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October 26, 2011

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

RE: Haleema B. Alkhatib v. PECO Energy Company
Docket No. C-2011-2242125

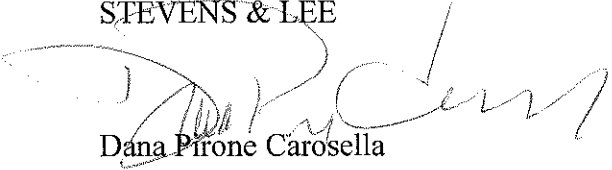
Dear Secretary Chiavetta:

Enclosed for filing on behalf of PECO is an original of its Reply Exceptions filed in this matter. This document has been e-filed at the Pennsylvania Public Utility Commission's website. A copy has been served on the Complainant in accordance with the attached Certificate of Service.

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

Very truly yours,

STEVENS & LEE



Dana Pirone Carosella

Encl.

cc: Haleema B. Alkhatib w/encl.
The Office of Special Assistants w/encl.

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

HALEEMA B. ALKHATIB	:	
Complainant	:	
v.	:	Docket No. C-2011-2242125
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**REPLY EXCEPTIONS
OF RESPONDENT PECO ENERGY COMPANY**

Pursuant to 52 Pa.Code §5.535, Respondent PECO Energy Company (“Respondent” or “PECO”) hereby replies to the Exceptions of Complainant Haleema B. Alkhatib (“Complainant”) as follows:

I. PROCEDURAL HISTORY

On May 11, 2011, Complainant filed a Formal Complaint against PECO with the Pennsylvania Public Utility Commission (the “Commission”) at Docket No. C-2011-2242125. Complainant checked the box on the Formal Complaint form beside the sentence that reads: “I received notice that my utility service is being terminated.” Under the complaint form subsection entitled “State the facts of your complaint,” the following language appeared:

On 2/15/11, PECO sent me a termination notice for a bill that I accepted for the assessed value and returned for settlement discharge & closure, via my exemption, with the enclosed documents on the following dates; [sic] 6/4/10, 7/27/10, 11/20/10, 2/28/11, 3/24/11, and 4/27/11. My acceptance to offset the account via my exemption was in accord-and-satisfaction with Public Law/Public Policy and principles of interpretations for settlement of all agreements in commercial/consumer-transaction-law [sic] and regulation. I’ve tendered my credit to settle the bill in the accordance thereof. The transaction was reported to the United States Treasury/Internal Revenue Service via an original issue discount (1099-

OID, copy A), voucher (1040-V), and the bill as evidence. My credit was timely issued to zero-out the account, but they didn't adjust the account and demanded payment with interest. They're withholding credit, or taxing me a second time, and in breach of fiduciary duty.

Under the complaint form section entitled "Relief," Complainant made the following request:

Settle current account and apply credit to future bills. This is theft of public funds, and a violation of the bankruptcy/reorganization of the United States. I have discharged debts and settled accounts via my exemption with Public & Private Corporations, Institutions & Agencies in this manner and received confirmation back therefrom.

On June 8, 2011, PECO filed an Answer and New Matter and included with it a Notice to Plead. This same day, PECO filed Preliminary Objections and included a Notice to Plead. On June 17, 2011, Complainant filed a Response to PECO's Preliminary Objections (the "Response"). The Response provides, in pertinent part, as follows:

The United States government and it's [*sic*] people have been in bankruptcy since the year 1933. My remedy in commerce is the bankruptcy. As the Secured Party/Beneficiary of the Treasury Trust Account via my exemption number on the account, I have given PECO Energy my Letter Rogatory to submit their presentment/bill, 1040-V (voucher), 1099-ID to credit and zero out the accounting. I requested confirmation to be sent to me.

In a letter PECO Energy Company sent to me dated May 24, 2011, PECO Energy stated they only accept cash (it has no monetary value), certified checks, money orders and valid bank checks payment of utility service provided. PECO Energy will not apply as credit to your account any non-negotiable documents, sight drafts, Acceptance for Value, UCC Certified Tender of payments, or other UCC documents.

The above form of payments that PECO Energy states they will only [*sic*] accept as payment are all negotiable instruments.

The Constitution of the United States declared only gold or silver coins as lawful money.

That lawful money was taken in 1933.

On June 22, 2011, a Motion Judge Assignment Notice was mailed to Complainant and PECO.

On September 16, 2011, PECO's Preliminary Objections were sustained by Initial Decision issued by Administrative Law Judge, Mark A. Hoyer. The Initial Decision was served on Complainant and PECO by the Secretary's Bureau on September 27, 2011.

On October 17, 2011, Complainant filed timely Exceptions to the Initial Decision.

II. ARGUMENT

A. The Commission Should Adopt the Findings and Conclusions in the Initial Decision Dismissing the Complaint and Sustaining the Preliminary Objections Because it Lacks Subject Matter Jurisdiction, the Complaint is Legally Insufficient, and The Complaint Contains Scandalous and Impertinent Matter.

First, in the Initial Decision, ALJ Hoyer correctly found that the Commission does not have the requisite subject matter jurisdiction to determine the negotiability of instruments and cannot, therefore, determine the negotiability of Complainant's (attempted) tenders of payment. Complainant provided PECO with "payment" in the form of a 1099-OID and/or voucher (1040-V) and claims that her account was not properly credited after these "payments" had been tendered. In order for the Commission to determine whether the form of "payment" was reasonable, the Commission must address the negotiability of an instrument presented for payment according to the Uniform Commercial Code ("UCC"), and in particular 13 Pa. C.S. §3104. Next, the

Commission must determine, as a conclusion of law, whether an instrument is negotiable or a negotiable instrument. *Triffin v. Dillabough*, 552 Pa. 550, 716 A.2d 605 (1998); I. D. at 6.

The Commission's Rules of Administrative Practice and Procedure permit the filing of Preliminary Objections. 52 Pa. Code Section 5.101. Pursuant to 52 Pa. Code §5.101(a)(1), a formal complaint may be dismissed without a hearing where there is a lack of Commission jurisdiction. Where a question presented to the Commission is one of law, there is no necessity to hold a hearing. *White Oak Borough Authority v. Pennsylvania Public Utility Commission*, 175 Pa. Super. 114, 183 A.2d. 502 (1954). The Commission is granted discretion to dismiss a complaint without a hearing if a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d). A hearing is necessary only to resolve disputed questions of fact, and is not required to resolve questions of law, policy or discretion. *Dee-Dee Cab, Inc. v. Pa. Public Utility Comm.*, 575 Pa. 698, 817 A.2d 593, *petition for allowance of appeal denied*, 836 A.2d 123 (Pa. Commw. Ct. 2003); *Lehigh Valley Power Committee v. Pa. Public Utility Comm.*, 128 Pa. Commw. 259, 563 A.2d 548 (Pa. Commw. Ct. 1989); *Edan Transportation Corp. v. Pa. Public Utility Comm.*, 154 Pa. Commw. 21, 623 A.2d 6 (Pa. Commw. Ct. 1993). Here, as noted by the ALJ in the Initial Decision, it is clear from the pleadings that the Commission does not have subject matter jurisdiction. As such, it was proper and appropriate to dismiss the Complaint for lack of subject matter jurisdiction based on PECO's preliminary objections without holding a hearing.

ALJ Hoyer correctly concluded that the Commission does not have jurisdiction to determine the negotiability of an instrument. As such, ALJ Hoyer correctly concluded

that the Commission does not have subject matter jurisdiction to entertain the Complaint and, therefore, the Complaint must be dismissed and PECO's Preliminary Objection granted on the issue of subject matter jurisdiction. (I.D. at 6)

Next, in the Initial Decision, ALJ Hoyer correctly sustained PECO's second Preliminary Objection asserting that the Complaint is legally insufficient. As previously explained in its Preliminary Objections, and as properly found in the Initial Decision, the type of dispute raised in Complainant's complaint must be dismissed because the relief she seeks cannot be granted as a matter of law and because it is contrary to the Commission's policy. In the Initial Decision, ALJ Hoyer correctly explained that the Complaint does not set forth an "act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission." See 52 Pa. Code §5.22(a)(4) (emphasis added). I.D. at 6-7. As a result, Complainant's request for relief cannot be granted as a matter of law and, it must be denied for the same reasons that this Commission does not have subject matter jurisdiction to determine whether Complainant's "tender" is a negotiable instrument.

Lastly, ALJ Hoyer correctly sustained PECO's final preliminary objection on the ground that the Complaint contains scandalous and impertinent matter. I.D. at 7. Complainant averred in her Complaint "that PECO has stolen public funds related to bogus payments purportedly made to the United States Treasury Department for Complainant's utility bills is outrageous and cannot stand." In the Initial Decision, ALJ Hoyer properly reviewed the definitions of "impertinent" and "scandalous" before

correctly finding that the allegation and request for relief that PECO stole “public funds” is scandalous. *Id.*

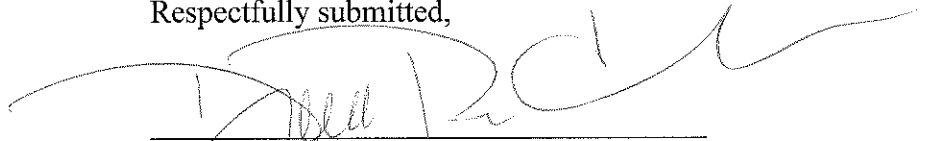
In reviewing the Complainant’s Exceptions to the Initial Decision, PECO submits that there is no basis to grant the Exceptions and depart from the findings and conclusions in the Initial Decision. The Exceptions do not describe any misstatement of law or misapplication of facts in the Initial Decision. In this case, ALJ Hoyer determined as a threshold matter, which is essential before this Commission may entertain any complaint, that the Commission does not have the requisite subject matter jurisdiction to determine the negotiability of instruments and, as a result, cannot determine the negotiability of Complainant’s tenders of payment. *James Coppedge v. PECO Energy Company*, F-2009-2135893 (Opinion and Order entered August 3, 2010). Having properly made this initial determination, ALJ Hoyer could have, but did not, decide that it was unnecessary for him to decide PECO’s remaining two (2) preliminary objections. Instead, ALJ Hoyer reviewed PECO’s other preliminary objections for legal insufficiency and for including scandalous or impertinent matter in the Complaint. In so doing, ALJ Hoyer correctly determined the remaining preliminary objections in PECO’s favor because: a) the Complaint does not set forth an “act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.” 52 Pa. Code §5.101(a)(2), and b) the allegation that “this is a theft of public funds” constitutes scandalous or impertinent matter that is properly stricken from the Complaint.

ALJ Hoyer properly reviewed the pleadings and the law concerning subject matter jurisdiction. Here, there is no reason for this Commission to depart from the findings and well-reasoned conclusions contained in the Initial Decision.

III. CONCLUSION

Based on the reasons stated herein, PECO respectfully requests that the Commission deny Complainant's Exceptions, dismiss the Complaint, and issue an Order adopting and upholding the Initial Decision in its entirety.

Respectfully submitted,



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Counsel for Respondent
PECO Energy Company

Dated: October 26, 2011

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

HALEEMA B. ALKHATIB
Complainant

v.

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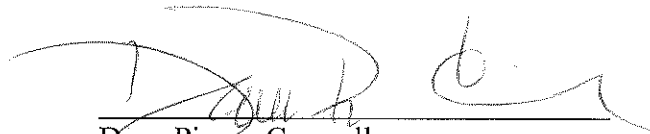
CERTIFICATE OF SERVICE

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

Haleema B. Alkhatib
827 South 60th Street
Philadelphia, PA 19143

The Office of Special Assistants
Keystone Building, 3rd Floor
400 North Street
Harrisburg, PA 17120



Dana Pirone Carosella

DATED: October 26, 2011