a publicly available record in the form of a PACER case summary which clearly shows that Ms. Chavous has an active Chapter 13 Bankruptcy. Therefore, the inquiry should end there, and in accordance with the precedent referenced above, the Commission should recognize that it is pre-empted

from ordering a payment arrangement in connection with Ms. Chavous's unpaid post-petition PECO account.

27. PECO respectfully requests that the Commission issue an Order reversing the decision of the BCS in Case No. 002760261, holding that the Commission is without jurisdiction to order payment arrangements to utility customers who are debtors in active Chapter 13 Bankruptcy cases, and denying Michelle Chavous's request for payment terms.

**REQUEST FOR RELIEF**

WHEREFORE, for all of the reasons stated herein, PECO respectfully requests that the Commission deny Michelle Chavous' request for a payment agreement, and confirm that the Commission is without jurisdiction to order payment arrangements to utility customers who are debtors in active Chapter 13 Bankruptcy cases.

Respectfully submitted,



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Michael A. Gruin (I.D. No. 78625)  
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Facsimile: 610-988-0852  
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Philadelphia, PA 19101-8699  
(215) 841-6841  
Fax: 215.568.3389  
tishekia.williams@exeloncorp.com

Counsel for PECO Energy Company

Dated: July 1, 2011

Commonwealth of Pennsylvania :  
County of Dauphin : SS

**AFFIDAVIT**

I, Michael A. Gruin, being duly sworn according to law, depose and say I am the agent of PECO Energy Company and have been authorized to make this affidavit on its behalf and that the facts above set forth are true and correct to the best of my knowledge, information and belief, and PECO Energy Company expects to be able to prove the same at any hearing hereof.

  
Michael A. Gruin, agent of PECO Energy Company

Sworn and subscribed before me this  
1st day of July, 2011

  
Notary

My Commission Expires:

**COMMONWEALTH OF PENNSYLVANIA**  
NOTARIAL SEAL  
MELISSA M. ZEIDERS, Notary Public  
City of Harrisburg, Dauphin County  
My Commission Expires February 24, 2015

December 3, 2010

## BCS Decision Report

BCS Case #: 002760261 Open Date: 2010-10-27  
Customer Name: MICHELLE CHAVOUS  
Service Address: 35 EAST LYNBROOK RD

COLLINGDALE, PA 19023  
BCS Bill Account #: 8325263016 Previous Case #:  
Violation Type: NO Chapter Type:  
Decision Type: W Section / Rule:  
Investigator Name: TIM CLARK

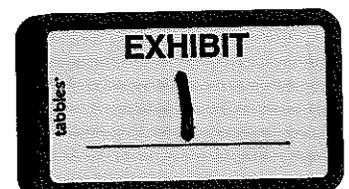
Decision Issued Date: 2010-11-24  
Case Closed Date: 2010-11-22

Letter Description:  
EGW STRAIGHT PAR/NO LPCS/BUDGET + FOR LEVEL 1 HOUSEHOLDS

Total Balance:	\$309.85	Balance Date:	2010-11-22
Amount to Restore Service:	\$0.00	Amount to Continue Service:	\$0.00
Date Payment Due:		Regular Budget Amount:	\$331.00
Special Budget Payment:	\$346.00	Final Bill Monthly Payment:	\$0.00
Plus Arrears Payment:	\$15.00	End of Month Payment:	\$0.00
Current Monthly Payment:	\$0.00		
Payment Terms:	DECEMBER 2010 DUE DATE		

PAR Description:

Resolution Description:  
LEVEL 1, BB 331.00 + 15.00 = 346.00 BEGINNING DEC 2010 DUE DATE. WAIVE LPCS.



REC

2010 DEC 13 PM 1:52

PA PUC  
SECRETARY'S BUREAU

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PECO ENERGY COMPANY	:	
Complainant/Appellant	:	
	:	
v.	:	Docket No.
	:	
MICHELLE CHAVOUS	:	
Respondent	:	

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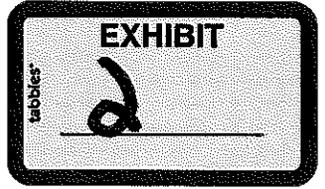
**FORMAL COMPLAINT OF PECO ENERGY COMPANY  
TO APPEAL DECISION OF BUREAU OF CONSUMER SERVICES**

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Pursuant to 52 Pa.Code § , PECO Energy Company (“PECO”) hereby appeals the decision issued by the Bureau of Consumer Services (“BCS”) upon the informal complaint of Michelle Chavous (BCS Case # 002760261) on November 24, 2010. In support thereof, PECO avers as follows:

**I. Introduction and Procedural History**

1. PECO is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal corporate office in Philadelphia, Pennsylvania. PECO is certificated by this Commission and provides electric distribution service to approximately 1.6 million customers and natural gas delivery service to approximately 475,000 customers in Southeast Pennsylvania.
2. Respondent Michelle Chavous is an adult individual residing at 35 E. Lynbrook Rd., Collingdale, PA 19012 and is an electric customer of PECO’s.
3. Michelle Chavous filed an informal complaint against PECO on October 27, 2010. Ms. Chavous’ informal complaint (BCS Case # 002760261) sought a payment arrangement from PECO on an unpaid PECO electric account balance of \$588.79.



4. In response to the complaint, PECO submitted an informal report requesting that the case be dismissed as the Commission lacks jurisdiction over the matter because Ms. Chavous has an active Chapter 13 Bankruptcy case. A copy of the informal report is attached as Exhibit 1.

5. Over the objection of PECO, the BCS issued Ms. Chavous a payment agreement. The BCS-ordered payment arrangement called for Ms. Chavous to pay \$15 per month towards her unpaid PECO balance, in addition to her budget billing amount of \$331. A copy of the BCS decision is attached hereto as Exhibit 2.

## **II. Statement of the Case**

6. Ms. Chavous filed for Chapter 13 Bankruptcy Protection on September 18, 2008. Ms. Chavous' Chapter 13 Bankruptcy case was assigned Docket No. 08-16079-bif. A copy of the "Public Access to Court Electronic Records" ("PACER") case summary for Ms. Chavous' Chapter 13 bankruptcy case, confirming the filing date and docket number, is attached hereto as Exhibit 3.

7. At the time of the filing of the Chapter 13 Bankruptcy petition, Ms. Chavous had an outstanding balance on her PECO account of \$4,329.64. After the Chapter 13 Petition was filed, this amount was moved to a non-service account, and Ms. Chavous' PECO account continued with a zero balance as of the petition date. PECO does not expect to receive payment on the pre-petition balance of 4,329.64.

8. According to the PACER Case Summary sheet, William C. Miller has been appointed the bankruptcy Trustee in connection with Ms. Chavous' Chapter 13 reorganization.

9. According to the PACER Case Summary sheet, Ms. Chavous' Bankruptcy case is active and has not been discharged.

### III. Legal Argument

10. The Commission lacks subject matter jurisdiction over Ms. Chavous' request for payment terms on her PECO account because she has filed a Chapter 13 bankruptcy petition and her petition is still active.

11. The Commission has only those duties, powers, responsibilities and jurisdiction as were expressly or by necessary implication given to it by the Legislature. *Rogoff v. The Buncher Company*, 395 Pa. 477, 151 A.2d 83 (1959); *Western Pennsylvania Water Company*, 10 Pa. Commw. 533, 311 A.2d 370 (1973). The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. P.U.C.*, 157 Pa. Super. 595, 43 A.2d 348 (1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 427 Pa. 581, 235 A.2d 602 (1967).

12. The Commission lacks jurisdiction to issue an Order affecting a customer's assets when that customer has an active Chapter 13 Bankruptcy case. In the case of *Anyanwu v. Philadelphia Electric Company*, 55 Pa. P.U.C. 221 (1981), the Commission dismissed a complaint seeking an amortized payment agreement by a debtor in a Chapter 13 bankruptcy, finding that: "[T]he Complainant's filing of a petition for personal bankruptcy has pre-empted this commission from establishing any payment schedule with respect to any amounts owed by the Complainant to the Respondent. Accordingly, we must dismiss this complaint for lack of subject matter jurisdiction." The

Commission reiterated this principle in the case of *Benjamin v. Equitable Gas Company*, PA PUC Docket No. C-20032180 (Order Entered January 20, 2005). In that case, the Commission also determined that it lacked subject matter jurisdiction over a customer's complaint, explaining: "As provided by §1471 of Title 28, United States Code (28 U.S.C. § 1471), a United States District Court and its Bankruptcy Court has jurisdiction over all civil proceedings arising under Title 11, and the Bankruptcy Court has exclusive jurisdiction of all property of the debtor, wherever located, as of the commencement of the proceeding."

13. More recently, in the case of *Borlak v. Columbia Gas Company of Pennsylvania*, Docket No. C-2008-2064344, (Order entered July 6, 2009), the Commission stated "... [t]he Bankruptcy Court has exclusive jurisdiction over the Complainant's property and the Commission cannot order a payment arrangement." *See also, Smith v. Equitable Gas Company*, 1996 Pa. PUC LEXIS 192 (1996) ("The Commission did not have jurisdiction over the bulk of the issues raised by the Complainant."); *Hodge v. Equitable Gas Company*, 1997 Pa. PUC LEXIS 76 (1997) ("Any motions or petitions pertaining to deposits, including requests for a lesser deposit must be brought before the Bankruptcy Court"); *Mattson v. PECO Energy Company*, Docket No. F-00349372, Order entered Sept. 23, 1998; and *Saunders v. PECO Energy Company*, Docket No. F-00433998, Order entered June 25, 1999.

14. The BCS asserts that in some cases, the Commission may issue a payment agreement to a customer with an active Chapter 13 bankruptcy petition. It appears that BCS' policy is to issue a payment agreement to a customer with an active bankruptcy

*unless* the Company proves that the Chapter 13 filing specifically addresses the customer's post-petition utility debt.<sup>1</sup>

15. PECO respectfully submits that the BCS is wrong as a matter of law. In determining whether the Commission is pre-empted from establishing a payment arrangement for a customer with an active Chapter 13 bankruptcy case, the controlling factor is whether the Chapter 13 case is, in fact, open. It is not necessary for the Commission to determine whether the payment arrangement is being sought with respect to a pre-petition or post-petition account balance, or whether the customer's petition includes a specific schedule for paying the utility debt. The Chapter 13 pre-emption results from the bankruptcy court's exclusive control over the debtor's income and assets. Under 28 U.S.C. § 1471, no other agency or authority – including the Commission - has the authority to issue an order that affects the disposition of the debtor's income or assets, because after the filing of a Petition, the Bankruptcy Court has exclusive jurisdiction over the disposition of the debtor's assets. See *Benjamin v. Equitable Gas Company*, PA PUC Docket No. C-20032180 (Order Entered January 20, 2005). A Commission Order imposing a payment arrangement would violate the Bankruptcy Code's exclusive jurisdiction over a debtor's assets. An Order by the Commission fixing a monthly payment arrangement by the customer necessarily impacts the debtor's Chapter 13 proceeding. Such an Order by the Commission binds the debtor to dispose of his or her assets, i.e., it binds the debtor to use a portion of the assets to pay the utility company.

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<sup>1</sup> In addition to the BCS decision in the instant case, See, e.g., Informal Complaint of Tracy Monaghan, BCS case no. 2759612; Informal Complaint of Lenora Laken, BCS case no.2597064. In each of the aforementioned cases the BCS issued a payment agreement to a customer with an active Chapter 13 bankruptcy petition. On the contrary, the BCS declined to issue an agreement to customers with an active Chapter 13 filing in the Informal Complaint of Margaret Byrd, BCS Case No. 002690721, and the Informal Complaint of Mary Burton, BCS Case No. 002733829.

This would be a clear violation of the Bankruptcy Court's exclusive jurisdiction over the debtor's assets.

16. It must be noted that the specifics of the Commission-ordered payment arrangement are irrelevant to the determination of jurisdiction. The very fact that the Commission is making a decision about how the debtor's assets are to be spent results in a violation of the Bankruptcy Code. Therefore, once it is proven that a customer has an active Chapter 13 Bankruptcy cases, the BCS's inquiry into a possible payment arrangement should end there, and the case should be dismissed for lack of subject matter jurisdiction.

17. In the present case, PECO has supplied a publicly available record in the form of a PACER case summary which clearly shows that Ms. Chavous has an active Chapter 13 Bankruptcy. Therefore, in accordance with the extensive precedent referenced above, PECO respectfully submits that the Commission is pre-empted from ordering a payment arrangement in connection with Ms. Chavous's unpaid PECO account.

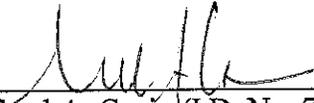
18. PECO respectfully requests that the Commission issue an Order denying Michelle Chavous request for payment terms, and directing the Bureau of Consumer Services to cease issuing payment arrangements to customers who are debtors in active Chapter 13 Bankruptcy cases.

### **REQUEST FOR RELIEF**

WHEREFORE, for all of the reasons stated herein, PECO respectfully requests that the Commission deny Michelle Chavous' request for a payment agreement, and

direct the BCS to cease issuing payment arrangements to customers who are debtors in active Chapter 13 Bankruptcy cases.

Respectfully submitted,



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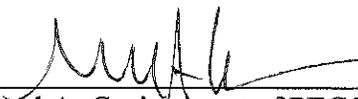
Counsel for PECO Energy Company

Dated: December 10, 2010

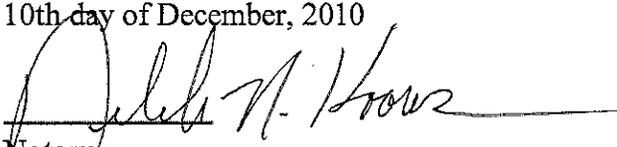
Commonwealth of Pennsylvania :  
 : SS  
County of Dauphin :

**AFFIDAVIT**

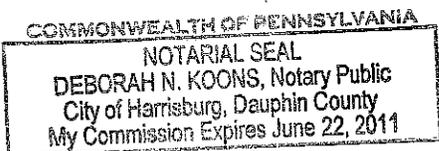
I, Michael A. Gruin, being duly sworn according to law, depose and say I am the agent of PECO Energy Company and have been authorized to make this affidavit on its behalf and that the facts above set forth are true and correct to the best of my knowledge, information and belief, and PECO Energy Company expects to be able to prove the same at any hearing hereof.

  
\_\_\_\_\_  
Michael A. Gruin, agent of PECO Energy Company

Sworn and subscribed before me this  
10th day of December, 2010

  
\_\_\_\_\_  
Notary

My Commission Expires:





<p><b>Final Position to BCS</b></p>	<p><b>ACTIVE CHAPTER 13 BANKRUPTCY</b></p> <p>On 09/22/2010, the customer reported income of \$3073.00 with 1 adult and 3 children (167% FPL, Level 2).</p> <p>Active Bankruptcy Docket #: 08-16079; Date Filed: 09/18/2008; Type: Chapter 13 Total Amount: \$4,329.64.</p> <p>BCS #2261237 and #2283596 were closed as company offer was better.</p> <p>The customer has a total account balance of \$588.79.</p> <p>The Commission does not have jurisdiction over the customers request for a payment agreement. The customer has an active Chapter 13 bankruptcy petition pending. The U.S. Bankruptcy courts have exclusive jurisdiction over the customer's assets. All claims against a debtor, including claims arising subsequent to the filing of a petition, are to be adjusted and paid in accordance with the plan required by Chapter 13. Thus, the customer filing a petition for personal bankruptcy has preempted the commission from establishing any payment schedule with respect to amounts owed by the Customer to PECO Energy. The payment agreement request should be dismissed for lack of subject matter jurisdiction. The customer must seek relief form the bankruptcy courts.</p> <p>Company's final position is that the customer pays the past due balance immediately, then pays all bills as rendered.</p>
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**08-16079-bif** Michele Yvette Chavous  
**Case type:** bk **Chapter:** 13 **Asset:** Yes **Vol:** v **Judge:** Bruce I. Fox  
**Date filed:** 09/18/2008 **Date of last filing:** 07/16/2010 **Plan confirmed:** 09/24/2009

### Case Summary

**Office:** Philadelphia **Filed:** 09/18/2008  
**County:** Delaware **Terminated:**  
**Fee:** Paid **Debtor discharged:**  
**Origin:** 0 **Reopened:**  
**Previous term:** **Converted:**  
**Joint:** n **Debtor dismissed:**  
**Confirmation hearing:**

**Nature of debt:** consumer  
**Pending status:** Awaiting Discharge ,

**Trustee:** United States **City:** Philadelphia **Phone:** (215) **Email:**  
 Trustee 597-4411 USTPRegion03.PH.ECF@usdoj.gov  
**Trustee:** WILLIAM C. **City:** Philadelphia **Phone:** 215 **Email:** ecfemails@ph13trustee.com  
 MILLER 627-1377

**Party 1:** Chavous, Michele Yvette (xxx-xx-0554) (Debtor)

**Atty:** JAMES **Represents party 1:** Debtor **Phone:** 484-661-2891  
 KUTKOWSKI **Fax:** 215-358-0343  
**Email:** jim@padebt911.com

**Location of case files:**  
**Volume:** CS1  
 The case file may be available.

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
12/03/2010 13:04:35			
<b>PACER Login:</b>	pe0017	<b>Client Code:</b>	lynn zack peco
<b>Description:</b>	Case Summary	<b>Search Criteria:</b>	08-16079-bif
<b>Billable Pages:</b>	1	<b>Cost:</b>	0.08





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

IN REPLY PLEASE  
REFER TO OUR FILE

**DATE SERVED: DECEMBER 29, 2010**

F-2010-2215689

MICHELLE CHAVOUS  
35 EAST LYNBROOK ROAD  
COLLINGDALE PA 19023

Dear Ms Chavous:

A complaint has been filed against you before the Pennsylvania Public Utility Commission by PECO Energy Co. 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.

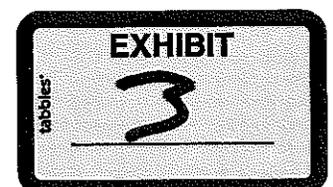
**CUSTOMER OF A UTILITY**

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.



December 29, 2010

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 "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta  
Secretary

Imm

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**DATE SERVED: DECEMBER 29, 2010**

**MICHELLE CHAVOUS**  
Complainant

v.

**PECO ENERGY COMPANY**  
Complaint Appellant  
Respondent

Complaint Docket  
No: **F-2010-2215689**

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**FORMAL COMPLAINT NOTICE TO RESPONDENT TO ANSWER OR SATISFY**

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**TO: MICHELLE CHAVOUS**

**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).

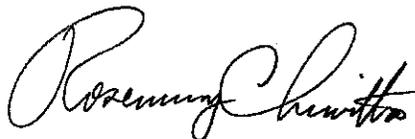
2. If you fail to either satisfy this complaint or to file answer or other responsive pleading within twenty (20) days, you will be deemed to have admitted all the allegations in this complaint in accordance with Section 5.61 of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. 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.



Rosemary Chiavetta  
Secretary

(SEAL)

Certified Mail  
Return Receipt Requested

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PECO ENERGY COMPANY	:	
Complainant/Appellant	:	
	:	
v.	:	Docket No. F-2010-2215689
	:	
MICHELLE CHAVOUS	:	
Respondent	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing Motion for Judgment on the Pleadings upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA First Class U.S. Mail

Michelle Chavous  
35 East Lynbrook Rd  
Collingdale, PA 19023

  
\_\_\_\_\_  
Michael A. Gruin

DATED: July 1, 2011